

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

an already established Streamlined Sales and Use Tax Agreement which my State and 21 other States are party to, or States can adopt a set of alternative minimum simplification standards to make it easier for online businesses to comply with their tax laws.

And this bill makes it easier for businesses—that choose to do business in a State that requires remote sellers to collect sales taxes—to comply with the law by providing software to help them calculate the sales tax.

Furthermore, this bill exempts small businesses with less than \$1 million in gross revenue from having to collect sales taxes on remote sales. Those truly small businesses would not be affected by the legislation before us today.

This bill does not create new taxes or increase existing taxes. Instead, the bill will help States and cities collect billions in unpaid taxes already owed, reducing the need to raise new taxes on tax-compliant businesses and citizens. Indeed, yesterday I was with my Governor and he indicated that if we could pass this at the Federal level and allow the State of Rhode Island to collect approximately \$70 million a year, he would secure a reduction in our sales taxes which would benefit all the people and businesses in Rhode Island.

This is a proposal that I think is not only necessary, it is long overdue. In 2012, as I have indicated, Rhode Island estimated it lost approximately \$70 million in uncollected revenue. The revenue was legally owed but, because of this loophole, it went uncollected. This puts pressure on individuals and businesses that play by the rules. Indeed, if the Marketplace Fairness Act becomes law, Rhode Island has provisions in State law—and the Governor reiterated that yesterday—that would help lower the sales tax from 7 percent to 6.5 percent and eliminate the recent extension of sales tax to clothing purchases over \$250. This would have huge and immediate benefits to the people and businesses of Rhode Island.

The other thing it could do, frankly, is it would encourage local businesses to hire Rhode Islanders. We are facing a 9.1-percent unemployment rate. We have been slowly making progress in terms of putting people back to work—but there is much more to be done. This bill would help with that recovery because one of the barriers main street businesses face in hiring locally is the unfair competition from remote sellers that do not collect sales tax. This bill corrects that.

Now some online retailers who benefit from this unfair tax advantage understand the need to correct the loophole. That is why companies such as Amazon.com, with substantial remote sales, support this legislation. Governors of every political stripe recognize the undue pressure this tax loophole puts on their budgets, businesses, and citizens, and that is why the National Governors Association supports this. Ultimately, the Marketplace

Fairness Act is about revitalizing our real economy by helping Main Street businesses compete against remote sellers that benefit from this tax loophole because these Main Street businesses cannot hire workers or expand if shoppers use their stores just to browse and then make their purchases online in order to avoid paying sales tax.

Yesterday I was with a group of business leaders in Rhode Island. Among them were the Cardi brothers, Ron and Pete Cardi, who own a family furniture store. It has been in the family for generations. They are first-rate businessmen and first-rate community leaders. They tell me it is not uncommon for someone to come in the showroom, get help from one of their skilled sales personnel, order the furniture, have it shipped to their homes so they see it fits exactly right, then call up and have it returned to the store—and then a truck will show up a day or two later at the customer's house, from a remote seller with the same item because the remote seller doesn't collect sales tax. We cannot have our retailers in States such as Rhode Island simply be showrooms for remote sellers. That is one of the consequences of this loophole we have to correct. This bipartisan proposal is designed not only to allow States to keep or retain the tax that is owed, but also, in the case of Rhode Island, to allow a tax reduction; and furthermore, to give local businesses more incentive to hire.

This is legislation that makes extraordinary sense in every dimension. I hope we can get through this debate this week and successfully pass this legislation. We are all encouraged by the 75 votes this proposal received when it was made as an amendment during the budget debate and the 74 votes this bill received on the cloture motion. I am hopeful it will continue to enjoy a similar level of support moving forward.

Once again, let me thank Senators ENZI and DURBIN for their extraordinary leadership, which has helped forge this bipartisan and bicameral bill, and I urge my colleagues to support its passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Ms. HIRONO. Madam President, I join my colleague Senator REED of Rhode Island and I thank Senators ENZI and DURBIN for their hard work on S. 743.

I rise to speak in favor of the Marketplace Fairness Act. This legislation will put businesses in Hawaii on an even playing field with their out-of-State competitors. It does this by giving the States—not the Federal Government, the States—the authority to require out-of-State merchants to collect the same taxes local merchants have to collect when they sell goods to customers in Hawaii. This is only fair.

I want to be clear about what this bill does and what it does not do because there is some confusion about

what this bill does and doesn't do. For example, this bill does not impose a new Federal sales tax. This bill does not require the States to do anything. In fact, if this bill becomes law, nothing would change unless a State passes its own legislation.

What this bill does do is to give States that choice. It lets each State choose whether to level the playing field for its local businesses. In addition, this legislation provides a framework that ensures States can exercise this authority in a way that ensures fairness for businesses of all sizes.

For example, it requires any State that chooses to exercise this new authority to streamline its sales and use taxes, and to provide free software to calculate these taxes to out-of-State sellers. This does not impose any kind of burden on these out-of-State sellers who are selling items to people in States such as Hawaii. This legislation protects small online businesses by exempting any business with less than \$1 million of annual sales.

The growth of the Internet has been one of the most significant drivers of innovation in our country's history. More and more Americans rely on the Internet to run their small businesses, access educational and health resources, keep in touch with loved ones, and for entertainment. Expanding fast, affordable, and secure Internet access is an essential building block for a strong 21st century economy.

However, we must be careful to ensure that while we are promoting the economic potential of the Internet, we are also being fair to local businesses and entrepreneurs. These are the businesses that populate the Main Streets of towns all across the country, across all the islands in the Hawaiian chain. These are hardware stores, clothing stores, gift shops, and many others—many of which are small businesses. These are businesses that create jobs, pay taxes, and provide needed goods and services in our communities. In fact, in Hawaii, retail businesses employ nearly 25 percent of the workforce, about 128,000 people. In 2012, these businesses in Hawaii generated \$30 billion in sales as well as \$1.2 billion in tax revenue. Many of these entrepreneurs do not want to just contribute economically, they want to contribute and do contribute to the culture and character of their communities.

For example, my office received a call from the owner of Kona Stories, a small bookstore in Kailua-Kona, HI. Kona Stories opened in 2006 and sells over 10,000 titles of all kinds. But Kona Stories doesn't just sell books, it hosts book clubs, supports local authors and artists, and it also helps promote other local businesses. The programs and meetings Kona Stories hosts focus on promoting the local culture and character of the community. Small shops like these are places that can teach visitors about the unique characteristics of our communities. They also help bring local people closer together around shared experiences and values.

Unfortunately, these small businesses are the ones that are hurt most by the advantage online merchants currently have, because they do not collect Hawaii sales and use taxes. This makes online products appear cheaper because their prices do not include State taxes, even though these taxes are technically still owed. That is not real competition, it is an artificial discount that is unfair to local brick-and-mortar businesses and it puts businesses in Hawaii, such as Kona Stories, at a disadvantage. As small businesses, they have a hard enough time competing with the online giants that can offer lower prices even if they were collecting State taxes.

In addition to allowing States to level the playing field for their local businesses, this bill would also provide a boost for State and local government by letting them collect the taxes that are already owed. According to a 2012 Hawaii Tax Review Commission report, fixing the situation and giving States such as Hawaii that option to enact necessary legislation would mean nearly \$160 million in additional revenue for the State of Hawaii in 2013.

I want to be clear. That money does not come from new taxes. It comes from taxes that are already owed, that are not paid. That is money that should be going to keep teachers in the classroom, firefighters and cops on the beat, and fixing our roads and bridges so we all benefit.

Overall, the Marketplace Fairness Act is a good bill whose time has come. It balances the need to preserve a vibrant and innovative online marketplace with a need to ensure fairness for local businesses. It also ensures that everyone is meeting their responsibilities with regard to paying State and local taxes.

That is why this legislation has such a broad range of support from business, government, labor organizations, big and small, from all across the country. In fact, my home State of Hawaii has been working to try to address this issue on the State level for years. We need this Federal legislation. Passage of this bill will finally give Hawaii the ability to address this disparity and put our businesses on an even playing field. That will be especially important to the 2,000 local businesses that make up the retail merchants of Hawaii.

Madam President, I ask unanimous consent that a list of Hawaii national supporters be printed in the RECORD. There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUPPORTERS OF S. 743, THE MARKETPLACE FAIRNESS ACT

Retail Merchants of Hawaii, National Association of Counties, National League of Cities, U.S. Conference of Mayors, Government Finance Officers Association, National Council of State Legislatures, Bipartisan Policy Center's Governors Council, AFL-CIO, AFSCME, American Federation of Teachers, National Education Association, American Federation of Government Employees, International Association of Fire

Fighters, International Federation of Professional Technical Engineers, International Union of Police Associations, Service Employees International Union, UAW, American Apparel & Footwear Association, Food Marketing Institute, Consumer Electronics Association.

Ms. HIRONO. I hope my colleagues will join me in supporting this important legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MANCHIN). Without objection, it is so ordered.

JUDICIAL NOMINATIONS

Mr. ALEXANDER. Mr. President, occasionally some of my friends on the other side of the aisle will say President Obama is being poorly treated on his nominations. That did not ring true to me because it seems to me that just the reverse was true. I have spent a good deal of time in the last two Congresses to actually make it easier for Presidents—not just President Obama but any President—to have his or her nominations considered in a timely fashion.

There are about 1,000 nominations that a President makes in the whole government that are subject to advice and consent. This is the constitutional authority of the Senate. It was put there deliberately by the Founders to provide a check and balance. The Founders did not want a king. They had been accustomed to tyranny and they wanted to think of ways to avoid that. So they created a President, not a king. They said the President shall, with these important nominations, send them up to the Senate. The Senate has the right to advise and consent. Movies and books have been writing about this. It is well known. Some of the most celebrated debates we have had in the Senate have been about Presidential nominations.

But for the most part, the Senate listens to the President's nominations, extends to him the courtesy that he was, after all, elected by the American people, that he has a right to staff his government. He has the benefit of the doubt on his nominations for judges.

So I was surprised to keep hearing from some of my Democratic friends. Every time we confirmed a judge, somebody would come on the floor and say: The Republicans are holding up President Obama's nominations. I did not think that was true. So I asked my staff to work with the Congressional Research Service. I come to the floor to include in the RECORD the facts which show it is not true.

Here is the bottom line. The Senate has confirmed President Obama's nominations for Cabinet more rapidly than it did those of President George

W. Bush or President Clinton; and has confirmed Obama's nominations to circuit courts—but not his district court nominations—more rapidly than it did those of President George W. Bush.

In 2013, the Senate changed its rules to speed up consideration of those district judge nominations. In the history of the Senate, of course this includes President Obama, no Cabinet member, unless we count John Bolton's nomination by George W. Bush to be the U.N. Ambassador, and no district judge has ever been denied his or her seat because of a filibuster; that is, a failed cloture vote.

In the history of the Senate, only seven circuit judge nominees have been denied their seats by a filibuster, five of George W. Bush's nominees and two of President Obama's nominees. I ask unanimous consent to have printed in the RECORD this summary of President Obama's nominations, along with an article from the Washington Post that points out that President Obama's nominees have been confirmed more rapidly than those of the last three Presidents in his first term.

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

PRESIDENT OBAMA'S NOMINATIONS

BOTTOM LINE:

The Senate has confirmed President Obama's nominations for cabinet and circuit court—but not his district court nominations—more rapidly than it did those of President G.W. Bush or President Clinton. In 2013 the Senate changed its rules to speed up consideration of district judge nominations.

In the history of the Senate, no cabinet member (unless you count John Bolton) and no district judge has ever been denied his/her seat because of a filibuster (failed cloture vote). In the history of the Senate, only SEVEN circuit judge nominees have been denied their seat by filibuster—FIVE G.W. Bush nominees and TWO Obama nominees.

FIRST-TERM CIRCUIT COURT JUDICIAL CONFIRMATIONS:

Obama average time (240 days) is FASTER than G.W. Bush (277 days) from nomination to confirmation.

FIRST-TERM DISTRICT COURT NOMINEES:

Obama average time (221 days) is SLOWER than G.W. Bush (156 days) from nomination to confirmation NOTE: January, 2013 senate rules changes should speed this up.

SECOND-TERM CABINET CONFIRMATIONS:

Obama average time (46 days) is FASTER than G.W. Bush (55 days) or Clinton (68 days) from announcement to confirmation (see attached Washington Post article).

SENATE FILIBUSTERS THAT DENIED A CABINET NOMINEE HIS/HER SEAT DUE TO A FAILED CLOTURE VOTE:

NONE in the history of Senate (with only exception G.W. Bush's nomination of John Bolton in 2005).

SENATE FILIBUSTERS THAT DENIED A DISTRICT JUDGE NOMINEE HIS/HER SEAT BECAUSE OF FAILED CLOTURE VOTE:

NONE in the history of the Senate.

SENATE FILIBUSTERS THAT DENIED A CIRCUIT JUDGE NOMINEE HIS/HER SEAT BECAUSE OF A FAILED CLOTURE VOTE:

SEVEN in the history of the Senate, including five under G.W. Bush and two under Obama.

In 2011, Senate rules changes created “innocent until nominated” working group to make it easier for presidential nominees to be considered and eliminated 169 major and approximately 3000 minor presidential nominations requiring confirmation. And 273 Presidential nominations were placed in an expedited process.

In 2013, the Senate has confirmed 10 Obama judicial nominees (4 circuit, 6 district). President G.W. Bush by comparison had 0 judges confirmed at this point in his second term.

[From the Washington Post, Mar. 18, 2013]

#### SENATE MOVING ON OBAMA NOMINEES

(By Al Kamen)

How slowly is President Obama's second-term Cabinet coming together?

Well, there are two sides to the story.

One part of the equation is how fast Obama is putting up nominees. And it seems he's been pretty sluggish on that front. With the addition Monday of Thomas Perez for labor secretary, he's announced eight nominees and still has four more Cabinet or Cabinet-rank jobs to fill. By contrast, George W. Bush had made 11 nominations by this time in his second term—nine of which he made in the six weeks after reelection. Bill Clinton had announced 12 nominees by the end of the December after his reelection.

But in the second half of the Obama administration's nomination picture—how quickly the Senate is approving those nominees—things are moving apace.

Three of Obama's Cabinet nominees have been confirmed so far: Secretary of State John Kerry, Defense Secretary Chuck Hagel and Treasury Secretary Jack Lew. For those folks, the average number of days between the announcement by the White House and confirmation is 45.6 days, which beats the averages of the last three administrations that had second terms.

According to the Congressional Research Service, it took an average of 54.6 days for Bush's second-term nominees; that figure was 67.8 days for Clinton's picks and 56 days for Ronald Reagan's.

Who says the Senate can't step lively these days?

Mr. ALEXANDER. To be more specific about these matters, let's take circuit court judicial confirmations in President Obama's first term. According to our research, the average time for President Obama's nominees was 240 days. That is faster than President George W. Bush, 277 days from nomination to confirmation. So circuit court judicial confirmations which are usually the subject of great interest around here, President Obama treated better than President George W. Bush, slightly better.

First-term district court nominees. The Obama average time, 221 days is slower than George W. Bush, 156 days from nomination to confirmation. That is why in January of 2013 we changed the Senate rules to speed this up. Apparently, that is working. Last time I checked, during this year, the beginning of President Obama's second term, he has to date had 13 judges confirmed. President Bush, in this same period of time in his second term, had one judge confirmed. Second-term Cabinet confirmations. The average time of President Obama's nominees is 46 days. That is faster than George W. Bush, 55 days, and faster than Bill Clinton, 68 days from announcement to confirmation.

I mentioned the Washington Post article which said—it was published March 18, 2013. It says:

He has announced eight nominees and still has four more cabinet or cabinet-ranked jobs to fill. By contrast, George W. Bush had made 11 nominations by this time in his second term—nine of which he made in the six weeks after reelection. Bill Clinton had announced 12 nominees by the end of December after his reelection.

In other words, President Obama is a little slower in making his second-term nominations.

According to the Congressional Research Service,—

Says the Washington Post:

—it took an average of 54.6 days for Bush's second-term nominees; that figure was 67.8 days for Clinton's picks and 56 days for Ronald Reagan's. So the Obama nominees were moving more rapidly.

Senate filibusters that denied a Cabinet nominee his or her seat due to a failed cloture vote. It has never happened in Senate history so far as we can find, with the exception of President George W. Bush's nomination of John Bolton.

There have been occasions when the minority says we are not ready to cut off debate yet. We have more information we want about a Cabinet member. That happened with Secretary Hagel. Many of us made it clear to the majority leader that his motion to cut off debate on Secretary Hagel's nomination was premature because it had only been reported by committee for 2 days; we requested another 10 days to consider it, that was until after the recess, and said that there would be an up-or-down vote.

But so far as we are able to tell, there has always been an up-or-down vote on any President's nominee for the Cabinet, after that Cabinet member has gotten to floor. Now it may be that in the past some Cabinet nominees fell by the wayside in committee. I have repeated on the floor my own experience in 1991, when President Bush nominated me to be Education Secretary and Senator Metzenbaum put a hold on my nomination that lasted a month, but I was eventually confirmed unanimously.

So there may have been secret holds in the past that slowed down nominations or even may have killed one. But so far as the Congressional Research Service has found, no Cabinet member by President Obama or any President has been denied his or her seat ultimately by a failed cloture vote.

Same with district judges. No district judge in the history of the Senate has been denied his or her seat by a failed cloture vote. There may have been a cloture vote on one or two occasions, but in the end, that person was finally seated.

Then, as far as circuit judges, one of my great disappointments in the Senate was when I arrived in 2003. The Democrats had cooked up a plan to filibuster President Bush's circuit court Federal nominees. So far as I can tell,

that had never been done before. There was always an up-or-down vote. Even in the case of Clarence Thomas, for example, a controversial nominee for the Supreme Court, I think the vote was 53 to 47 or 52 to 48. There was no thought of killing Clarence Thomas's nomination by a cloture vote, by a 60-vote margin.

What happened was, without dwelling on it too much, Democrats decided they did not like some of President Bush's nominees. It was not they were not qualified. Michael Estrada was one, one of the most eminently qualified persons ever nominated. Bill Pryor was another one, from Alabama, former law clerk to Judge Wisdom for whom I used to clerk. Pickering of Mississippi was another.

They were basically smeared is what happened. It was an outrageous thing. I remember I was waiting to make my maiden speech as a Senator in 2003 on another subject. I got so upset about this. The first time I spoke on the Senate floor was against that, against that practice of denying a President an up-or-down vote on his circuit judge nominees.

If you do not like the person, vote against him or her but at least allow an up-or-down vote. That so enraged the other Republicans that they wanted to change the rules of the Senate. They said: OK. We have the majority. There are 55 of us. We will just change the rules. We will confirm all of President Bush's judges with 51 votes. That is what the Democrats have tried to do at the beginning of the last two Congresses: We have enough votes to do it. We will change the rules and everything will be 51.

Cooler heads prevailed. I made a couple speeches about it. Democrats and Republicans got together, one of these gangs that we have, maybe 14 Members, they said: Look, except in extraordinary cases in the case of circuit judges, there will always be an up-or-down vote on a President's nominee.

But a lot of the damage had been done. Five of President George W. Bush's Federal circuit judge nominees were denied their seat because of a filibuster. So as far as we can tell, with the research of the Congressional Research Service, that was the first time in the history of the Senate that it happened. As one might expect, now Republicans have done the same thing, twice in the case of Ms. Halligan. If we count her as twice, that is three. But we can count Miguel Estrada several times because he was filibustered a half dozen times.

The record is the Democrats have now blocked five of President Bush's Republican nominees for circuit judge, and Republicans have blocked two of President Obama's nominees. I don't believe this is good for the Senate or for the country. It would be better if we had up-or-down votes for Cabinet members and for Federal judges, both Cabinet and district.

The body of the Senate has precedents. My own personal view is as far

as district judges go I will always vote for an up-or-down vote. As far as circuit judges go, I will always do so except in an extraordinary case. I have always thought a President ought to be able to have an up-or-down vote on a Cabinet member. Again, the Democrats, under President Bush, decided once not to do this.

I believe it is important to bring this before the Senate. I would like us not to go any further in the direction we have followed in the last 20 years. I would like for us in the Senate to get back to where we recognize elections have consequences. The President needs to staff his government. Give the President the presumption of the doubt on judicial nominees. If we don't like the judge, vote no.

This means Republicans now need to swallow a little hard because there is a Democratic President and a Democratic Senate. It will not always be this way. We may have a Republican President and a Democratic Senate. Then the Democratic Senate could decide never to confirm a Cabinet member or never to confirm a circuit judge. I think the American people would be very upset with that. It is important to bring this to the attention of the full Senate and place this in the record.

One other aspect which is important, we have had very good conversations at the beginning of the last two Congresses about the rules of the Senate. The rules of the Senate are not as exciting as a debate about guns, immigration, or a debate about marketplace fairness, which is really the 10th Amendment we are having today. However, they are very fundamental to our country's structure.

The wisdom of our Founders was that they set up three competing, sound branches of government. All need to function well in order for us to have our liberty. This is why we have checks and balances. We want our liberty. We don't want a king, we don't want a runaway parliament, and we don't want a runaway court. We want checks and balances so we, as individuals, can retain our liberty.

I wish the Senate to function as it should and the advice and consent nomination to function as it should.

This is why as part of our rules change we took some steps to streamline the advice and consent role of the Senate. We did this when it wasn't clear whether there would be a President Obama or a President Romney, which is one way we were able to do it with the Democratic Senate and a Republican House.

We took some important steps. For example, we reduced the number of Presidential nominees which require a full-blown Senate confirmation by approximately 170. We took approximately 200 of those nominees right to the desk, and they were expedited. Unless an individual Senator says: I wish to have a full hearing on a member of the board for the Goldwater Scholarship Fund—or something such as this,

then it stays on the desk, goes through the committee for vetting, and is moved to the calendar for a vote. This has worked pretty well.

We did one other thing which was important and which, hopefully, the President and his administration are taking advantage of, we tried to work on the innocent-until-nominated syndrome which has existed around here for a long time.

Whenever someone is nominated for a Cabinet position, we need to go through such a process of vetting, public scrutiny, and general indignation, we wonder why anybody in his or her right mind would do it. Many people won't. This is why we call it innocent until nominated.

One reason for this is because of the multiplicity of forms a nominee such as the Secretary of Education needs to fill out. They might need to fill out one form about what their income was in 1977 and then another form about what their income was in 1977 by a different definition. When they arrive at their hearing and someone has made a mistake, some Senator accuses the nominee of perjury because he was sworn in and said he was going to tell the truth. It was easy to make a mistake under those circumstances.

What we did was create a working group to review all the forms. They made recommendations mainly to the executive branch about simplifying them. The executive branch has worked with our Senate committees. They are doing this now.

As a result, if I am nominated for Secretary of Education, I might fill out a single form which might comprise the only form I would need to fill out for the executive branch. Any Senate committee could ask any question at once and add that to the form, but they might agree to start with this form. It should make it simpler for the nominee, easier for the Senators as we go through the confirmation process, and it might be a way to help encourage talented men and women to enter public service.

The President has said to several of us before that he recognizes part of the reason his nominations aren't moving as rapidly as he would wish is because of the vetting process, the process he and his administration need to go through before they even send anybody over to the Senate.

Much of the delay is in the time which comes before a nomination actually arrives in the Senate.

I hope this review will help to quiet down these—as Senator GRASSLEY said—crocodile tears on the other side of the aisle. We don't think they are deserved.

The President's nominees are moving more rapidly than the last three Presidents, and his circuit court nominees moved more rapidly than those of George W. Bush. As we change the rules to speed up his district court nominees—he is ahead 13 to 1 in terms of nominations in the second term for judges. This is a pretty good record.

It is my desire the President will work with us to speed up the vetting process to develop an innocent-until-nominated effort, which is ongoing to enable it to be an advantage not to just this President but future Presidents. Hopefully, we may give respect and due consideration to any nominee the President sends forward.

At the same time, the President will recognize we have an advice and consent responsibility. It may take some time. We will ask questions and may not want to move to a final vote at the very moment the majority leader may. This doesn't necessarily mean the nominee will be denied his or her seat. As a matter of fact, as far as I can find in the history of the Senate, it has not, with the exception of John Bolton.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank my colleague from Tennessee for coming to the floor. He has been here with some frequency together with the Republican Senator from Wyoming to discuss the matter which is pending before the Senate.

What is pending before the Senate is known as the Marketplace Fairness Act. It is a measure which Senator ENZI of Wyoming has been working on for 12 years and one on which I have worked with him for several years. It is an interesting issue because it is one where the Supreme Court challenged Congress 20 years ago. The States went to the Supreme Court and said: We want those who are not physically present in our State, but sell in our State, to collect sales tax. At that time the Supreme Court in the Quill decision said no; this is up to Congress. Congress needs to take action.

Here we are 20 years later and the conversation has changed dramatically. What used to be sales by mail or catalog are now Internet sales, and they are growing in volume by the day. States are finding themselves in a challenging situation.

States pass sales taxes. Senator ALEXANDER was Governor of Tennessee. The State decided on a State sales tax. They say to every business in the State—as Senator MANCHIN understands because he was Governor of West Virginia—every sale you make over the counter collects sales tax for West Virginia, Tennessee, or in the State of Illinois. Those merchants understand their legal responsibility, their civic responsibility, and they collect the sales tax, remitting this amount back to the State.

The problem they now have discovered is what is known as showrooming. Store owners have described this as a situation where a customer shows up and requests to look at running shoes—this happens at Chris Koos running sports shop in Normal, IL. The customer will say: These look good, but do you have them in a different color? Staff goes back and gets another box of shoes for the customer who tries them

on. Then they will say: This looks great but do you have a wider one? Yes, that is perfect. That is the shoe I want. Let me write down the information about the shoe.

The customer will then turn around, go home, and order the shoe on the Internet. The local merchant who did all of the work, who displayed the merchandise, pays the rent, pays the taxes, receives nothing. The person buys it over the Internet because many Internet retailers do not collect sales tax.

In my State this might be 8, 9 or 10 percent difference. Chris, my friend, the mayor of Normal, told me it is not unusual 2 weeks later for them to come back in with the shoes purchased over the Internet and say: These didn't turn out right. He reminds them they didn't buy the shoes in his store.

This is a story repeated over and over. The brick-and-mortar retailers, the shops on Main Street, and the malls feel they are at a great disadvantage. If their competition on the Internet is not collecting sales tax and they are, it puts them at a competitive disadvantage.

In all of the States with a sales tax, approximately 46 States, if I am not mistaken the purchaser over the Internet has a legal responsibility to pay the sales tax. Most people don't know this. In my State of Illinois people are supposed to pay it when they file their State income tax. There is a line: How much do you owe for sales tax and use tax for remote purchases on Internet purchases?

Several months ago I was reminded by my bookkeeper this line was on the form. I said I should take a quick look to see what I owe.

One in twenty people in Illinois fill out this line. We have about 95 percent of the taxpayers in my State who put zero. We know it is more than 5 percent of the people living in Illinois who are purchasing over the Internet. This tax is not paid.

What this bill says is we don't create any Federal tax; no, none at all. We don't create any new State or local tax, none at all. What we do say is States can give the software to these Internet retailers to collect the tax when people make the purchase.

I recently bought a book on amazon.com, put in my address, ZIP code, and they calculated instantly how much I owed in sales tax on that purchase. I paid it and the money was emitted to the Illinois Department of revenue. They are doing this even though there is no legal obligation for them to do so. More and more companies such as Lands End—I called them. They said: We collect sales tax.

More and more companies are doing so, but this would make it uniform. We wrote this law understanding there are some small Internet retailers who perhaps sell several hundred or several thousands of dollars' worth of goods in the course of a year. We exempt them. They don't have to collect the sales tax if their revenues from the previous

year are below \$1 million. We exempt them. That is to put no hardship on the small retailers but to go after the 1 percent with sales in excess—revenue in excess of \$1 million. We go after them to make them pay what they should.

This is what is pending before the Senate. It has been a long time coming. We have been working with retailers across America to accomplish this. They have said this will give them a level playing field when it comes to sales. The same sales tax is collected over the counter which is collected over the Internet. This is the way it works and at no expense to the retailer.

The States need to provide the software for the collection. They are not going to be held responsible if the State gives software which is imperfect. They can't be held responsible for it. If they use the software given to them, they have met their legal obligation. This is what is before us.

We have had two votes now: one a symbolic vote on the budget and another a procedural vote to move forward on this measure yesterday, which 74 Senators voted for, which is pretty substantial in a body of 100 Senators. All but 5 of the Democratic Senators support it, and a substantial number, 24 or 25 Senators, from the Republican side support this, more than half of their caucus.

We are on this measure now. I have said to my colleagues, and I believe Senator ALEXANDER said to his Republican colleagues: If you have an amendment which is relevant and material to this bill, bring it to the floor. Let's get into a debate. Let's talk about these amendments. Let's vote on these amendments, and then let's move to final passage.

Those who will witness this will see a rare occurrence on the floor of the Senate—perhaps an actual debate and vote on an amendment. It doesn't happen very often around here. So you may wish to stay tuned. I encourage all of my colleagues interested in this issue who believe they would like to offer some form of an amendment to please bring it to the floor as soon as it is ready, which I hope will be today. This is our last week in session before we break for a week. We want to get this bill done. We started early in the week—on Monday, yesterday—and we want to get it done by Friday. If we have to stay over, we will stay over—Saturday, whatever it takes. We want to get this done before this break, and it now depends on my colleagues.

Those who are sitting on an idea, it is time to let it hatch. Bring it to the floor, and let's have a vote on it or let's talk about it. It may be something we can accept. If it is, we will try. If it isn't, we will bring it up for a vote and let the Senate decide. We want to act as a Senate because we have a good bipartisan measure, Senator HEITKAMP of North Dakota and I, joining on the Democratic side along with quite a few

others, Senators Enzi and Alexander on the Republican side.

I urge my colleagues and staff who are following this debate, now is the time. If you have an amendment, bring it to the floor today, right now. We will be here to receive those amendments and to work on them.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I see the principal leaders for this legislation, Senators Durbin and Enzi, and I congratulate them for their leadership. What they have been able to do is to come up with a simple, 11-page bill that has two words for a theme—States rights or 10th Amendment. We have a majority of Senators on the Democratic side and a majority of Senators on the Republican side who have indicated their support for it. They voted twice in support of it.

I talked with Senators at the Republican luncheon today, and at least one Member told me he had a couple of amendments, and I encouraged him to bring them on down because we want amendments. We want this to be discussed on the Senate floor. Senator REID, the majority leader, has said there will be amendments. I have a fishing amendment I would like to get passed somewhere, but I will not offer it on this bill because I want to offer amendments that are related to marketplace fairness. But there are a number of ideas that are, and they ought to be discussed.

I wonder if, before I finish, I might ask the distinguished Senator from Illinois a question. Maybe I am just sensitive to this as a former Governor, as I know the occupant of the Chair is as well, but I wonder if the Senator from Illinois finds it a little ironic there are some people in Washington who say they do not trust the States to make decisions about their own tax structure. I was Governor of a State that has a triple-A bond rating, no State debt on roads, no income tax, is one of the best run States, and when I was there had eight balanced budgets. Unfortunately, during the 10 years I have been in the Senate, we haven't had any of that. So I feel just the reverse.

In a constitutional framework that has a 10th Amendment that says decisions are reserved to the sovereign State, it not only smacks of a lack of respect for our constitutional structure, but it makes no sense to me that Members of Congress would not trust the Governor of Tennessee and the Legislature of Tennessee to make their own decisions.

We had a representative today at a meeting that all three of us attended who said that in Ohio, as I recall, the legislature and the Governor have already decided that if we pass this law permitting Ohio to collect taxes from everybody who already owes them rather than just some people, they will reduce their income tax rate.

So does the Senator find it ironic there would be people in Washington



who don't trust the States to make decisions for themselves in a constitutional system that was created by sovereign States?

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Senator from Tennessee for posing that question, and through the Chair I would say to him that I am in a tough position here facing two former Governors—Governors of West Virginia and Tennessee—but I am sure they agree with what I am about to say.

In this circumstance, the decision was made by the State of Tennessee—and West Virginia as well—as to what the sales tax would be by the people living in the State and making purchases in the State. We don't change that at all. That is up to the States to decide.

As I mentioned, four States, maybe five States, when it comes to sales tax, have no sales tax. What we are putting in this bill will not change that in any way. If you live in Oregon, you will pay no sales tax because of this bill for what is sold over the counter or over the Internet.

Our friends from Delaware are supporting this bill because they think because they are a no-sales-tax State surrounded by Pennsylvania and New Jersey and Maryland, they are going to have an advantage. They believe people will cross the borders to buy in Delaware. So they have calculated this actually helps them.

But we are respecting the decisions made by each State as to the taxes that will be imposed. We are doing it on a fair and equalized basis for those who have brick-and-mortar stores as well as those over the Internet. And I would say that is consistent with the 10th Amendment and consistent with States rights in this area.

Mr. ALEXANDER. Mr. President, I wonder if I could, through the Chair, pose another question to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. If I am not mistaken, there is a Federal moratorium on Internet taxes; that is, there is a Federal temporary ban on State taxes on access to the Internet. Am I not correct that if the Marketplace Fairness Act passes, that ban will still be there? In other words, today there is a Federal ban on Internet taxes, and after this law passes there will continue to be a ban on Internet taxes? And this is not about Internet taxes, it is about State sales and use taxes that are already owed but in some cases are not collected.

Mr. DURBIN. Responding to the Senator from Tennessee through the Chair, he is right. And this has been controversial. I can remember that in the last debate—and it was a few years ago—the argument being made was that we should have free access to the Internet. I don't quarrel with that. The Internet has been a powerful force in

our economy. It is going to grow as a force in our economy, and I don't believe we should tax access to the Internet. There are also a myriad of bills related to services over the Internet and whether they should be taxed. We do not get into that in any way whatsoever. What we are talking about are taxable goods by State law subject to State sales taxes as they currently exist. We don't change those taxes in any way.

A point that was raised in our press conference is an important one. Some States treat food differently, prescription drugs differently. The State has to basically tell the retail community what the State standard is going to be for the categories of goods that are being sold. So we make it as easy as humanly possible for the Internet retailers, providing at the expense of the State the software they need to make this work.

Mr. ALEXANDER. Mr. President, the Senator alluded to this in his remarks, and we both heard Senator HEITKAMP from North Dakota. It is pretty remarkable that a Senator, in her first 3 months, would find herself in the middle of a debate about a problem she created 20 years ago in North Dakota. She brought this case that created this situation.

But let me ask the Senator from Illinois what he envisions will happen if we do not act. If I am not mistaken, under the arrangements we now have today, if a big Internet seller in Illinois—someone who sells more than \$1 million a year—and as I understand it, 99 percent of Internet sellers are exempt from this, but let's say you are in that 1 percent and you want to sell in Tennessee—your responsibility is to file one return in Tennessee, and you are subject to one audit, period. And if you sell in another State, the same thing. So you might be subject to filing one report and one audit in all the States, and many of the States are part of what is called a streamline structure where they work together, so they audit together. And audits don't occur every year.

But there are 9,600 taxing jurisdictions in the United States. So what we have done or propose to do is simplify this greatly so that if you are an Internet seller, if you sell online or by catalog from Illinois to Tennessee, you have a very small number of reports you need to fill out, a very small number of audits to which you might be subjected. And your liability is very limited for making a mistake because the State has to provide the software, and if the software doesn't work, that is the State's fault and not yours.

But what would happen if we didn't act, I would ask the Senator from Illinois? What if we did not act to simplify this system, as the Supreme Court said 20 years ago is our responsibility?

Mr. DURBIN. I would say to the Senator from Tennessee through the Chair that there are two possibilities:

We continue under this current system, which works a disadvantage on

the Main Street stores and shopping malls and denies to those units of government the revenue that would otherwise be coming from the sales tax. That would be one outcome.

The second outcome is—and Senator HEITKAMP has mentioned it—this case may return to the Supreme Court. If it returns to the Supreme Court, it is quite possible it won't be written as mercifully as our version. We have exempted—we have exempted Internet retail sellers with revenues the previous year below \$1 million. We have tried to lean toward an accommodating approach. I don't know if the Supreme Court would reach the same decision when it comes to sales tax liability. I believe it is better for us to accept their challenge, even 20 years later, and get this done.

Mr. ALEXANDER. In addition to that, let's say I am the Governor of Tennessee and I look to the Senate and say: These guys can't get anything done. They have been debating this ever since Senator ENZI has been a Senator. They have been debating it for 14 years. They are never going to do anything.

So I just bring a lawsuit and I say: If you are going to sell in Tennessee, you are welcome, but you are going to collect the tax. I mean, Tennessee businesses collect the tax and send it in. So if you want to come in and sell to us, you do that too. We are going to treat you exactly the same way.

Now, let's say the Congress hasn't acted. Then that seller in Illinois who wants to sell in Tennessee has not only the State taxing jurisdiction to consider, he has 95 counties to consider, he has several dozen cities with local sales taxes to consider, and he has 9,600 jurisdictions across the country to consider if we don't act.

So some of the opponents of this legislation who raise this 9,600 jurisdictions—this is the solution to that problem. If you want to sell by catalog or online, this simplifies it for you, it reduces your liability, it reduces the number of forms, and it requires the States to provide the software that you would use, which many businesses are using today and it works for them.

So I would ask the Senator from Illinois, don't you imagine if we don't act, another consequence will be some Governor in some State will go back to the Supreme Court, and the Supreme Court will say: Twenty years have passed. We now have an Internet. There is no burden on interstate commerce, so it is up to the States to decide what to do.

And then we would have a big free-for-all.

Mr. DURBIN. Responding to the Senator from Tennessee through the Chair, I listened to the speeches of our critics, and they were swooning over the notion of being subjected to 9,600 taxing districts, taxing entities. What the Senator from Tennessee has described is our answer. This bill avoids that problem. This bill simplifies that situation.

We are down to 46 States with the defined goods and the defined sales tax. That is more reasonable for the retailers than running the risk, as the Senator suggests, that this goes back to the Supreme Court, and 20 years after the fact they say: It is wide open. If Congress is not going to act, the Internet retail community has now matured to a point where they should be able to collect sales tax in every taxing entity where a person resides.

I believe that is a much more complex and challenging situation.

Mr. ALEXANDER. Mr. President, I see Senator ENZI is here, and I appreciate his patience in allowing me to go ahead, but I know if I were still the Governor of Tennessee—which I am not, and I won't be again—and Congress did not act on this and I saw an opportunity—if I looked across my State and I saw that our tax laws treated some taxpayers one way and other taxpayers a different way and instate businesses one way and out-of-State businesses better, it wouldn't take me 20 minutes to call the attorney general over and say: Let's take this case to court. Let's go back to court. If somebody is going to sell in Tennessee, they are going to collect the tax.

I believe I would have a reasonably good chance of winning. And I am confident that, knowing a number of the Governors around this country, if we fail to act, I will bet one of them will be in court the next day.

I congratulate Senator DURBIN and Senator ENZI for their persistence in creating what is an 11-page bill about two words—States rights—that will—my prediction—allow many States to lower their tax rates when they collect taxes that are already owed but not paid and treat businesses the same way and taxpayers the same way.

I thank the Presiding Officer, and I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from Tennessee, Mr. ALEXANDER, and the Senator from Illinois, Mr. DURBIN, for this discussion they have had where I think they cleared up a lot of the confusion there might be over the bill. They have presented excellent reasons why we need to get this bill done, and why we need to get it done now—so we can continue to grow businesses in our States instead of growing businesses outside of our States.

There are a number of things people have mentioned. One of the big ones I want to talk about is the small seller exemption. I know Senator WYDEN from Oregon has suggested a compromise for the whole bill which was to create the nontax States to be a haven for all Internet sales, and that won't work. Our purpose is not to move all of the business online out of our own States but to keep it there.

But there is a compromise in this bill. It is called the small seller exemp-

tion, and that is where people who are starting in business don't have to collect the tax when they are out of State. With in-State sales, a lot of them will have retail sales in their State as well as hopefully some online sales. On what they sell in their bricks-and-mortar store, they collect sales tax from everybody who buys from them. There is no exemption. But the compromise we made for the online sales was until a retailer hits the \$1 million mark in a year—and we would love for them to hit the \$1 million mark and have that kind of business. But until they do, they are protected in that they don't have to collect the tax. We give them a break over the in-State retailers. Of course, the ones who are in State who are selling out of State have that same online break. But that is why we have a small seller exemption, to continue to grow small businesses that are using the Internet. We want the Internet to grow and are not discriminating against the Internet. And as has been mentioned, there will be no tax on the use of the Internet. That is not a part of this bill.

This is a tax on what people buy on the Internet, because States already anticipate that the sales tax they have in place is going to be paid on every purchase. When that money comes back, part usually goes to the State, part goes to the county, part goes to the towns. That is to provide for their schools, fire protection, for all of the services people who live in the communities are used to. I can tell you that in Wyoming that makes up at least 30 percent of everybody's budget. I know in one town it is 70 percent of their budget.

So if you start eliminating the sales tax by getting products from out of State, you are wiping out services in the local communities. Those local communities are where the Main Street retailers, the shopping center retailers—the brick-and-mortar retailers—are the ones paying property tax. They are hiring local people, and they are also participating in the community in a number of ways. School yearbooks probably wouldn't exist without the participation of the local merchants.

We want to continue to encourage the local merchants, and so we came up with the small seller exemption of \$1 million. You don't start collecting the tax and you don't need to get the free software to be able to collect the tax until you hit the \$1 million mark in a year, and then that would go into effect.

We looked into a number of different levels. Our older bill had  $\frac{1}{2}$  million in the Senate bill and the House had \$1 million in their bill. I said, Let's give a little more flexibility. Let's go with the \$1 million. So that is how we wound up with \$1 million.

I will comment more on this later, but I see my fellow Senator is here who would probably like to make a comment.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Mr. President, first let me thank Senator ENZI and Senator ALEXANDER. I completely agree with their position.

I had a chance to talk about this issue when we were debating it on the budget issue. The bill simply removes an impediment from the States being able to collect the sales taxes that are due. It responds to the Quill decision about requiring a physical presence in a State in order to require that State to collect the sales tax.

Senator ENZI points out there are no new taxes; that it is a matter of basic fairness. It really does help small businesses. The brick-and-mortar companies located in our neighborhoods, small shopowners who build a neighborhood and build a community, are the ones who are at risk where they have to pay sales taxes and yet their competitors don't.

I will give a short example with a story told to me about a retailer selling electronic goods. The consumer came into the shop, looked and found the product she wanted, went on the Internet, found the product for the same price on the Internet but didn't have to pay the sales tax, and literally bought it while the shopowner was watching—after the shopowner had given that individual personal service. The shopowner didn't lose the sale because of competitiveness but lost the sale because of tax avoidance. This bill would correct that.

This is \$23 billion. This is a lot of money our States are not collecting. These are taxes that are already imposed. In my own State of Maryland, it is somewhere between \$150 million and \$300 million of taxes that could be used to reduce tax burdens to the taxpayers in my State.

It is a matter of basic fairness, something that needs to be done. As Senator ENZI pointed out, it will simplify the sales tax collections by using the Streamlined Sales and Use Tax Agreement, and we exempt small sellers of \$1-million-or-below sales. So it is an issue that needs to be passed, and I am pleased that we are finally getting around to passing it.

Mr. President, I ask unanimous consent to speak for up to 10 minutes as if in morning business.

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

#### SEQUESTERATION

Mr. CARDIN. I have never supported the sequestration. I always thought it was a big mistake. These are across-the-board, mindless cuts that say every priority in government is identical to the other. That is not the case.

If you had a problem in your family budget and you had to reduce some spending and you had money put aside for your mortgage payment, your rent payment, or your family food budget, and maybe some money for a weekend



trip, you wouldn't identically cut every category. You may give up that weekend trip in order to be able to save the roof over your family or put food on the table. Sequestration says every priority in government is the same.

It is also not directed to where we need to go to reduce the deficit. Once again, sequestration primarily applies to domestic discretionary spending. It provides a fourth round of cuts when we have already had cuts over the last 3 years. For the agencies that are affected, it is equivalent to about a 10-percent cut. You can't do that without seriously affecting the mission of the agencies, and that is wrong. That is why I have said from the beginning, let's replace sequestration.

March 1 came; sequestration came; people woke up the next day and said, What is the big deal? Well, we are finding out what the big deal is all about. We just heard from the FAA, the air traffic controllers, that because of sequestration they have very little option—85 percent of their operational budget is in personnel, and air traffic controllers are most of the personnel. Therefore, they have announced they have to furlough 11 days during the remainder of this fiscal year. That comes out to about one furlough day over each work period. It is as much as a 10-percent reduction in the workforce to man our towers to make sure air traffic is managed safely. You can't do that with that type of reduction, and we are now looking at whether there are going to be significant delays of flights. Those types of cuts are ridiculous. We know better than that. There is no question about it, these are the types of things that are going to hurt our economy if we can't have a reliable air traffic service.

I was talking to one of the nonprofits in Maryland that manages a Head Start Program, and they were telling me about what the fall enrollment is going to be. They have a waiting list of families who want their children in Head Start and qualify for Head Start and aren't going to be able to get into a Head Start Program. Why? Because of sequestration. The waiting list will get longer. Children will be denied the ability to go to Head Start Programs. Did we intend that? I don't think so. I don't think our colleagues wanted to say we were going to balance our budgets on the backs of children being denied Head Start placement.

I was at the National Institutes of Health not too long ago. The research they do is so critically important to our country's future. It is not only the fact that they are discovering the answers to dread diseases or ways in which we can keep people healthy. They are now working on developing a universal flu vaccine against the influenza so you don't have to get a vaccine every year. Think how many lives that can save. It is also the basic research we need in order to create the jobs in the bioscience areas and the tech areas. This is about creating more jobs in our

communities. Now they are going to have to give up grants as a result of sequestration even though today they are only approving about one out of every seven worthwhile grant applications. We certainly didn't intend that through sequestration.

I could talk about new transit starts. We have some very exciting programs in Baltimore, Washington, and Maryland—a purple line to provide transit between the Washington suburban counties and Maryland. We have transit programs in Baltimore. We have the corridor cities along the 270 corridor. We have southern Maryland that needs help. All these programs need to compete for a limited amount of funds. Now, because of sequestration, there are going to be less funds available, meaning we are going to have more traffic jams rather than less. Do we mean for that to happen?

I could go on and on. I could talk about the cuts to the Department of Defense and what they have to go through. These weren't cuts we initiated, saying this program needs to be reduced. These aren't the types of deliberative actions a Congress would do. It is saying we are going to do a meat ax approach and tell the agency: You cut your program by this percentage amount. We advertised it a little over 5 percent, but in reality it is much higher than that because these cuts over a 7-month period reflect a year's reduction. So the cuts are even more severe when used on an annual basis.

Our Federal workforce deserves more. These are people working hard providing vital services in our country, whether it is protecting our borders or doing research or keeping our food supply safe or making sure our seniors get Social Security checks. The list goes on and on. It is not fair to those who signed up to serve the public as Federal workers, and it is certainly not fair to our economy. This is having a very damaging impact on the economy of this country. We have already seen in the most recent job reports a slowdown of more than we predicted, and most economists say it is directly related to these across-the-board sequestration cuts.

So what should we do? We are in session. It is time for us to act. We are in the fiscal budget year 2013. Yes, we passed a budget at the end of last year. I think it was on January 1 when it finally got around to passing. We passed it at the sequestration levels saying we hoped we would figure out a budget plan to avoid the sequestration cuts in this year. So let us consider a way to avoid these mindless across-the-board cuts, and substitute it for sensible reductions that we know will not have the same type of unintended consequences on services that are vitally important to our economy and to the people of this country.

There are areas where we have savings. We know that. We have that in the overseas contingency accounts under the Department of Defense. We

know we can find savings in tax expenditures. We spend \$1.2 trillion a year in tax expenditures. We know we can certainly find some savings on tax expenditures. I think we have to look at a broader level than just these discretionary spending accounts that are particularly devastated by these sequestration cuts.

I urge this body to find a way we can replace sequestration for fiscal year 2013—this current fiscal year—by more responsible budget savings, and then, working through our appropriations committees, working through the Budget Committee and the other committees for fiscal year 2014, have time under a more normal legislative process to figure out our spending priorities to go beyond the appropriate dollars—what we do on the Tax Code, what we do under mandatory spending. Let's bring up that game plan after the next fiscal year, 2014, which begins October 1. But for the current situation, let's replace sequestration with a more sensible way to get those savings, rather than causing harm—whether it is to those who depend upon air traffic, those who depend upon a place in Head Start, those who rely upon the research done at NIH, or those who depend upon having adequate support within our military. All of the above are adversely affected by sequestration. It is time for us to take action, to do what we were supposed to do: Make the tough decisions. Don't take the way out that every program in government is of equal importance.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Ms. AYOTTE. Mr. President, yesterday I came to the floor to oppose the cloture motion on the motion to proceed to the so-called Marketplace Fairness Act. I, of course, would like to, I think properly, name it the Internet Tax Collection Act because that is what it is. I strongly oppose this bill which has very serious flaws to it and very serious ramifications for not only businesses in my State, online businesses where we have seen great growth, but also online businesses across this Nation.

I strongly disagree with the decision to fast-track this bill, to skip the regular markup process of the Finance Committee. Both the chairman of the Finance Committee, Senator BAUCUS, and the ranking Republican on the Finance Committee, Senator HATCH, had opposed going to this bill without the committee doing its work.

Why? There are a number of concerns that have been raised about this bill by Members on both sides of the aisle. At a very minimum, we believe these concerns warrant a thorough vetting through the regular order. That is why I, along with Senators WYDEN, TESTER, SHAHEEN, RUBIO, LEE, and CRUZ wrote a letter to the majority leader expressing these concerns, asking again for regular order for this bill. But here we are. Cloture was invoked and I suspect the

supporters of this bill certainly do not want to go through the markup process so here we are again without regular order.

This bill is wrong for a great area of growth for our country, which is online businesses. Small business owners get hit the worst under this bill. Small business owners from my State of New Hampshire have told me—and large businesses from my State of New Hampshire that do business online have told me—this legislation would make it harder for them to do business. During the recent Senate work period, I held two roundtable discussions in New Hampshire, one in Manchester and one in Portsmouth. It was a great opportunity to hear directly from those on the ground what the implications of this bill will be to business owners in my State. I would like to share a sampling of the feedback from businesses in New Hampshire about this bill.

Russ Gaitskill, who is the president and CEO of Garnet Hill, in Franconia, NH: "It's going to be a nightmare."

He sent to my office an example of what he would have to do. Understand what this will make online businesses have to do in this country. They now become the tax collectors for other States, even though they do not rely on the services in those States, they do not use the roads in those States, they don't get to vote for the Representatives in those States. Taxation without representation, that is what this bill is about. They now have to collect for the rest of the Nation's 9,600 tax jurisdictions of different not only State sales taxes but local and county sales taxes.

I want to use one example of what this is like and what an administrative nightmare this is for businesses. This is 1 page of a 40-page sales tax manual that is an example of what any online business across the Nation could have to face. In New Hampshire, if there is a customer from Illinois who chooses to buy from an online business in New Hampshire—here we are. If the person lives in Grand Prairie, it is a 6.5-percent rate. But if the person is from Colona or Collison, a 6.5-percent rate or if you live in Dow, it is a 7-percent rate.

There are 9,600 different tax jurisdictions across this Nation and the people pushing this bill, the proponents, say: Oh, no problem for these businesses. Just use software. Every business has this software. It is going to be easy as pie.

So when Dow changes their tax rate half a percent, the whole program changes. Yes, that burden is put on the business. Talk about an administrative nightmare. Do you know why. Because States are in a position where they want to use that as a cash grab to make other States and online businesses do their work of tax collecting for them instead of them doing it themselves. I cannot believe my colleagues are going to go along with this and those who are pushing it.

I think it is especially odd there are Republicans who want to create this

kind of complicated tax mess. I hear from my colleagues on this side of the aisle all the time about how we are going to cut through regulations, we are going to make it easier for businesses. A lot of my colleagues on the Republican end are pushing this notion that a business—oh, just let them purchase some software and then let them try to collect for almost 9,600 tax jurisdictions in the Nation. What could possibly go wrong for an online business? Many of them, smaller businesses in this country, are trying to thrive, trying to grow through a difficult time in our country.

I also heard from E&R Laundry and Dry Cleaners, a small business founded in 1921 in Manchester. About 70 percent of E&R's sales are now Internet based. The company's president said he would not have the resources to calculate, collect, and deliver sales taxes for thousands of jurisdictions across the country.

A bakery in my hometown of Nashua echoed that sentiment. Susan Lozier Roberts of Frederick's Pastries—and anybody who has been there, yum. I can understand why people across the country would want to get some Frederick's pastries. Susan said it would create mass confusion, keeping up with all the individual State tax codes.

I heard the same from one of the most prominent maple sugar producers in the State. In New Hampshire, we are a State that prides itself on its maple sugar products. Peter Thomson—his father was the late Gov. Mel Thomson, a wonderful figure in the history of our State—said it would be a burden we just couldn't afford.

Ken Smith, the owner of Maine-ly New Hampshire, said: I physically don't have the manpower or the hours to be able to handle something like this.

Jenn Coffey, another business owner, said: If I had to become a tax collector on top of what I am already trying to do as a startup—we all know how hard it is to start your own business, by the way—she said: I would be out of business.

I also heard widespread concerns about the threat from faraway audits that this legislation would bring. That is the poster board I had up there, with all these tax rates. In every single one of those jurisdictions, if we divide it by county or we divide it by State, when a business in another State, in New Hampshire, for example—if they are selling to a customer in Illinois, they can then, if their computer program that everyone is saying is so easy doesn't calculate it right, they can be hauled in for an audit in another State where they do not have any physical presence. What do they do? They have to get a lawyer in another State. They have to deal in a court system in another State or with auditors with a department of revenue. Whom do they deal with? Talk about administrative nightmare, to be dragged into another State for potential audits, to have to

hire lawyers in other States—what an administrative mess this bill will create.

It is truly shocking to think that people actually want to say this somehow is going to level the playing field or make it more fair, when it puts this great burden on businesses.

Travis Adams, with whaddy.com, based in Nashua, said: One tax audit from another State or jurisdiction would completely crush us.

Ben Baker, an online retailer in Barrington, said: Small businesses like mine just can't handle that kind of accounting burden. If I have to hire a bookkeeper or pay my current offsite accountants significantly more per month to track all this, you can bet my plans to expand my business in the next 6 months are a lot less likely.

Paul Ford, an online dealer in Portsmouth, perhaps summed it best when he said: The last thing we need is legislation like this.

I would also like to mention a comment from Joel Maloy, a friend of mine, a great business owner in New Hampshire, president of Polaris Direct. He said: This is not about making Main Street more competitive. It is about passing new taxes on to consumers. That is consistent with what other business owners have told me from across New Hampshire, and I have certainly also heard it from businesses across the Nation. They know this is not about competitiveness. It is about helping States get more money to spend on programs they cannot afford.

That is what the Wall Street Journal said this week. The paper called the Marketplace Fairness Act an online revenue raid. They said this is a bill—of course, do you know who is pushing this bill? Big business, big retail business. Do you know what it does, according to the Wall Street Journal—and I fully agree with them on this—“... big business and big government are uniting to pursue their mutual interest in sticking it to the little guy.”

“[B]ig business and big government are uniting to pursue their mutual interest in sticking it to the little guy.” Haven't we had enough of that in our Nation? The paper concluded that “the new revenues will merely fund larger government.”

Some of my conservative colleagues have tried to justify their support for this big government bill on the notion that their States will be able to reduce their income or sales tax. I think we all understand there is no requirement in this bill that States have to reduce some other tax burden if they collect taxes in this way. This is just about spending more money.

Let's talk about the Constitution. By imposing collection requirements on businesses that have no physical presence outside their home State, I also fear this is going to trample on existing State sovereignty. Under current Supreme Court precedent, in the absence of an actual sufficient nexus, a State cannot reach beyond its borders

to compel out-of-State Internet vendors to collect taxes on a particular transaction. That is the Quill decision.

By usurping and changing the standard, it would undermine an important limitation in the commerce clause, the nexus requirement. So now your nexus with a State is a click; instead of a physical presence in a State. If an online business in New Hampshire has to collect and remit sales taxes for online customers from Massachusetts, what is to prevent Congress from later expanding the commerce clause even further to require New Hampshire brick-and-mortar businesses to collect the Massachusetts tax, because Massachusetts has already tried to do this to New Hampshire. In fact, when I was attorney general of the State, we brought a case to the Massachusetts Supreme Court because there were customers from Massachusetts who came over to buy some tires in New Hampshire and the Massachusetts DRA tried to get New Hampshire businesses to collect that tax.

That is exactly what we are doing with this bill. It actually places an unfair burden on online businesses versus brick-and-mortar businesses that are in that situation that now do not have to collect that. But I worry that will be the next step for businesses in my State of New Hampshire and other States across this Nation that do not have a sales tax.

What about stores that sell through catalogs. Their customers are frequently older and less likely to have transportation or be online. Will catalog vendors also have to collect and remit State sales taxes?

Finally, what about other unintended consequences on consumers, retirees, and investors? That is the type of information we would have talked about in a committee hearing that we did not have on this bill before the Finance Committee. There was a hearing, but there was no markup. A markup is when we try to improve and deal with unintended consequences to a bill.

Could this bill open the door to taxes on financial services or transaction taxes? Some of the financial organizations have raised that issue. In my home State of New Hampshire, it is a matter of pride that we do not have a sales tax, and this bill tramples on that choice for the State of New Hampshire. That is because we know it gives our retailers, yes, an advantage in a competitive marketplace, but we also know low taxes are the result of low spending. This legislation threatens to trample on retailers in all States, forcing them to become tax collectors for other States—nearly 9,600 tax jurisdictions, as I have mentioned.

I said it before, and I will say it again. This truly is taxation without representation because businesses in New Hampshire or online businesses in other States can now be subject to doing the business of governments in other States, of collecting their taxes, when they don't elect the representa-

tives there, when they don't rely on the roads there or the services there. Here we have it—the ultimate in taxation without representation. I say to my conservative colleagues, why would they want to support such authority given by the Federal Government?

Supporters of this amendment argue that they have created an exemption for small businesses of \$1 million for small sellers, but this amount is not indexed to anything. What about the business that is \$1 million and \$1 in sales? Then they have to do it, and it is going to discourage businesses from growing.

Also, this limit is far lower than the SBA—the Small Business Administration—actually defines a small business.

Even with this exemption, trust me, once this exemption is in place and the States don't get all the revenue they want, they will be back. They will be back before this body to say: We didn't get enough money, so the Senate needs to authorize us further. Get rid of the exemption. We have a right to collect from those businesses as well or have them collect for us as well because that is what it is—requiring them to collect for us.

A broad coalition of groups is opposed to this far-reaching legislation. Let me talk about a few of them.

No. 1, Americans for Tax Reform. Americans for Tax Reform said:

This legislation grants states new tax collection authority without removing equivalent taxing authority elsewhere. Therefore, this legislation can only be viewed as a tax increase.

The Financial Services Roundtable said:

This legislation has the potential for unintended consequences. It's important for Congress to explore all possible outcomes and costs of this proposal, especially the impact on consumers.

A transaction tax on financial services products will hurt retail investors, retired Americans, and small businesses, effectively making it more expensive for them to invest and plan for the long term. Without hearings, these implications and others will not be properly addressed.

Again, the Securities Industry and Financial Markets Association has raised similar concerns, saying that this could lead to a financial transaction tax which will hurt all of us.

TechNet opposes this, saying:

Imposing a new Internet sales tax regime is a tremendously complex issue that should be addressed through regular order, starting in the Senate Finance Committee, and done in a thorough and deliberative manner.

That has not been done here.

We should not rush a proposal that is riddled with holes and, most importantly, does not provide enough protections for small businesses, the back bone of our economy.

Americans for Prosperity opposes this. Americans for Prosperity says:

This bill would not level the playing field; it would burden online retailers in a way that brick-and-mortar stores are not. Complying with the internet sales tax would be a considerable administrative burden for companies, particularly for small businesses.

Freedom Works opposes this as well. Heritage Action for America opposes

this. The National Taxpayers Union opposes this. The Competitive Enterprise Union opposes this. Competitive Enterprise Institute opposes this, as well as the Council for Citizens Against Government Waste. These are groups that are committed to low taxes, less government, and free enterprise so we can have a strong economy.

Again, I encourage my colleagues on both sides of the aisle—especially my colleagues on this side of the aisle—to listen to the red flags these groups and several of my other colleagues have raised.

I will conclude by once again restating the serious concerns I have about this legislation. I have concerns about the impact on small business owners in my State and in States across the Nation. I have concerns about the impact on online businesses that have been such an area of growth for this country.

The concerns about the administrative application of this bill—I showed my colleagues all the tax jurisdictions. To put that burden on businesses is absolutely wrong. It is wrong for creating jobs in this country, and it is absolutely wrong to put such an administrative burden on people who are working so hard in starting their businesses and thriving and making sure they grow.

I believe we are opening Pandora's box with this bill, and this shouldn't be done in the manner it has been—without regular order. We are talking about a massive reorganization on how sales taxes are collected in this country. What will be next? What will the States ask us for the authority to tax next? That should be a very big question for our colleagues.

I strongly encourage my colleagues to put the brakes on this bill and to think about the harm this legislation would do to small online retailers across America. When consumers and online retailers in the States of my colleagues find out what is actually in this bill and they don't understand why their Senators would support an online sales tax bill, I know they will raise many concerns to my colleagues when they have the administrative burden and the nightmare of trying to collect for 9,600 tax jurisdictions in this Nation.

I urge my colleagues to oppose this bill. Thank you.

**THE PRESIDING OFFICER.** The Senator from Minnesota.

**Mr. FRANKEN.** Mr. President, I rise today in support of the legislation that will level the playing field for brick-and-mortar retailers in Minnesota and across our Nation. I join my bipartisan group of friends, including Senators DURBIN, ENZI, HEITKAMP, and ALEXANDER, in support of the legislation we are debating this week, the Marketplace Fairness Act. It will simply allow States to help their brick-and-mortar retailers, including the mom-and-pop shops on Main Street, stay competitive in a marketplace where online sales

have become a fact of life. This legislation is a commonsense measure that brings our sales tax laws into the 21st century.

In Minnesota the retail industry includes nearly half a million workers—about one in five jobs in our State—and those retailers need to compete on price and on service every single day. But the current sales tax system makes it impossible for them to compete on an even playing field.

Take Michael Norby, who owns Norby's, a department store in downtown Detroit Lakes, MN, whom I met last August. His situation and what I have learned from him explains a lot about why I support this bill. Norby's has been in his family since 1906. Mr. Norby wants to compete with the big guys—with the Amazons and the Overstocks of the world. He said he can compete with anybody just as long as it is on a level playing field. He said: Once you bring those guys onto the same playing field as the rest of us, we will compete with them.

But there is a problem. Mr. Norby described what they see in Norby's every day. We have heard it from other Senators. It is called showrooming. The customers come and check out the merchandise, they get help from a sales associate, then they pull out their smart phones and say: I can get this cheaper online. When Norby's has to collect sales tax and the other guys don't, it makes it impossible to compete. Mr. Norby describes this simply as an issue of fairness. And he is right.

Brick-and-mortar stores such as his should be able to compete on the same terms as online retailers. That is what this bill does, and that is why Mr. Norby supports the Marketplace Fairness Act. But it is not just about fairness. When Mr. Norby is able to compete on fair terms, he will be able to hire more people. That is what will happen when the Marketplace Fairness Act passes. And what goes for Norby's goes for other businesses around Minnesota. The Marketplace Fairness Act is going to help the local businesses in our communities that provide jobs to our constituents. And when customers shop at local retailers, that money then supports the local community and it stays in that community.

The Marketplace Fairness Act will help our States and our communities in another way. State and local budgets have been hit really hard since the great recession. One thing that has meant is that even though the private sector jobs have grown for the past 37 months, the public sector has shed a tremendous number of essential jobs—teachers, firefighters, police officers. That is why so many Governors across this country support efforts of reform, because it is the right thing to do for their States.

Republican Governors in Alabama, Arizona, South Dakota, Georgia, South Carolina, Idaho, and many other States support the concept of leveling the playing field for small businesses be-

cause it brings much needed revenue to their States without creating a new tax. There is no new tax created here. It is simply going to improve compliance under existing laws.

Minnesota has lost an estimated \$397 million in revenue in 2011 alone from taxes owed but not collected on remote sales. I am sure that \$397 million could do a lot for the people of Minnesota, including hiring back some of those teachers and firefighters and police officers, making improvements in infrastructure, in education, and in so many of the things that create prosperity and that affect the middle class.

I have heard from big retailers in Minnesota, such as Best Buy and Target, about how important this issue is, but I have also heard from countless mom-and-pop stores, such as Norby's Department Store. I have spoken with the Minnesota Retailers Association and the Metro Independent Business Alliance. In addition to retailers, I have heard from the League of Minnesota Cities, from mayors across the State, and from our Governor—all who understand what that revenue they are missing can do for our communities.

The Marketplace Fairness Act is bipartisan, and it is a commonsense bill. I urge my colleagues to support this legislation.

Thank you, Mr. President. I yield the floor.

THE PRESIDING OFFICER. The Senator from Missouri.

MR. BLUNT. Mr. President, I ask unanimous consent to speak as in morning business as my remarks will not relate to the business at hand.

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

MR. BLUNT. Mr. President, first of all, I wish to talk about the bill that is on the floor. I agree with Senator FRANKEN—this is a bill that enjoys bipartisan support. We saw in the budget debate just how broad and how bipartisan that support is. It is the right thing to do. It is the fair thing to do. It is a situation where government no longer decides that one business located in a community that provides the police protection, the sidewalk, and whatever else one might use as one goes into a local store and looks something over, is disadvantaged over a business that is located somewhere else.

Also, there is a fundamental policy of the importance of having laws on the books that are actually enforced. In almost all the States—I think the number is somewhere near 37 or 38 States—this tax is currently due. This tax is supposed to be voluntarily paid, and winking and nodding on not paying this tax creates real concerns. I think in Missouri last year—a State where this tax is supposed to be paid as a use tax—300 people filed that they owed this tax and paid some of that use tax. Now, my absolute certain guess is that more than 300 Missourians received something in the mail at their house that didn't have taxes paid on it when they received it.

So my view would be that we should do one of two things: We should either take all of those laws off the books or determine a way where the laws that States have are actually able to be enforced by those States.

States have a right to decide, no, we don't want to be a part of this compact. We don't want to be a part of it. We don't want this sales tax revenue. We don't want to collect the money that is due on the same product in our State. But they also have the right to say, yes, that is our law, and we need to collect that tax, and we do not want to pick winners and losers.

From the point of view of some of the most conservative leaders in the country, including those who are in government—Al Cardenas, the chairman of the American Conservative Union, says:

When it comes to state sales taxes, it is time to address the area where federally mandated prejudice is most egregious—the policy toward Internet sales, the decades old inequity between online and in-person sales as outdated and unfair.

Governor Mike Pence from Indiana says:

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

Another Indiana Governor, Mitch Daniels, said:

Sales taxes that states impose ought to be paid, and paid by everybody equally and collected by everybody in the retail business.

Art Laffer, in a Wall Street Journal article just this week, said:

The principle of levying the lowest possible tax rate on the broadest possible tax base is the way to improve the incentives to work, save and produce—which are necessary to reinvigorate the American economy and cope with the nation's fiscal problems. Properly addressing the problem of e-fairness on the state level is a small, but important step toward achieving this goal.

Art Laffer—President Reagan's adviser on exactly that concept of having a tax that is fairly applied in the broadest possible way—is supportive of this, along with Mitch Daniels and Mike Pence and Al Cardenas and many other conservatives who have looked at this as both a fairness issue and an issue of simply providing a way that States are allowed to enforce their law.

Regulating interstate commerce is one of the principal reasons to have a Constitution and a Federal Government.

#### ESSENTIAL SERVICES ACT

Mr. President, the other thing I would like to talk about is what happened beginning on Sunday in the country as people tried to travel when approximately 47,000 Federal Aviation Administration employees were furloughed, and furloughed in a way that created needless airport delays nationwide.

The announcement came on the heels of a report that the President has cut other public services, such as the self-guided tours at the White House. I cannot imagine how much the self-guided

tours at the White House cost, but I do know it was cut when for almost every school student in America who comes to Washington, one of the things they would like to see is the White House. So I guess there is some immediate pain involved there, just like there has been pain involved at airports since Sunday.

The airline industry was not even told until late last week that this was going to happen. This has been mismanagement, and intentional mismanagement. As late as September 28, the Office of Management and Budget sent out a notice to the entire executive branch of the government that said: Spend your money—this is for the spending year that begins October 1—spend your money like the law will not be obeyed. Suddenly, 6 months into the spending year, the spending caps, the budget caps, the amount of money that had been appropriated beyond that—it is twice as big a problem as it would have been October 1. Then you have to give notice to people that they are going to be furloughed, if that is the option you have taken, and it is a bigger problem than it needed to be.

During his sworn testimony before Congress last week, FAA Administrator Michael Huerta admitted that the agency has the flexibility under current law to transfer up to 2 percent of funding from one activity to another without congressional action, and also they could ask to transfer up to 5 percent—setting priorities—by asking Congress. It would be 2 percent without even asking Congress and 5 percent by asking Congress that could be transferred.

There was a serious discussion and an amendment offered early this year in the continuing resolution debate to give the agencies the authority they needed to set priorities between now and September 30. But the administration clearly said it did not want to be able to set those priorities.

The idea that any reduction in Federal spending has to create the maximum amount of pain is offensive to me. I think it is offensive to most Americans.

The FAA currently spends \$2.7 billion annually on nonpersonnel costs. The day they started this, saving \$600 million by furloughing employees, they announced \$474 million of new grants for sustainable and livable communities.

I am actually for sustainable and livable communities, but this is a new program. It is a program that I would bet a considerable amount of money that if the Department of Transportation would have come to Congress and said: Could we spend this \$474 million on keeping the airlines and the airports working—the freight that goes all over the country, the people who go all over the country to do business and create jobs—I will bet you Congress would have said: Absolutely, take that \$474 million. Do not announce those new grants that you have not told any-

body they have yet and use it to solve this problem, while we work to see if there are better ways to solve this problem.

Last week, I introduced the Essential Services Act as a standalone bill. I introduced that same act, in fact, during the continuing resolution debate. We were able to get a part of it into the continuing resolution for food safety inspectors.

But what the Essential Services Act says is that people who are essential to public health and safety have to show up for work. The basis for that is President Clinton, in 1995, on August 22, issued a letter, an excerpt from which I ask unanimous consent to have printed in the RECORD.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, August 22, 1995.

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Alice M. Rivlin Director

SUBJECT: Agency Plans for Operations During Funding Hiatus

OMB Bulletin 80-14, dated August 28, 1980 (and amended by the OMB Director's memorandum of November 17, 1981) requires all agencies to maintain contingency plans to deal with a possible appropriations hiatus. The bulletin requires agency plans to be consistent with the January 16, 1981 opinion of the Attorney General on this subject.

The Office of Legal Counsel of the Department of Justice has issued an opinion dated August 16, 1995 that updates the 1981 opinion. A copy of the August 16th opinion is attached. You should review your plans in light of this opinion, make any changes necessary to conform to the opinion, and otherwise ensure your plan is up to date.

Please send a copy of your updated plan to your OMB program examiner no later than September 5, 1995. Any questions should be directed to your program examiner.

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGAL COUNSEL,  
Washington, DC, August 16, 1995.

MEMORANDUM FOR ALICE RIVLIN DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

From: Walter Dellinger, Assistant Attorney General

Re: Government Operations in the Event of a Lapse in Appropriations

This memorandum responds to your request to the Attorney General for advice regarding the permissible scope of government operations during a lapse in appropriations.

The Constitution provides that "no money shall be drawn from the treasury, but in consequence of appropriations made by law." U.S. Const. art. I, §9, cl. 7. The treasury is further protected through the Antideficiency Act, which among other things prohibits all officers and employees of the federal government from entering into obligations in advance of appropriations and prohibits employing federal personnel except in emergencies, unless otherwise authorized by law. See 31 U.S.C. 1341 et seq.

In the early 1980s, Attorney General Civiletti issued two opinions with respect to the implications of the Antideficiency Act. See "Applicability of the Antideficiency Act Upon A Lapse in an Agency's Appropriations," 4A Op. O.L.C. 16 (1980); "Authority for

the Continuance of Government Functions During a Temporary Lapse in Appropriations," 5 Op. O.L.C. 1 (1981) (1981 Opinion). The 1981 Opinion has frequently been cited in the ensuing years. Since that opinion was written, the Antideficiency Act has been amended in one respect, and we analyze the effect of that amendment below. The amendment amplified on the emergencies exception for employing federal personnel by providing that "[a]s used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property." 31 U.S.C. §1342.

With respect to the effects of this amendment, we continue to adhere to the view expressed to General Counsel Robert Damus of the Office of Management and Budget that "the 1990 amendment to 31 U.S.C. §1342 does not detract from the Attorney General's earlier analyses; if anything, the amendment clarified that the Antideficiency Act's exception for emergencies is narrow and must be applied only when a threat to life or property is imminent." Letter from Walter Dellinger to Robert G. Damus, October 19, 1993. In order to ensure that the clarification of the 1990 amendment is not overlooked, we believe that one aspect of the 1981 Opinion's description of emergency governmental functions should be modified. Otherwise, the 1981 Opinion continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular appropriations. . . .

Mr. BLUNT. That letter from Alice Rivlin, the Director of OMB, says: Here are the people who have to show up for work if the government shuts down. The government did shut down, we all remember, in 1995, and these people did show up for work.

On April 6, 2011, it appeared we might have another government shutdown, and the Obama administration put out a similar letter based on the same groups of people. These are not hard people to identify, as it turns out. On April 6, 2011, the examples they gave of essential employees who would have to work would be: FAA employees who would keep the air traffic control system open, FEMA disaster operations would continue, Social Security checks would be sent out to beneficiaries, the National Weather Service alerts and forecasts would be maintained, the U.S. Postal Service would continue to collect mail and deliver mail, the Customs and Border Protection activity would continue, and the food safety inspectors would show up.

There is a list. Mr. President, I ask unanimous consent to have this notice from the Obama administration printed in the RECORD.

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

EMAIL GUIDANCE FROM OPM TO AGENCIES  
(APRIL 6, 2011)

Shutdown Contingency Planning

The Administration is committed to working out a compromise for funding the remainder of the fiscal year so that we can avoid a costly and disruptive shutdown that

would imperil our economic recovery. Yet, the Administration is preparing for all possible outcomes.

In the event of a Government shutdown, Federal departments, agencies, and the District of Columbia are legally prohibited from incurring further financial obligations for those activities that are funded by the annual appropriations that have lapsed—with the exception that an agency may incur those obligations that are necessary to carry out an orderly suspension of operations and to perform certain legally-defined “excepted” activities. Excepted activities include the safety of life and protection of property. (Since the general prohibition on incurring obligations relates to those activities that are funded by the annual appropriations that have lapsed, an agency may continue to carry out activities that are supported by other sources of funding which continue to remain available to the agency, such as existing balances of a multiyear appropriation.) Across the Federal Government, a shutdown would mean that many of the essential services that Americans rely on would be suspended or required to operate at lower levels, and many Federal employees would be furloughed and unable to work.

Below is a snapshot of how many major Federal activities would be affected. This is not a comprehensive list. For more details, please contact the relevant Federal agency directly.

#### EXAMPLES OF SERVICES THAT WOULD BE AFFECTED

The Federal Housing Administration (FHA) would not endorse any single-family mortgage loans or have staff available to process and approve new multifamily loans. FHA single-family lending represents a market share of more than 20 percent of overall loan volume (home purchases and re-financing).

No new approvals of SBA-guaranteed loans for business working capital, real estate investment or job creation activities would occur.

National Parks, National Forests, and the Smithsonian Institution would be closed.

Those filing paper tax returns would not receive tax refunds from the IRS, and many taxpayers would be unable to receive service from the IRS to help them meet their tax obligations. For example, 400 walk-in service centers would be closed.

The Mine Safety and Health Administration would not be able to conduct regular safety and health inspections.

Only emergency passport services would be open; normal processing would not.

Department of Commerce grant-making programs for economic development would cease, as would most payments by HUD’s Community Development Block Grant program to State and local governments.

USDA would not be able to approve any grants, loans or loan guarantees for its rural housing, utilities, business, and community facilities programs.

Farm loans, farm payment, and enrollment in conservation programs would cease.

Agricultural export credit and other agricultural trade development and monitoring would stop.

The Community Development Financial Institutions Fund would suspend its grants and technical assistance to communities across the country, delaying investments that finance businesses and create jobs in distressed neighborhoods.

Inspections of stock brokers, receipt and publication of corporate financial disclosures, and routine oversight of financial markets by Federal agencies would cease.

Enforcement actions would be postponed in all but a few cases.

Certain FEMA flood mitigation and flood insurance operations would be suspended.

Agricultural export credit activity and other agricultural trade development and monitoring would cease.

Most of the Veterans Benefits Administration customer support services would be suspended.

Most Department of Defense budget planning and preparation would cease; military personnel would not receive paychecks during a funding lapse.

Customer service would be reduced across the federal government.

Department of Justice civil litigation activities, including civil rights enforcement and defensive litigation (where the U.S. government is a defendant), would mostly stop.

Freedom of Information Act (FOIA) processing would cease.

#### EXAMPLES OF SERVICES THAT WOULD REMAIN OPERATIONAL

The Federal Aviation Administration would keep the air traffic control system open and safe.

FEMA disaster operations would continue. Social Security checks would be sent to beneficiaries.

National Weather Service alerts and forecasts, as well as volcano and earthquake monitoring by other agencies, would continue.

The U.S. Postal Service would continue mail collection, delivery, and other operations.

Customs and Border Protection activity would continue.

Military operations in Afghanistan, Libya, and Iraq would continue.

NASA satellite missions currently in operation would continue.

SNAP, WIC, and other child nutrition benefits would continue.

Most Federal Student Aid operations would continue.

Core Federal law enforcement, such as the FBI and U.S. Marshals, would continue, as would prison and detention operations.

Medical services for veterans would continue to be available.

FDA monitoring of drug imports would continue.

Meat and poultry inspection would continue.

Treasury’s core payment and collection programs would remain operational.

OMB is working diligently with Agencies to finalize operational plans for all possible scenarios, including a Government shutdown. We will continue to make new information available to the media and general public as it is finalized.

Mr. BLUNT. This is not very complicated. All the Essential Services Act says is that the people whom the government said had to show up if there is no money to run the government would also be the people who would be prioritized and would be allowed to show up if there is a 2.5-percent cut. Who can argue with that?

People are told: The weather is really bad today. If you think you have some risk to your person to get to work, do not come in. But these people are told: If you can possibly get to work, get to work. If the food safety inspector does not get there, 500,000 Americans could not work that day if they did not show up at every food safety facility where that one Federal employee has to be there for everybody to work. If the air traffic controller does not get there, and the runways are cleared off and

planes can land and planes can take off, that may not happen if the air traffic controller is not there.

This says those people would not be subject to furlough under the new Budget Control Act. They would have the same priority on a day when there is a reduction in the funding for a Department that they had in the day when there was no funding for the Department. If people are told they have to show up when there is no money to run the government, surely those same people need to show up if there is a 2.5-percent reduction.

The definitions set by President Clinton and President Obama in their administrations are fine with me for this purpose. Washington is living outside its means today. Federal spending has skyrocketed 19 percent since 2008. The Federal debt is approaching \$17 trillion. Clearly, we have to do something about spending, and we can do that without interrupting people’s lives. We can do that by prioritizing what the government should do.

Last week, we had Mr. Huerta before the Commerce Committee that Senator ROCKEFELLER chairs and Senator THUNE is the ranking Republican. I think it was on Wednesday. There was no discussion that on Sunday we are going to start furloughs of air traffic controllers.

In the legitimate oversight responsibility of our committee, we are to be told by the FAA Director: Our plans are drawn up. We are about to execute them. I am here to testify before the Congress. I think one of the things I should tell you is that all kinds of flights are going to be delayed on Sunday and Monday because of this plan. It was not mentioned. Plenty of questions, even questions about how you were going to furlough employees, but no answers.

I encourage Americans to visit our Web site: [bitly.com/cutwasteful](http://bitly.com/cutwasteful) spending. Let’s find the things we can cut rather than finding things that you cut—from the White House tours, to vaccines for kids, to air traffic controllers, to border security guards. I hope we will do the right thing. I encourage Senator REID to allow a vote on the Essential Services Act and prioritize the way we spend money.

Back to the start of my remarks, I am a proud cosponsor of the Marketplace Fairness Act. Senator PRYOR and I intend to offer an amendment on that to just clarify current law, that we are not taxing use of the Internet; we are just having a fair tax for products people buy over the Internet.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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



Ms. HEITKAMP. Mr. President, I rise in response to my good friend, the Senator from New Hampshire, who obviously feels very passionately about the bill, as do all of us who have worked for years and years to try to create a marketplace that is fair and equitable for so many people in this country, particularly our brick-and-mortar Main Street businesses.

I can certainly appreciate that remote sellers in New Hampshire who have, in fact, enjoyed a nice opportunity to move products into the marketplace free of any burden—unlike a Main Street business with any tax collection burden—that they do not want to lose that advantage they have. In many States that advantage can be quite significant.

I want to give you an example. Today, in our news conference we heard from a woman named Teresa Miller. Teresa Miller sells pet supplies both in her store and remotely. She operates out of the State of Missouri, and in many of the jurisdictions where she sells pet supplies, the tax rate can be as high as 9.5 percent. She has a trained sales force that listens to customers' concerns about their pets and what their pets need in terms of nutrition.

The customer will walk out of the store, never to return. It is pretty clear those customers are buying those products on the Internet having used the expertise of Ms. Miller's staff.

I would suggest that is exactly the situation that we are trying to address. The Senator from New Hampshire raised a fair number of points which, ironically, can all be responded to and can be addressed by simply reading the bill. The first point I want to make is the point that someone will have to deal with upwards of 9,600 different jurisdictions.

That is not true. In fact, this bill mandates that if you are going to expand your collection obligation to remote sellers, you need to participate as a State in a streamlined process either through the streamlined process that is already set up or you need to look at a bill or some kind of process in your State that will reduce those compliance burdens to simply 46 State jurisdictions.

The other concerns that have been raised—and I want to just take a moment. Sometimes too often we do not actually look at what we are debating. I want to take a moment and talk a little bit about page 3 of the bill. Page 3 provides that in order to qualify, a single entity within the State responsible for all State and local taxes and return processing and audits for remote sales needs to be sourced to the State. There is a single audit requirement and a single State or use tax return.

So these jurisdictions will be limited to simply one within the State. The bill clearly provides that. In discussing the certified software, talking about how that would provide additional burdens, again, understand this bill re-

quires that certified software be provided for free to the remote seller. If the remote seller, in fact, does use the certified software, that certified software then gives them immunity from any future tax liability and audits and gives them basically the ability to say: I did my job. I did my due diligence. I used the software you told us to use. I do not expect that there is going to be an audit that could assess me any additional taxes having used that safe harbor.

The next issue the Senator from New Hampshire raised is the effect of this bill on nexus requirements. It gets a little tricky because in law we have an obligation in this body to regulate interstate commerce. But what we do not, I believe—and some people may disagree. I believe, as a lawyer who has litigated a lot of cases, this body does not have the authority to determine due process standards under the Constitution. To reiterate, it is clearly stated that nothing in this bill affects State nexus. So when the good Senator from New Hampshire suggests that this will change nexus standards, that is absolutely incorrect.

The final issue I want to touch on is the issue of the financial services tax. I want to make the point that in the bill itself it is clearly limited to imposing a sales and use tax obligation. It clearly states no other tax will be, in fact, affected by this bill. So I think frequently we get into discussions about what if. All of those discussions can be clearly clarified by simply reading the bill. That is what I would suggest. It is 11 pages. It is very straightforward. There has been a lot of work put into this piece of legislation over very many years, and a lot of accommodations, including an accommodation that you are only required to do this if you have \$1 million in remote sales.

I am going to close with the words of Teresa Miller. When someone asked her how she would feel about this, because she also markets on the Internet, she said she would be thrilled to have this obligation because it would mean that her remote sales exceeded \$1 million.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I rise today in strong support of the Marketplace Fairness Act. I would like to thank Chairman ROCKEFELLER. I would like to thank the two major sponsors of this bill, Senator DURBIN and Senator ENZI, who have been working on this for years, and Senator HEITKAMP for her longtime knowledge and leadership on this bill, as well as Senator ALEXANDER.

I am proud to be a cosponsor of this important legislation. It has been very important for years for businesses in Minnesota, both big and small, and across the country, giving them the certainty they need. That is what this bill will do so they can succeed and grow.

I am encouraged to see the Senate coming together in a bipartisan way to create a level playing field for our businesses on Main Street to compete. That is all they want to do. They just want an even playing field to compete. The bipartisan support for the Marketplace Fairness Act is a reminder that when we put politics aside we can get things done, something the Presiding Officer from the State of West Virginia knows about very much.

During the budget debate, 75 Senators came together and we succeeded in passing an amendment that I cosponsored to the budget resolution that helped outline the broad support for a very simple idea: that all businesses need to play by the same set of rules.

When I go around my own State, as I know Chairman ROCKEFELLER does in his, I hear from small locally owned retailers, and competitive issues are raised all the time. We have small businesses—this gives a sense of what we are talking about—places such as the Uffda Gift Shop in Red Wing, MN. I hope all of you will visit there. I have been there and did Christmas shopping there. There is Mary's Morsels, which is a bakery in Eveleth, MN, on the Iron Range, northern Minnesota, where my dad grew up; Sleepy Eye Floral—I suggest all of you go to Sleepy Eye, MN, at some point in your life. You can then go and buy some flowers at Sleepy Eye Floral. You will find big support for this legislation, the Marketplace Fairness Act.

In my time in the Senate I have been committed to a competitive agenda that promotes long-term economic growth. Part of that agenda includes not only bringing our debt down in a balanced way, promoting exports, making sure that our workforce is trained for the jobs of today, but it also means an even playing field and making sure that all businesses can compete.

That is what America has been built on. I know our businesses in Minnesota want that level playing field. It is time we give it to them. That is exactly what this bill does. It allows brick-and-mortar retailers the ability to compete against out-of-State Internet retailers. States are currently unable to require out-of-State or online-only retailers to collect sales tax. It puts local mom-and-pop shops at a significant disadvantage.

Not only that but this loophole—by the way, this is not about adding a tax. That is why we have such strong bipartisan support. It is only about allowing those taxes to be collected, something most people support. I have to tell you that because these taxes are not being collected, it creates a loophole that is literally draining billions of dollars in lost revenue from State and local governments at a time when they need it for police officers, they need it for firefighters, and when they need it for our schools.

Some \$23 billion last year alone was lost because these laws were not being enforced in an even way. My State lost

about \$394 million in 2011 from out-of-State sales taxes that are legally due but not collected. This lost revenue translated into over 7 percent of Minnesota's general sales tax liability in 2011.

In our State, local brick-and-mortar retailers assess sales tax at a rate of 6.875 percent, while their online competitors typically assess no sales tax. That is simply not right. When this happens, city and State governments either have to find revenue from other sources, such as raising taxes, or they must cut critical services.

Let's also be clear about what the legislation that Senator HEITKAMP has so intelligently pointed out—let's be clear about what the legislation does and does not do. It does not create any taxes or increase existing taxes. It simply gives States the ability to enforce their own sales and use tax laws, which reduces the need to raise taxes.

It also relieves customers of the legal obligation to report to State tax departments the sales taxes they owe. One of the longstanding principles of tax fairness is that taxpayers who engage in similar economic transactions should face the same tax consequences.

Today, that is simply not the case. Minnesota is home to these thriving small businesses, but also to many large businesses that are in retail, such as Target and Best Buy. I have seen with my own eyes people go into Best Buy, spend half an hour with a very eager salesperson who is helping them in any way, looking at dozens of TVs, and then go back outside the store and buy it on the Internet.

That is not how things should work. We have to have fairness. That is why this bill is called the Marketplace Fairness Act. This bill has such strong support from business, such strong support in this Chamber. I am very excited about what is going on. We have been having this debate for over 10 years now. It is one of the first things I heard about when I got to the Senate 6 years ago. It is long past time to get this done.

I yield the floor.

Ms. HEITKAMP. I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. WARREN.) The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

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

#### SEQUESTRATION

Mr. REID. Madam President, my friend from Oklahoma is on the Senate floor. I would ask if he would be kind enough to wait while I say a few words and withhold offering the consent agreement to allow Senator SCHUMER to speak for 5 minutes. Following Senator SCHUMER, I will offer the consent agreement. Would that be appropriate for the Senator from Oklahoma?

Madam President, the arbitrary spending cuts in the Budget Control

Act were designed to be painful—so painful that both parties would come together to find a bipartisan way to reduce the deficit. Thus far, it hasn't worked. We have reduced the debt by doing a number of different things by approximately \$2.5 trillion. We have cooperated in that regard. The deep cuts required by the sequester failed to bring the Republicans to the negotiating table to find more savings or more revenue.

Even after both the House and the Senate passed budget resolutions, the House Republican leadership has refused to go to conference to work out our differences. Republicans have been telling us for a long time that they want regular order. When we come to regular order, they don't want regular order.

Republicans are afraid to even be seen considering a compromise with Democrats. I speak more strongly, as the Republicans here in the Senate are doing their objection here on going to conference more to protect the House. This applies much more to the House Republicans than it does to the Republicans in the Senate. The Republicans in the House are afraid to be seen considering a compromise with us.

Because Republicans have refused to negotiate a compromise, sequestration kicked in with devastating effect. We are just beginning to feel the impact of these deep cuts. Nationwide, the sequester will cut 750,000 jobs this year alone. More than 70,000 little boys and girls will be kicked off the Head Start Program. Programs funding medical research with Duke University, as I indicated on the floor yesterday, and scores of other programs that do the same and programs that help get homeless veterans off the streets are being decimated. Yesterday I spoke about Meals on Wheels. Meals on Wheels is one of the programs that are so helpful. Homebound seniors receive one meal a day, and it is usually only during the day. These are being significantly hammered. I have spoken about Head Start for young children, but education programs are being hit very hard. These are programs that deal with impoverished children.

We know the sequester is causing massive delays. I am from Las Vegas. I am from Nevada. No place in America is more desperate to have the flights on time than tourist-oriented Las Vegas. It is the same in Reno. These cuts are hurting tourism in Las Vegas and in all of the country.

It is not only the furloughs at the FAA, it is some of the programs I have spoken about and many more. We have seen the dire effects of these arbitrary budget cuts, and we have an obligation to stop them. That is why I am going to ask unanimous consent to take up and pass legislation that would block sequestration until the end of this fiscal year, until the first day of October. This would give us 5 months to sit down at the negotiating table and work out an agreement to reduce the deficit

in a balanced way, in a way that doesn't punish the American people and our economy in the meantime.

The legislation I am proposing is simple, and it deserves quick approval. There is no reason to go back, even though I would agree to it through the Buffett rule.

Let's do some spending cuts, let's do some more cutting.

We tried that. It wouldn't work.

Let's try the flexibility.

That also won't work because we are dealing with the same amount of money.

I hope this simple solution I am offering will be supported by my Republican friends—establishing binding caps on the war spending. The wars are winding down, and currently there is \$650 billion there. And as this bill proposes, the one on which I will ask consent, it will close that loophole and propose more than enough savings to offset the cost of delaying sequestration for 5 months.

Let's put a stop to the furloughs, delays, and a stop to the job losses. Let's put a stop to the devastating cuts to programs that keep our poor children from receiving an equal shot in life. Let's stop senior citizens and homeless veterans, who are the most vulnerable among us, from falling through the cracks. They may not be as transparent as what is happening at our airports, but these are devastating to human beings. Let's do it in a fiscally responsible way and do it now. Then let's get to work finding a broader agreement to strengthen our economy and reduce our long-term deficits.

I yield 5 minutes to my friend the Senator from New York as indicated with the tentative agreement I requested earlier. Then I will resume on the floor to ask for the consent, and my friend from Oklahoma will respond.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I rise in strong support of the proposal by our Democratic leader. We all know that sequestration was a blunt instrument, and now it is beginning to hurt. There is delay after delay at airports throughout the Nation.

This is not only a question of traveler inconvenience. Our economy in all likelihood will lose many more dollars in the next week or two than it costs to furlough the air traffic controllers when businesspeople can't travel, when tourists can't travel. I know my home city of New York is greatly affected. No one stays in the hotels, no one dines in restaurants, and no one attends the shows. This may be repeated in destination after destination throughout the country. If people are so uncertain of air travel that when they show up at the airport, they may wait 1 hour or they may wait 5 hours, they won't go. A good percentage will stop their trips.

So it doesn't make sense to go forward. I think we are in agreement. The problem is, how do we fix it? There aren't many ways to fix it because if

you simply say, give flexibility, the Transportation Department has very little flexibility because many of its funds are off limits. The highway trust fund, for instance, isn't affected by sequestration because those are our nickels and dimes that go into the gas tax per gallon, which wasn't affected by sequestration. An extremely high and disproportionate number of the Transportation Department's expenditures are air traffic controllers themselves.

We have this problem. As Leader REID pointed out, we have other problems—stopping cancer research and cutting back on NIH and NSF, which has always been our seed corn. NIH created a biopharmaceutical industry that is second to none and employs millions of people in your State and mine. NSF research basically created the Internet, which has created millions of jobs and makes the U.S. industry the envy of the world.

So we are cutting our seed corn, the kinds of programs for our homeless veterans, and the kinds of programs for our homebound seniors. The meat-ax approach of sequestration cuts those across the board.

My preference would be to close some tax loopholes to get rid of sequestration. I don't think we should give tax breaks to oil companies. We should not give tax breaks to companies that send jobs overseas. That would be my preference. But we know our friends on the other side of the aisle are against any revenue increases right now, so to put this on the floor immediately would be an exercise in futility.

The leader's plan is the right plan. It is ingenious. We have \$600 billion on the budget that we know we won't spend the vast majority of because no one believes we will have troops in Iraq or Afghanistan 5 years from now. Yet that money is sitting there on our budget and preventing cancer research, air traffic controllers, and money for homeless vets from being used where it was supposed to be.

So the proposal to take a certain amount of money out of the OCO—the overseas contingency operations—which we know we won't spend, makes no sense. Now you say: Well, you know you won't spend it; it is a gimmick.

It is not a gimmick. It is sitting there in the budget occupying space and could be used by these other agencies. And to insist the OCO continue is causing real pain, causing our economy not to grow as quickly, causing vulnerable people to be hurt, and causing research—the seed corn of America—to decline.

Our colleagues on the other side of the aisle are saying that President Obama is to blame for these delays. He has very little choice if we don't change things, and this is a way to change things.

If we want to get rid of these delays, which we all on both sides of the aisle very much desire, I would propose to my colleagues that the solution proposed by the majority leader is the best

way to go given the political necessities on the other side, the desire not to have any revenues—even closing certain tax loopholes.

So I would hope we could come together and vote on this solution. Cutting the OCO has been supported by Republicans. I remember Senator Kyl, a former Senator from Arizona, was advocating this late last year to deal with the doc fix, the DRGs, and other things. The people will come together on this. So I hope we can vote for this proposal, put the air traffic controllers back to work off their furloughs, get rid of these delays, and then come together in a grand agreement in time for the September budget.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

#### UNANIMOUS CONSENT REQUEST— S. 788

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. 788.

My friends on the other side have had this legislation for a short time, not a long time, but it is not that difficult to understand. I have tried to explain it the best I can.

I ask unanimous consent that the Senate proceed to the consideration of S. 788, the text of which is at the desk, which is a bill to suspend the fiscal year 2013 sequestration and offset that with funds from the Overseas Contingency Operations; that the bill be read three times and passed; and the motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Oklahoma.

Mr. COBURN. Madam President, reserving the right to object, and I plan to object, I will take some time to explain why I object.

What is happening in the Senate is phenomenal, and I want the American people to see this. The Federal Government is 89 percent bigger than it was 10 years ago. We just heard the majority leader say flexibility can't work because we are already dealing with the same amount of money—89 percent more than we were 10 years ago.

I didn't vote for the Budget Control Act. I think sequester is a stupid way to cut spending. But I want us to understand exactly what is going on. This is a contrived situation because no effort—zero effort—by the FAA or the Department of Transportation has been made to have any flexibility in terms of how they spend their money. They have made no request for a reprogramming of funds within the FAA. They have over \$500 million unobligated sitting in balances that aren't obligated, so none of this had to happen. This has been a created situation.

I want my colleagues to think for a minute about the number of people who didn't make it to their aunt's funeral yesterday because of a contrived

situation; the number of people who may not get to the birth of a grandchild; the number of business meetings that aren't going to occur because we have created a contrived situation. Our problem is we are continuing to spend money we don't have.

So we have taken FAA, we have put the airlines at risk—and they are, by the way, suing the government because they haven't made a good-faith effort to do it in another way—and we have created a situation where we are going to discomfit and inconvenience hundreds of thousands of American people on a political point because we can't cut any spending in Washington.

Let me outline for my colleagues a moment what the FAA could do. They could save \$105 million by cutting their overhead expenses for consultant supplies and travel by 15 percent. That is one-seventh or one-sixth of all the money they need to keep all their controllers on. They could save \$41 million by eliminating funding the President has already recommended eliminating in terms of programs for airports that are on the national plan of integrated airports. They have already recommended doing that, but they are not doing that. They have the flexibility to do that but they are not doing it. That is another \$41 million.

They can save \$6 million on small community air service—flexible. They could reduce the Airport Improvement Program. They have plenty of flexibility there. That is up to \$926 million. They could do that. They could reduce or eliminate—and they would have to have our help to do this—the Essential Air Service Program where at many airports across this country we are paying a \$1,200 subsidy to fly less than 10 people a day out of an airport less than 90 miles away from a major airport. So to say there is no flexibility, they do not want any flexibility. And the fact is our country is headed toward bankruptcy.

Let me talk about OCO for a minute. It is true OCO money is in the budget, because we thought we were going to have to spend it. But every penny of that money will be borrowed money—borrowed money. So if we weren't going to spend it, we are saying now we are going to go over here and take care of sequestration? A 4-percent cut in the Federal budget—4 percent. It is only 89 percent bigger than it was 10 years ago and we can't find 4 percent within the FAA?

Let me outline a few other things going on at the FAA. They have posted requirements for nonessential employees since sequestration started. They have made no efforts at flexibility. They have made no efforts to do what they could do to keep the most number of controllers working.

This isn't going to happen. We are not going to borrow money anymore against the future of our kids when in fact we have other ways to do it.

I will make my final point. The President is the CEO of this country.