

reasons he doesn't have an understanding of how a conference works is because they have stopped us from going to conference on virtually everything.

He also says: We don't know what the prospects are for success. That is what conference is all about. The Senate passes a bill, the House passes a bill, and we sit down and try to work it out. He said:

I think it's possible that we could succeed, but at this point we're not close enough to anticipate a successful conference, and that presents complications for the House.

We are the United States Senate, not the United States House of Representatives. We should do our business and not be worried about the tea party-driven House of Representatives. The budget process is the only way to work through our differences without bringing the country to the brink of another artificial crisis. To accelerate job growth and reduce the deficit without harming the economy, we have to make important and smart spending cuts, while asking the most fortunate among us to do a little better, contribute a little more.

The arbitrary across-the-board cuts of the so-called sequester do just the exact opposite. The sequester uses a meat cleaver where a scalpel is needed. The sequester cuts were designed to be too painful—so painful they would force the supercommittee to reach a bipartisan compromise. We all remember what happened there. Republicans refused to allow one penny of revenue. When they did that, they insisted on a cuts-only approach. They ensured the sequester would kick in.

Eliminating sequester is part of a larger challenge: to set sound long-term fiscal policy through the regular order of the budget process, which they said they wanted—they, the Republicans. Now they have walked away from it. That will take cooperation. Remember, Democrats and Republicans voted for these arbitrary cuts, and Democrats and Republicans will have to work together to reverse them.

Why are my Republican colleagues so afraid? We know the two sides will not agree on every aspect of the budget. We know finding common ground will not be easy.

We can get it done. We used to do it until we have been stopped from doing everything by a tea party-driven House of Representatives and the strongly influenced Republicans in the Senate by the tea party. Republicans believe in one set of principles for how the government should spend money and how it should save money.

Democrats have very different principles. Republicans would lower taxes for the rich while the middle class foots the bill. Democrats would ask the wealthiest individuals and corporations to contribute a little more to reduce the deficit. Republicans would turn Medicaid into a voucher program, in effect doing away with Medicaid as we know it.

Democrats would preserve and protect Medicare for future generations. Republicans would use more harsh austerity to reduce the deficit. Democrats would adopt a balanced approach that couples smart spending cuts with new revenue from closing loopholes.

Remember, we have already cut more than \$2.5 trillion from the debt. We have our differences, but Democrats aren't afraid to work out those differences. We are ready to go to conference to begin the difficult work of compromise.

If this Congress is serious about reducing the deficit and protecting the economy, we need to go to work now, not wait until this minor impasse—and that is what it is—turns into another major manufactured crisis, which the House loves to send to us at the last minute.

#### UNANIMOUS CONSENT REQUEST— H. CON. RES. 25

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar No. 33, H. Con. Res. 25; that all after the enacting clause be stricken; that the amendment, which is at the desk, the text of S. Con. Res. 8, the budget resolution passed by the Senate, be inserted in lieu thereof; that H. Con. Res. 25, as amended, be agreed to; the motion to reconsider be considered made and laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and the chair be authorized to appoint conferees on the part of the Senate, all with no intervening action or debate.

I have just been informed that there is no one from the Republican side to object to this, so I will renew this. I want everyone put on notice that we are going to ask that we follow regular order, which the Republicans have been whining about for 2 years. That is what we want to do, and that is what this consent is all about.

I would withdraw this request until the Republicans show up to object.

The PRESIDING OFFICER (Mr. KAINE). The unanimous consent request is withdrawn.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business until 5:30 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### MARKETPLACE FAIRNESS ACT

Mr. ENZI. Mr. President, I rise today to urge my colleagues to vote for the Marketplace Fairness Act in just over an hour or so from now. I have said many times over the past few weeks—and, in fact, I have been saying it for the past 12 years as I have worked on this issue, but it is worth repeating—this bill is about fairness. It is about leveling the playing field between the brick and mortar and online companies and it is about collecting a tax that is already due. It is not about raising taxes, taxing the Internet, or taxing Internet access.

This bill in general, and this bill in particular, has grabbed the attention of Members of the Senate and their constituents back home. Unfortunately, the misinformation that is being disseminated by many has added confusion and anxiety about what the bill does and does not do. For example, the Americans For Tax Reform sent me a detailed letter last week asking many questions. It appears the letter was not meant to find resolution or a path forward with this issue but ultimately to confuse my colleagues prior to tonight's vote. Senator ALEXANDER and I responded to the 16 questions in order to provide clarity for the organization and its members.

Mr. President, I ask unanimous consent to have printed in the RECORD the two letters to which I just referred.

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

AMERICANS FOR TAX REFORM,  
Washington, DC, May 2, 2013.

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

DEAR SENATOR ENZI: We believe that there are a number of unanswered questions concerning the Marketplace Fairness Act that remain troubling to taxpayers. We would appreciate your leadership in answering the following questions regarding the legislation as it stands and the recent manager's amendment that you filed to S. 743, the Marketplace Fairness Act.

1) What measures protect businesses from tax audits, court proceedings and penalties like tax liens imposed on a business by state departments of revenue where the business has no physical presence? How will businessmen and women be protected over time from politicians in a different state that they cannot vote for or against? Is there a danger of establishing taxation without representation?

2) Does the bill prevent double taxation by removing the Use Tax? If states still have a Use Tax law on the books what provisions of MFA prevent states from charging Use Tax in addition to sales tax?

3) Can states audit remote sellers for customer data and then retroactively (i.e., prior

to the enactment) audit citizens for “unpaid” Use Taxes? Some states, such as California, can perform audits reaching back six years. Can states ask remote sellers for historical customer purchasing data and then audit citizens based on this data?

4) While the legislation says that it does not break physical nexus requirements for other types of taxation, some states have “privilege” taxes already in law. Some of these privilege taxes require enactment of MFA as written to enforce “privilege” tax collections. For example Michigan law states:

“there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable . . .”

Is there anything in MFA that prevents this type of application of MFA collection standards?

5) If states do not conform with MFA requirements or basic simplification requirements, does Section 6 of the MFA permit them to continue to expand “nexus definition” laws? Can California collect tax based on economic nexus laws? Can New York collect based on affiliate nexus laws? Could Oklahoma expand its reporting requirement laws across its borders?

6) Why are tribal lands now included as “states” in the manager’s amendment? Why were tribal lands not included in the original bill? Have any of the tribes agreed to the same rules the states have, or asked to be included?

7) During the floor debate, there were many questions on how the MFA would apply to sellers based in other countries. What is the enforcement process for overseas sellers with no presence in the United States? Are they required to comply with state tax collection duties? Under MFA, do states have the ability to bring enforcement actions against overseas businesses that are selling remotely into the state?

8) Does the MFA protect the small sellers, who would be eligible for the small seller exemption, from states that exercise their Section 6 discretion to expand their tax collection authority through nexus definitions?

9) While the minimum simplification requirements preclude the Streamlined Sales Tax Agreement (SSUTA), if states make changes to the SSUTA after the enactment of MFA do those changes become law?

10) Included in the manager’s amendment is language that clarifies that a state may not impose requirements on remote sellers that they do not impose on non-remote sellers. Currently, many states give special state sales tax deals for businesses with in-state presence, while offering remote sellers no such deal. Since this practice is giving preferential treatment to in-state sellers in relation to the collection and remittance of sales taxes, will this be prohibited under MFA. Will there be any limitation on states giving special sales tax breaks to large in-state businesses while forcing strictly out-of-state businesses with no presence to comply?

11) Under SSUTA states agreed that sales price was the cost that a consumer actually paid for an item. However, Nebraska wants to claim that “sales price” is the gross price before discounts and coupons, thereby charging the business tax on retail value rather than amount paid (Think discounts from Groupon or Living Social. If the retail cost is \$75, but the discount makes it \$25, Nebraska would want to collect sales tax on the \$75 rather than the amount actually paid, which was \$25). Is there anything in the MFA that prevents this type of excessive taxation from

occurring in Nebraska or other states? From what we understand the minimum requirements of MFA do not prevent this type of theoretical taxing from occurring.

12) How could MFA requirements affect the financial services sector? Will financial products that are sold over the Internet, like portfolio management services, credit reporting service apps, or insurance service fall under MFA taxation authority?

13) Home-schooling parents meet at state, regional, and national gatherings in part to sell used textbooks and related products that their children have completed. If these transactions are conducted online through an aggregation site, would the transactions be subject to the MFA small-seller exemption in states that exercise their Section 6 discretion to expand their tax collection authority through nexus definitions?

14) How will the MFA affect digital goods and services? Without a clear structure for digital goods taxation, these types of goods could fall under multiple taxation schemes. Does the MFA protect digital goods from multiple taxation?

15) In terms of digital goods, like apps and music, who is responsible for remitting the sales tax: the vendor, an app store or sales platform, or the creator of the digital good?

16) Some states, like Maryland have different sales tax rules for goods that are priced under one dollar. For example:

Effective January 3, 2008, the Maryland sales and use tax rate is 6 percent, as follows:

1 cent on each sale where the taxable price is 20 cents.

2 cents if the taxable price is at least 21 cents but less than 34 cents.

3 cents if the taxable price is at least 34 cents but less than 51 cents.

4 cents if the taxable price is at least 51 cents but less than 67 cents.

5 cents if the taxable price is at least 67 cents but less than 84 cents.

6 cents if the taxable price is at least 84 cents.

On each sale where the taxable price exceeds \$1.00, the tax is 6 cents on each exact dollar plus:

1 cent if the excess over an exact dollar is at least 1 cent but less than 17 cents.

2 cents if the excess over an exact dollar is at least 17 cents but less than 34 cents.

3 cents if the excess over an exact dollar is at least 34 cents but less than 51 cents.

4 cents if the excess over an exact dollar is at least 51 cents but less than 67 cents.

5 cents if the excess over an exact dollar is at least 67 cents but less than 84 cents.

6 cents if the excess over an exact dollar is at least 84 cents.

If Maryland, or states wishing to follow suit, do not comply with SSTP or the minimum simplification requirements included in MFA, can they tax low-cost goods in this way? This applies in particular to digital goods like apps and songs. Does the MFA require simple, flat taxes for low cost and digital goods?

Thank you in advance for your consideration and response to our concerns. I look forward to working with you to address these issues and ensure no legislation is passed that harms taxpayers nationwide. If you have any questions or concerns while responding to this letter, please have your staff contact Katie McAuliffe.

Onward,

GROVER G. NORQUIST.

U.S. SENATE,

Washington, DC, May 4, 2013.

Mr. GROVER NORQUIST,  
Americans for Tax Reform

12th Street, NW., Washington, DC.

DEAR MR. NORQUIST, We appreciate your direct interest in better understanding the

Marketplace Fairness Act, and we welcome the opportunity to respond to the questions outlined in your May 2nd letter. Below are answers to your questions regarding S. 743, the Marketplace Fairness Act, and the perfecting amendment filed last week.

1) What measures protect businesses from tax audits, court proceedings and penalties like tax liens imposed on a business by state departments of revenue where the business has no physical presence? How will businessmen and women be protected over time from politicians in a different state that they cannot vote for or against? Is there a danger of establishing taxation without representation?

The Marketplace Fairness Act (MFA) includes many significant benefits for remote sellers, including limits on audits, critical liability protection, and tax and administrative simplification. It is also important to remember that the sales tax is imposed on the consumer by the state where they reside, so that is the ultimate check against excessive taxation. Because the tax is imposed on the consumer, there is no danger of taxation without representation.

2) Does the bill prevent double taxation by removing the Use Tax? If states still have a Use Tax law on the books what provisions of MFA prevent states from charging Use Tax in addition to sales tax?

There is not double taxation between a sales tax and a use tax. A Sales tax is imposed by states on applicable transactions. A use tax only applies if the sales tax is not collected or imposed.

3) Can states audit remote sellers for customer data and then retroactively (i.e., prior to the enactment) audit citizens for “unpaid” Use Taxes? Some states, such as California, can perform audits reaching back six years. Can states ask remote sellers for historical customer purchasing data and then audit citizens based on this data?

No. The authority provided by the MFA is prospective and builds in considerable “waiting periods” before states can exercise collection authority after they have adopted the minimum simplification requirements.

4) While the legislation says that it does not break physical nexus requirements for other types of taxation, some states have “privilege” taxes already in law. Some of these privilege taxes require enactment of MFA as written to enforce “privilege” tax collections. For example Michigan law states:

“there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable . . .”

Is there anything in MFA that prevents this type of application of MFA collection standards?

Sales and use taxes are often called by different names, such as the general excise tax in Hawaii, the gross receipts tax in New Mexico or the transaction privilege tax in Arizona. All of these taxes are sales and use taxes, where the retailer is authorized (and in most cases required) to collect the tax directly from the consumer and to identify the tax on the consumer’s invoice or receipt.

5) If states do not conform with the MFA requirements or basic simplification requirements, does Section 6 of the MFA permit them to continue to expand “nexus definition” laws? Can California collect tax based on economic nexus laws? Can New York collect based on affiliate nexus laws? Could Oklahoma expand its reporting requirement laws across its borders?

Section 6 does not alter nexus standards, as interpreted by the Supreme Court. The

Supreme Court has declined to extend the “physical presence” standard beyond sales taxes, and it has not taken any cases to clarify the constitutionality of “economic nexus” laws. Other Supreme Court decisions, such as *Scripto* and *Tyler Pipe*, have made clear that in regard to sales tax, affiliates and independent contractors can create physical presence for sales tax collection purposes. The MFA addresses these problems by setting specific standards for states who wish to require remote sellers to collect state sales taxes.

6) Why are tribal lands now included as “states” in the manager’s amendment? Why were tribal lands not included in the original bill? Have any of the tribes agreed to the same rules the states have, or asked to be included?

Tribal governments are required to meet the same conditions as states choosing to participate. Tribal governments were included in earlier versions of this legislation, and they requested that they also be given the ability to collect sales taxes if they choose to exercise the authority granted by this legislation.

7) During the floor debate, there were many questions on how the MFA would apply to sellers based in other countries. What is the enforcement process for overseas sellers with no presence in the United States? Are they required to comply with state tax collection duties? Under MFA, do states have the ability to bring enforcement actions against overseas businesses that are selling remotely into the state?

States currently enforce collection of state taxes against foreign businesses with no physical presence in the United States, and have a number of methods to compel collection by foreign sellers including liens, levies and seizure of assets. The MA treats foreign corporations the same as it does domestic corporations. All online retailers that make over \$1 million in remote sales, regardless of where the retailer is located, must collect and remit sales tax to states that require it.

8) Does the MFA protect the small sellers, who would be eligible for the small seller exemption, from states that exercise their Section 6 discretion to expand their tax collection authority through nexus definitions?

The MFA does not alter nexus standards, as interpreted by the Supreme Court.

9) While the minimum simplification requirements preclude the Streamlined Sales Tax Agreement (SSUTA), if states make changes to the SSUTA after the enactment of MFA, do those changes become law?

The MFA does not “preclude” the SSUTA, and changes to the SSUTA have no force of law because any changes to the agreement must be enacted by individual states and their legislatures. The MFA recognizes that the SSUTA already incorporates the simplifications and protections embodied within the MFA. Thus, states that have already enacted laws to comply with SSUTA are granted authority by the MFA to require remote sellers to collect tax. The MFA also ensures that future changes to the SSUTA meet the simplifications and protections provided in the MFA.

10) Included in the manager’s amendment is language that clarifies that a state may not impose requirements on remote sellers that they do not impose on non-remote sellers. Currently, many states give special state sales tax deals for businesses with in-state presence, while offering remote sellers no such deal. Since this practice is giving preferential treatment to in-state sellers in relation to the collection and remittance of sales taxes, will this be prohibited under MFA? Will there be any limitation on states giving special sales tax breaks to large in-state businesses while forcing strictly out-of-state businesses with no presence to comply?

The MFA does not dictate to the states how they structure their state tax systems; to do so would be a fundamental violation of state sovereignty and the constitutional framework of our government embodied by the 10th Amendment. The MFA simply grants states the authority to enforce state sales tax laws on remote sales.

11) Under SSUTA, states agreed that sales price was the cost that a consumer actually paid for an item. However, Nebraska wants to claim that “sales price” is the gross price before discounts and coupons, thereby charging the business tax on retail value rather than amount paid (Think discounts from Groupon or Living Social. If the retail cost is \$75, but the discount makes it \$25, Nebraska would want to collect sales tax on the \$75 rather than the amount actually paid, which was \$25). Is there anything in the MFA that prevents this type of excessive taxation from occurring in Nebraska or other states? From what we understand the minimum requirements of MFA do not prevent this type of theoretical taxing from occurring.

The MFA does not dictate to the states how they structure their state tax systems. Residents of Nebraska, not Washington, should determine the appropriate level of state taxation in Nebraska.

12) How could MFA requirements affect the financial services sector? Will financial products that are sold over the Internet, like portfolio management services, credit reporting service apps, or insurance service fall under MFA taxation authority?

The MFA does not affect the financial service sector, and no state imposes a sales tax on financial transactions.

13) Home-schooling parents meet at state, regional, and national gatherings in part to sell used textbooks and related products that their children have completed. If these transactions are conducted online through an aggregation site, would the transactions be subject to the MFA small-seller exemption in states that exercise their Section 6 discretion to expand their tax collection authority through nexus definitions?

The small seller exemption applies to all remote sellers, and no discretion is given to states with respect to the amount of the small seller exemption. The term “remote seller” is defined in the bill and means a person that makes remote sales. Only individual remote sellers who make more than \$1 million in remote sales each year can be required to collect state sales taxes.

14) How will the MFA affect digital goods and services? Without a clear structure for digital goods taxation, these types of goods could fall under multiple taxation schemes. Does the MFA protect digital goods from multiple taxation?

The MFA does not affect the taxability of goods, digital or otherwise.

15) In terms of digital goods, like apps and music, who is responsible for remitting the sales tax: the vendor, an app store or sales platform, or the creator of the digital good?

The person responsible for remitting sales tax is exactly the same under the MFA as it is under current state law. The question under state law remains as it always has: who is making the “sale” as defined in state law? The party making the “sale” first collects and then remits the tax.

16) Some states, like Maryland have different sales tax rules for goods that are priced under one dollar. For example:

Effective January 3, 2008, the Maryland sales and use tax rate is 6 percent, as follows:  
1 cent on each sale where the taxable price is 20 cents.

2 cents if the taxable price is at least 21 cents but less than 34 cents.

3 cents if the taxable price is at least 34 cents but less than 51 cents.

4 cents if the taxable price is at least 51 cents but less than 67 cents.

5 cents if the taxable price is at least 67 cents but less than 84 cents.

6 cents if the taxable price is at least 84 cents.

On each sale where the taxable price exceeds \$1.00, the tax is 6 cents on each exact dollar plus:

1 cent if the excess over an exact dollar is at least 1 cent but less than 17 cents.

2 cents if the excess over an exact dollar is at least 17 cents but less than 34 cents.

3 cents if the excess over an exact dollar is at least 34 cents but less than 51 cents.

4 cents if the excess over an exact dollar is at least 51 cents but less than 67 cents.

5 cents if the excess over an exact dollar is at least 67 cents but less than 84 cents.

6 cents if the excess over an exact dollar is at least 84 cents.

If Maryland, or states wishing to follow suit, do not comply with SSUTA or the minimum simplification requirements included in MFA, can they tax low-cost goods in this way? This applies in particular to digital goods like apps and songs. Does the MFA require simple, flat taxes for low cost and digital goods?

The MFA does not require states to adopt the SSUTA. In fact, the legislation does not require states to do anything. However, states must adhere to the simplifications and protections provided in the MFA if they choose to simplify their tax systems and require remote sellers to collect state taxes.

The table reproduced above is an if/then statement of the kind that computers have been able to process for decades. In other words, this apparently complicated rounding method isn’t complicated at all for computers to process.

Thank you for giving us the opportunity to respond to your questions. We look forward to working with you to address these issues as we move forward with the enactment of the Marketplace Fairness Act.

Sincerely,

MICHAEL B. ENZI,  
U.S. Senate.

LAMAR ALEXANDER,  
U.S. Senate.

Mr. ENZI. I would encourage everyone to read the bill. It is short—11 pages. You don’t see many like this. You can see through that; right? It is a bill you can read from beginning to end and you can understand what it does, which is very unusual for Washington. It is not like a lot of bills that simply make changes to other bills and require you get hold of those other bills and read them to figure out what is going on. This bill is straightforward.

If a State meets the simplification requirements outlined in the bill, it may choose to require collection of sales taxes that are already due. Congress is not forcing States to do anything. And if States do act, they are collecting taxes already due by consumers—folks such as you and me.

One of the issues that received much attention while debating this bill the past few weeks is the issue on audits. There is some concern small businesses will be subjected to onerous and time-consuming audits by State and local governments if those governments start requiring they collect sales taxes on these remote sales. It is critical to keep in mind that sellers that have under \$1 million in remote sales in 1 year are not required to collect and

would not be subject to an audit from any out-of-State government.

In order to obtain authority to require remote sellers to collect, and therefore even have the potential of being audited by remote governments, States either must join the Streamlined Sales Tax and Use Agreement—and I will refer to that as the Streamlined States—or they can simplify their tax structure by creating a single entity within the State responsible for all State and local taxes and use tax administration and audits; establishing a single audit statewide; limiting collection to a uniform State and local tax base; allowing a single sales and use tax return; and providing the program to figure the tax with no liability to the retailer and, therefore, no need for an audit.

For States that join the Streamlined Sales Tax and Use Agreement, a remote business would only be subject to a single audit for participating streamlined States, eliminating the possibility of audits by local governments and the probability of an audit.

For States that do not join the streamlined States but choose to participate in the alternative simplification system outlined in the bill, a business would also be limited to a single audit, per State, per year.

Practically speaking, there is no possibility that streamlined States or non-streamlined States would ever be able to perform significant audits of remote sellers.

Today, the States audit less than 1 percent of retailers inside their borders. Auditing remote sellers would require additional resources and travel and is simply not a realistic possibility.

For audits that are performed under the new system, the Marketplace Fairness Act demands that States adopt uniform audit procedures which would simplify and reduce business administrative expenses.

Sellers who use the certified sales tax administration software would either not be audited or would have limited scope audits to determine that the software was properly installed.

In addition to the audit protection the Marketplace Fairness Act provides, participating States are required to establish and maintain an accessible database of geographically based tax rates and tax base information to make it easier for remote sellers to collect taxes. These states are also required to hold those sellers harmless for errors in the database.

Compared to today's sales tax administration, where sellers are expected to research and comply with tax rate and tax base information and to understand jurisdictional boundaries without help from the state and local governments, the Marketplace Fairness Act dramatically reduces administrative burden and audit risk.

Some opposed to this bill go so far as to say that this potential overreach of State and local governments will lead

to taxation without representation. The Marketplace Fairness Act includes significant benefits for remote sellers, including limits on audits, liability protections, and tax and administrative simplification. The tax is imposed on the consumer by the State where they reside pursuant to tax rates and a tax base established by the State and local governments. This serves as the ultimate check on excessive taxation. Because this tax is imposed on the consumer, there is no danger of taxation without representation.

Another concern raised by a few of my colleagues is that businesses will leave the United States, set up shop outside our borders, and sell into the United States, presumably only because of a sales tax collection requirement. It is important to note that States currently enforce collection of State taxes against foreign businesses with no physical presence in the United States, and have a number of methods to compel collection by foreign sellers, including liens, levies, and seizure of assets. The Marketplace Fairness Act treats foreign corporations the same as it does domestic corporations. All on-line retailers that make over \$1 million in remote sales, regardless of where the retailer is located, must collect and remit sales tax to States that require it.

I would say this. No one works on a bill such as this, works on it 12 years, as a popularity contest. You have to be doing what is right. I have listened to the people, talked to the people, and know this is something that is going to be necessary to keep Main Street in business so people will have the ability to go to the store and make a selection and try the goods, feel the goods, and know it is right and that retailer is not going to have to worry about the person using their iPhone to get the barcode and order it from somebody else because of a sales tax difference. That is what will keep Main Street viable and the downtowns making it look like there is a growing community.

In conclusion, I thank everyone associated with this bill for their hard work and efforts in getting us to this point. I thank Senators ALEXANDER, DURBIN, and HEITKAMP for their unwavering support of this bill and moving it forward in the Senate. I thank all of the cosponsors of the bill. I very much appreciate their support. I thank all the businesses, the trade groups, the constituents who provided constructive feedback as we have attempted to address, as best we can, all the concerns that have been raised.

I thank all of the staff who have worked on this issue—on my staff, my legislative director Randi Reid. She has worked on this as long as I have. She is probably, on the Hill if not the country, the expert on marketplace fairness or any of the other titles this kind of bill may have had.

I also thank my tax counsel, Eric Oman; Corey Tellez, Beth Cook, Dena Morris, Reema Dodin, MJ Kenny; Ben

Garmisa on Senator DURBIN's Staff; Alison Martin, Michael Merrell, and David Cleary on Senator ALEXANDER's staff; Jillian Fitzpatrick on Senator HEITKAMP's staff; and all of the staffs of the bill's cosponsors and all of the people in offices that have been taken into the process so we could get the process to work. It is always a team effort, and it takes more than ones who are just leading the effort. I know there are an immeasurable number of hours they have put in on this issue and I thank all of them for their hard work.

I look forward to continuing to work with my House colleagues, Congressman WOMACK, Congresswoman SPEIER, Congressman CONYERS, and Congressman WELCH, as they push forward to the House passage of the Marketplace Fairness Act.

I also thank Senator DURBIN for all of his energy on this bill, the perspective he was able to bring to the bill and his tremendous ability to communicate the issues. I thank Senator ALEXANDER. We were working on a much bigger bill until Senator ALEXANDER lent some expertise to make this a much simpler one, one that is completely readable and only 11 pages.

I think that covers most of the objections. There will be some from the States that do not charge a sales tax at all because if their businesses exceed \$1 million in on-line sales, then they will have to. If they sell into States that collect the sales tax, they would have to participate in the collection of that.

As we push forward with House passage of the Marketplace Fairness Act and as we finish in the Senate tonight, as I am confident we will, I thank all who are participating in it, particularly the people of courage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, today the Senate is voting on whether to take a few more inches off the little guy. I say that because we can tell what this debate is all about by looking at the morning newspaper. All over those newspapers we saw ads taken out by some of the biggest businesses in the country. It is pretty easy to see why. It is because with this vote for the so-called Marketplace Fairness Act, what we have is big businesses being given the ability to force—force, mind you—new regulations onto the startups, onto the small businesses. That is what this bill has always been about.

The big businesses have physical presence. They already pay taxes. The people whom we have said we care about, for the last 15 years, are the startups, the people who are just trying to get off the ground, who have the dream of one day being big. With this proposal that we will vote on in an hour, I fear what we are going to do is crush a lot of those startups, a lot of those small businesses, because not only will they have new regulations,

those small businesses will have new legal regimes, new audits by out-of-State regulators, new legislators, new Governors, new court systems, new accountants, new software, new consultants, and new lawyers. What I hope we will do is ensure, as this process goes forward, that we truly think through the implications of what is being done because on every count it is coercive and discriminatory in nature. It, in fact, gives a leg up to foreign retailers. It, in effect, repudiates a lot of what we have done over the last 15 years to build a sensible policy that will ensure what I call prosperity for both bricks and clicks.

I am sure that is what the Presiding Officer of the Senate wants. It is what we want in Oregon. We want our brick-and-mortar stores to prosper. We want our online stores to prosper. What this bill does is it precipitously overturns the law of the land, the law of the land upheld by the Supreme Court. It would, in unprecedented fashion, stipulate that State and local governments have taxing authorities over businesses that are located thousands and thousands of miles away.

The sponsors are quick to point out that the Court allowed that Congress could enact this sort of extraterritorial taxation. But as the Senate has seen again and again, just because government can doesn't mean government should.

We are going to continue this debate. It will not be done today. One of the central discussion points in this debate going forward will be the damage this bill, in its present form, does to the idea of State sovereignty. Proponents of the bill say the measure is about promoting States rights, but the reality is it is a coercive affront to State sovereignty. If any State does not wish to subject their business to out-of-State government tax collectors, the MFA tells them in effect: Get lost. The MFA enables the State of Indiana or the State of South Dakota to require online businesses located in New Hampshire to collect sales taxes on their behalf. I will repeat that. This so-called Marketplace Fairness Act could require New Hampshire, a State that does not have a sales tax—require New Hampshire businesses to collect sales taxes for goods and services provided to consumers in Indiana and South Dakota and send that money to those States. It enables California and New York to collect taxes from businesses located in Florida or Texas.

Finally, since I know we are in morning business, I think this steers the Internet toward a dangerous path. It would, in effect, endorse the notion that Internet entities should be required to enforce laws outside their home jurisdiction. Foreign countries have long pressed that notion. Foreign countries have specifically pushed that notion, that the Internet ought to cede to their control. As it is already, many countries are seeking to put the United Nations in charge of the Internet's reg-

ulator-in-chief, and essentially, if we look at the philosophical foundation of this proposal, it endorses that world view.

The Senate is being asked to consider schemes to allow States and localities to essentially nationalize their taxes, but tomorrow the Senate may be asked to consider similar schemes to enforce law and regulations. I will tell you what truly concerns me about this is it could be laws and regulations about content and other issues that are important to the powerful and well-connected. Make no mistake about it, that is who is pushing this bill today.

Open those morning newspapers and it was not the little guy, the person who does not have PACs and big political committees who was buying ads in the morning newspapers, it was the powerful and the well-connected. It seems to me the last thing this body should do is jeopardize the democratizing power of the Internet and technology through legislation such as this.

I believe the substance of this bill is deeply flawed. I know there have been efforts to improve it.

I see my colleague from Illinois. He wanted to take the bill I wrote years ago, the Internet tax freedom legislation, along with colleagues from both sides of the aisle, and he wanted to put it into this bill. The Internet Tax Freedom Act runs contrary to this bill because this bill allows discrimination.

It specifically allows online retailers to do things that would not be required for offline retailers. The offline retailer doesn't have to chase somebody across the country and try to figure out where they are going to consume a particular product. We ask for things from online retailers that we do not ask from offline retailers.

I understand why the Senator from Illinois wanted to take a bill that has been a big success for both bricks-and-clicks retailers and put it into this bill. In effect, I compared it to trying to dump sugar into a very bitter cup of coffee.

We cannot get healthy with this bill in its present form. It is a deeply flawed piece of legislation. This debate is going to continue.

I urge colleagues to vote no on the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank my friend and colleague from Oregon for coming to the floor and stating his position on the bill. For those who follow the Senate, we are about to see something that is historic, precedent setting, and nothing short of remarkable in an hour and a half. The Senate is actually going to vote on a bill.

Those who are watching this program on C-SPAN or from galleries may actually see 100 Senators—or close to that number—come to the floor, vote, and perhaps there will be a bipartisan majority supporting the bill. At least that is my hope.

I have joined with Senator ENZI, a Republican from Wyoming; Senator ALEXANDER, a Republican from Tennessee; and Senator HEITKAMP, a Democrat from North Dakota, in a bipartisan effort to solve a problem. It was a problem not out of our creation, it was a problem that came about because commerce has changed in the United States.

Twenty years ago the State of North Dakota went to the Supreme Court and said: We want to collect sales tax from remote sellers. Twenty years ago these were mainly catalog sales. It would give a company that made a catalog sale in the State of North Dakota the ability to collect sales tax.

Nearly 21 years ago the Supreme Court—across the street—said in the Quill decision: We are not going to rule this from the Court. It is up to Congress to write the law.

Well, in lightning-fast speed—the kind of reaction we have come to expect—21 years later, here we are actually debating the bill. We may actually vote on it in an hour and a half.

What is it all about? It is about the way commerce has changed in America. Let's think about it. When did anyone here first make an Internet purchase? Virtually all of us have. I remember doing it and saying: I wonder how this is going to work. They are going to take it off my credit card, I am going to receive this in the mail or UPS will deliver this book from Amazon. Well, it worked out pretty nicely, so I did it again. I bought clothes from Lands End, along with some other things, and pretty soon I am an Internet purchaser.

Well, it turns out there was something going on I didn't know about. In my State of Illinois—and 45 other States—I have a legal obligation to pay sales tax on what I purchase on the Internet. Most people don't know it. It is on the State income tax form, and at the end of the year in Illinois—and many other States—each taxpayer is asked to itemize how much they owe for sales tax to, for instance, the State of Illinois for purchases that were made on the Internet.

A year ago my bookkeeper brought it to my attention and said: Senator, do you want to pay this? I said: I think I should. I started making calculations of what it was. It was my best estimate, and I paid it. It turns out only 5 percent—1 in 20 taxpayers in Illinois—make that payment.

Now repeat that story for 45 States and we will find that so many residents of States—whether it is Maine, Illinois, or California—may have a legal obligation to pay sales tax on their Internet purchases, but they don't do it.

As a result, less money is going into the States, the counties, and the localities that have the sales tax revenue coming their way, but something else has happened that is very significant. The competition of the Internet retailers is a disadvantage.

Unabridged Bookstore is on Broadway in the city of Chicago. It is around

the corner from where my wife and I reside in Chicago. Unabridged is a great bookstore, and I love bookstores. I make a point of going in there. I went in there last Friday, bought a couple of books, and paid my sales tax to the State of Illinois.

As I mentioned earlier, I also buy books on Amazon. Sometimes they collect sales tax and sometimes they don't. It depends on whether the actual seller of the book is a store in Illinois, for example.

So what is the difference? Well, the difference is about 8 or 9 percent on what a purchaser pays for a book. When I bought the book at the store on Broadway—where they are collecting the sales tax as they are required by law, where they pay property tax as they are required by law sustaining the great city of Chicago and all of its services—I paid more than I might have on the Internet.

Here is what this bill says: States can now require the Internet retailers to collect the sales tax at the point of purchase and to remit those proceeds back to the States. So, for example, if Amazon, which supports this bill, sells a book to me in Illinois, they can collect the sales tax and send it to Springfield, the Illinois Department of Revenue. It is just that simple.

As far as the way they collect it, this bill requires that the Internet retailers be given the software they need so when I put in my address either in Chicago or Springfield—I have two places in Illinois—the address is going to identify how much tax is owed. It is not as dramatic and complicated as some on the Senate floor have suggested. In fact, it is done every single day.

What if we don't do it? What we are going to find is that stores that sell books, running shoes, bicycles, and appliances are at a distinct disadvantage. They become showrooms, and they tell a story.

This is a Lacrosse store, and they are going out of business. They sold sporting goods and soccer gear in the suburbs of Chicago. They could not keep up with it anymore because people were coming in and they were showrooming. Potential customers would come into the store and say: I am looking for running shoes, and I cannot decide if it is Nike or Adidas. Can you bring out a few boxes? How about different colors? Let me try a different size. OK. This is perfect. Let me write this down.

Everyone knows what happened next. They walked out of the store, ordered it on the Internet, and paid no sales tax. That is what this store, and many like them, are competing against. We are trying to solve this once and for all, and we have done it in a way I think is fair.

We took a bill that was 80 pages long and turned it into 11 pages so it is simple to follow. We made it easy for the retailers in terms of the software they need to make this collection, and now

across the United States there will be a standard which will help a lot of retailers. Sure, it is going to help the biggest ones. I will not make any bones about that. Of course it will. It will help the small ones too such as the Unabridged Bookstore and businesses such as the Lacrosse sporting goods store. They will be helped in the process too. They create jobs. These are entrepreneurs which sustain our communities.

When it comes to things we need in our neighborhood or town, we go to the small stores and ask if they will buy an ad in the church program or support the local baseball team. They are citizens and residents of the community. They are part of the community. This bill is trying to make sure they have a fair and level playing field when it comes to competing. That is what this is all about.

Some may wonder why we have such opposition. The Senator who spoke before me is from the State of Oregon. Oregon is one of five States in the Nation with no State sales tax. For the record, they are Alaska, Oregon, Montana, New Hampshire, and Delaware. Of those five States, four of those States—all eight of those Senators—are actively opposing this bill.

What does it come down to? If this bill passes, will the people of Oregon, who currently have no sales tax, have to collect sales tax from the residents of Oregon? No. Not one penny of sales tax will be imposed on any State where they currently don't have a sales tax. The residents of Oregon will not have to pay sales tax at the counter or over the Internet. It will not apply.

However, the three or four—and there are only three or four companies—Internet retailers in California that want to sell in California, Washington, Maine, and Illinois will be collecting sales tax based on their sales in our States only. That is fair. It doesn't change an Oregonian's sales tax responsibility at all. So for three or four retailers, the argument is being made: Don't change the law.

Just how many Internet retailers are we talking about? We put an exemption in this bill and said: If you had less than \$1 million in Internet sales last year, you don't have to collect sales tax this year. What does that \$1 million mean? Well, if we set that number at \$150,000 instead of \$1 million, we would have exempted 99 percent of all the Internet retailers.

What it comes down to is this bill will affect the big boys, such as Amazon and eBay—the big ones. They can certainly—and already do in many instances—collect the sales tax. It does not affect the small Internet retailers, particularly in States that are complaining the most about the passage of this legislation.

I think this is an important measure in terms of leveling the playing field for retailers across America, and it is long overdue. It is bipartisan, and it has the support of the White House. It has the support of the retail commu-

nity. Stores large and small all across America support this legislation. It has the support of virtually every level of government beyond the Federal level.

All the Governors and mayors in all the different localities—virtually all of them—support it. The labor union supports it as well because money coming back into these States and communities will be used for the good of the people who live there. I don't know about many States, but in my State they are struggling in terms of coming up with enough revenue. This bill will help provide some of the revenue my State needs to deal with some of these problems.

I would like to mention one other issue that was brought up Friday morning by the Wall Street Journal. The Wall Street Journal talked about the number of audits an Internet retailer might face if this bill passes. They suggested—I think improperly in their editorial—that it could be an onslaught of audits. We made it clear—and Senator ENZI said on the floor, as I have—that we are talking about one centralized audit for each State.

It would not be a matter of harassment. At most there would be some 45 audits which these Internet retailers would face. I hope that can be made extremely clear.

I have listened to a lot of speeches on the floor against this measure, and virtually every single one of them has been from a State with no sales tax. My final plea is to the people of Oregon, Montana, New Hampshire, Delaware, and Alaska. If this bill passes, they will not have to pay any new sales tax. This bill creates no new Federal tax and does not create new sales tax anywhere in the United States. It only has a method of collection for those sales taxes that already exist in the States across the Nation.

I hope we can get a good, strong bipartisan vote so we can send it to the House, and I hope they will take it up. It is a timely and important measure. After 21 years I think we have thought it over enough. It is time to act and do something to resolve the issue. This will help small businesses and local governments across America where this revenue will play an important part in their future.

I believe all the speeches I have heard about the value of small business, the value of entrepreneurship, and how important it is to create jobs at the local level. This will be a test vote this afternoon. In fact, we will have a couple of votes. First, there will be the managers' amendment. It is generally an amendment where we look closely and carefully at every single sentence in the bill. We made some slight variations. There were no major changes in the substance of the bill that was originally introduced. However, it is a cleanup amendment, which shows that even with our best efforts, we can improve, and I think that is important. Second, there will be the vote on final passage on the bill.



The last point I want to make is one I expect to hear from my friend from Oregon, Senator WYDEN—and he is my friend. He feels passionately about the Internet, and he should. The Internet has changed America. It has changed the world. It has changed the way we live, the way we research, the way we read books, the way we shop, and so many other things.

Senator WYDEN talks about the virtual issue of the sanctity of the Internet. I could not agree with him more. We have to make sure we preserve some very basic things about the Internet. One of the things we need to preserve is access to the Internet. What if we had to pay a tax every time we went online? That would be awful. So we had an amendment from Senator PRYOR of Arkansas and Senator BLUNT from Missouri which said access to the Internet cannot be taxed. It is called the Internet Freedom Act.

I said put it on here. I agree with that. Let's make it clear that nothing we do here will in any way inhibit a person's access to the Internet.

It is a bill which, frankly, Senator WYDEN had introduced, but because of the nature of this political debate, he objected to our putting an amendment on the bill. I am sure he still supports that bill in principle. This was an effort by us to make it clear that we want to protect access to the Internet and in so doing make sure we also protect something that is fundamental in this country: an opportunity for real competition and a level playing field for all manner of business, large and small, across America.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Tennessee.

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

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

Mr. ALEXANDER. Mr. President, we have an opportunity to vote today on an important piece of States rights legislation—at least that is the way I look at it as a former Governor of Tennessee.

Here is what the legislation does. It is called the Marketplace Fairness Act. There are many reasons to support it, but the reason I like it is because it gives Governors and legislators the opportunity to decide for themselves whether they can require out-of-State sellers to do the same thing in-state sellers are required to do; that is, to collect the sales tax already owed.

Let me say that again. This legislation is States rights legislation. It allows Governors and legislators in Maine or Tennessee or wherever—Illinois—to decide for themselves whether they want to require out-of-State sellers to do the same thing in-state sell-

ers already do, which is to collect the sales tax that is already owed when something is sold. That is it.

Before I went back to Tennessee, some people here were saying: We don't trust the States to make this decision. I think I know the answer to that from Tennesseans. I have spent the last week going from one end of our State to the other. Everywhere I have gone, I have asked a question. I said: There are some people in Washington who said they trust Washington to make a decision more than they trust Governor Haslam and Speaker Harwell, Lieutenant Governor Ramsey, and the Tennessee Legislature to decide what to do about taxes.

The last time I checked, Tennessee had an AAA bond rating, no State road debt, one of the lowest tax rates in the country, and was named the second freest State in the country. And the last time I checked, Washington, DC, was running up \$1 trillion of debt and more every year. Nobody in Tennessee trusts Washington more than the Governor and State legislature to decide what to do about taxes, particularly when it comes to whether we are collecting a tax that is already owed.

This is such an obvious piece of legislation that many of the opponents have resorted to interesting arguments, let's say, in opposition to it.

It has been said that the bill should have gone through committee. Well, it went to committee, but the chairman—a very respected Member of this body—doesn't like the bill, so he didn't report it to the floor. So that is why it didn't get out of committee.

They have said it should have more amendments. All of us, particularly on our side of the aisle—we are in the minority—would like to have as many amendments as we can. But there is one reason this bill didn't have amendments, and that is because opponents to the bill objected to every single amendment, every single one, even amendments they support. Senator PRYOR and Senator BLUNT offered a 10-year extension of the moratorium on Internet access taxes, and the Senator from Oregon objected to that even though he wrote the original act.

Some have suggested that what we are talking about is a tax on the Internet, but every Senator knows there is a law against a tax on the Internet.

Some have said: Well, it is a new tax. But of course it is not. It is an existing tax. One of my colleagues over here said that the only thing he hates worse than a tax is somebody who doesn't pay a tax that is owed. This is a tax that everybody owes that only some people pay. What we are trying to say to the Governor of Maine or to the Governor of Tennessee or to the Governor of Illinois is this: You can decide for yourselves, without playing "Mother May I" to Washington, DC, whether a State wants to treat some taxpayers one way and some another way, some businesses one way and some businesses another way.

Then there are some who say it is too complicated. Well, this is how complicated it is. If I order ingredients to make ice cream over the Internet from Williams-Sonoma, I put in my name, my address, and my ZIP Code, and the software figures out the sales tax, collects it, and sends it to the State of Tennessee, how hard is that?

I guess the complete answer to that is that a majority of Internet sales today collect the sales tax that is owed. If it is so hard, how are they doing that? Let me say that again. A majority of the retailers that sell over the Internet today collect the sales tax when it is owed using the software that is as simple as looking up the weather on a person's computer. I look up the weather in Maryville, TN. I type in my ZIP Code, and I type in "weather," and it tells me the weather. That is about how easy this is. A majority of the retailers that sell over the Internet today collect the sales tax when they make the sale, so it can't be not only impossible to do, but it is not hard to do.

Then there are some who say conservatives aren't for this. One of the leading proponents of this legislation is the chairman of the American Conservative Union, Al Cardenas. He sent out an e-mail last week, and he sent out another one today.

Dear Senator: As you continue work next week on the Marketplace Fairness Act, I would like to call your attention to what conservatives are saying about this issue. They recognize as I do that it is not the role of government to pick winners and losers in the marketplace by requiring brick and mortar stores to charge a sales tax while exempting Internet sales.

Sincerely, Al Cardenas, Chairman, American Conservative Union.

He included in his e-mail—I received this e-mail—the comments of Charles Krauthammer, a conservative if there ever was one.

The real issue here is the fairness argument—that if you're an old-fashioned store, you have to have your customers and you pay the sales tax and online you don't . . . So I think you want to have something that will level the playing field. You can do it one of two ways. You abolish all sales tax for real stores and nobody pays. Or you get the Internet people to pay the sales tax as well. I think the second one is the only way to do it, obviously.

Representative PAUL RYAN—he was home this past week too. He was in Janesville, WI. He is a pretty good conservative, last time I checked. I don't go around making a list of who is a good conservative and who is a bad one. I just think most people in America think of PAUL RYAN as a conservative, just as the chairman of the American Conservation Union does.

Representative PAUL RYAN:

To me, I think the concept is right . . . It's only fair that the local brick-and-mortar retailer be treated the same as the big-box online sales company out-of-State.

Lest one think the chairman of the American Conservative Union and Charles Krauthammer and PAUL RYAN are all on another planet somewhere,

here are a few other conservatives who agree with him: William F. Buckley before he died wrote extensively about this; Republican Governors Bob McDonnell, Chris Christie, Robert Bentley, Paul LePage, Bill Haslam, Butch Otter, Terry Branstad, Rick Snyder, Mike Pence, Tom Corbett, and Dennis Daugaard of South Dakota.

This is common sense. This is fairness. This is States rights.

For the life of me, as a former Governor, I do not understand how Congress can say to the conservative Republican Governor of Tennessee, the conservative Lieutenant Governor of Tennessee, to the conservative supermajority Republican legislature: You have to play "Mother May I" with Washington, DC. We don't trust you to make decisions about your own tax policy. We think Washington does a better job.

That is laughable. That is just laughable.

What we are doing with this bill—and I will conclude with this—is very simple. It is two words: States rights. It allows our State of Tennessee, our Governor and legislature, to make a decision: Will they decide to require out-of-State sellers to do the very same thing they require in-state sellers to do; that is, collect the sales tax when they sell an item and remit it to the State government? It is a tax that is already owed. It is not a tax on the Internet. It is a tax some people are paying and other people aren't even though they owe it. It discriminates against mom and pop small businesses.

This bill only applies to large retailers—those that sell more than \$1 million in remote sales each year.

To the charge that it is too complicated, how could it be too complicated if a majority of Internet sales being made today already collect the sales tax?

All we are saying is that the Governor and the legislature may wish to say to all taxpayers: If you owe the tax, you are going to need to pay it, and if you pay it, we can lower the tax rate for everybody in this State.

I thank Senator DURBIN and Senator ENZI for their leadership and bipartisan support. I regret that we didn't have more amendments, but the opponents used as their tactic to try to kill the bill—which I hope won't be successful—their right to object to every amendment. We can't do much about that.

So after the bill passes, which I hope it does tonight, the House will consider it, and I am sure they will come up with their version of the bill, and we can go to conference and we can pass the Marketplace Fairness Act, a States rights bill that, in my view, is exactly what conservatives hope would happen.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

#### ORDER OF PROCEDURE

Mr. DURBIN. Mr. President, I ask unanimous consent that the 20 minutes

prior to the vote, which is scheduled at 5:30, in relation to amendment No. 741 be equally divided between the proponents and opponents, with proponents controlling the final 10 minutes.

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

Mr. DURBIN. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CRUZ. Mr. President, I rise today to speak out against the so-called Marketplace Fairness Act. In my view, during a time of economic challenge, as we are in today, the very top priority of every elected official, whether Republican or Democrat, should be to restore economic growth, to get our economy moving, to get back to the economic dynamism, the economic strength that has lifted so many millions out of poverty and toward the American dream. This bill, if enacted into law, would hurt economic growth and would be a mistake.

First of all, more taxes will hurt economic growth, and this bill, if enacted, would in effect create a national Internet sales tax. It would subject small online retailers to paying taxes in 9,600 different jurisdictions all across this country. At a time when so many are hurting, we should be discussing how to reduce regulatory burdens on small businesses and how to reduce tax burdens on small businesses, how to reduce the complexity of taxes on small businesses, and this bill goes in exactly the opposite direction.

In particular, those who will be hurt the most by this bill if it is passed are small mom-and-pop retailers online. The threshold for this bill is \$1 million in gross online sales. That is not profit; that is \$1 million in total sales, gross sales, and \$1 million for a starting business is not a terribly high threshold for their gross, not their profits. That has to cover the costs and all expenses of the business. It has to cover any salary, any rent, any Web costs, communications, travel, accounting, legal services, plus the costs of goods sold. These small- and medium-sized businesses would suddenly find themselves subject to 46 different States and 9,600 local jurisdictions. They would find themselves having to pay tax filings, potentially, in all 46 States monthly or quarterly and to be subjected, potentially, to audits from each of these local counties, each of these local municipalities.

I have with me here today a listing of all of the tax rates of these 9,600 different jurisdictions. It is truly indecipherable, that you can look and pick any State and get the county and see the different tax rates. Indeed, in a lot of counties—for example, I just opened this at random. In Colorado—which I happened to open it to—if you look in Taylor Park, if it happens to come from the 81210 ZIP Code, the tax rate is 4.5 percent, but if it is in the same county that comes from the 81230 ZIP Code, the tax rate is 8.25 percent.

Small businesses—a small mom-and-pop just getting started on the Internet would be required to comply with all of these taxing jurisdictions, to send the taxes to all of these taxing jurisdictions, and to be subject, potentially, to audits from 9,600 taxing jurisdictions. That makes no sense.

I wish to point out also that this is not fundamentally about fairness. The proponents of this act point to small mom-and-pop stores that are their bricks-and-mortar retailers. But those are not the main proponents of these bills. A small bricks-and-mortar retailer right now is losing sales primarily to two different sources: No. 1, big-box bricks-and-mortar retailers. They are losing a lot of sales to big-box large retailers. This bill does nothing about that. No. 2, they are losing substantial sales to large online retailers, the giant corporations.

But here is an interesting statistic. Nine of the ten largest Internet retailers are already paying sales taxes in all 46 States that have sales taxes. Why? Because they have a physical presence in the State.

What the Supreme Court has said is, if you are physically in a State, the State can force you to collect its tax. But if you are not physically there, the Constitution does not let you haul someone in from a distant State and force them to collect your taxes because you do not have any accountability to those individuals in a distant State.

In terms of the small mom-and-pop retailers, they are losing their sales to the big-box and big Internet retailers, all of whom are already paying these taxes.

So what do we have here? We have a bipartisan coalition, unfortunately, that it appears is going to pass this bill in this Senate. But the coalition is driven by the fact that you have big business united. You have the big business bricks-and-mortar companies and the big business online retailers all together because the impact of this bill is to hammer the small business online retailers, to make it harder for the little guys to compete. So you see a strange alliance here in Washington, but one that I think is exactly backwards of what we ought to be doing.

I think it is fundamentally unfair to ask a Texas business to collect taxes for California Governor Jerry Brown or for New York City Mayor Bloomberg and a nanny State, in particular, because they cannot hold those politicians accountable. They do not have a presence there. They do not vote there. They do not have influence there. But yet they are being dragooned into collecting those taxes. I think that is fundamentally not right.

Let me give you an example of how this will hurt small businesses. There is a woman in Texas named Ann Whitely Wood who wrote a letter to our office. She lives in Dallas and had created an online consignment store. Even though it is largely a one-person operation, she may come close to doing \$1