

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

million in sales—which, keep in mind, are not profits; those are gross sales. Her letter said:

Legislators must understand that it is both possible and common for a small seller like me to reach about \$1 million in sales with a near-one person operation.

She estimates it could take her 6 weeks a year to comply with the sales tax procedures for all of the collecting States. That impact on a small business is crushing. A giant corporation has accountants, has lawyers, has people designed to deal with that. For a small business, it hits them in particular.

I point out even more fundamentally, the Internet has been this incredible haven of entrepreneurial freedom. It has enabled people to start businesses with nothing, out of their garage, and sell all over the world. It has transformed the ability for single moms and Hispanics and African Americans and people with nothing to go and start a business. Because it used to be that you needed this big distribution network, you needed warehouses, you needed trucks, you needed all of this, so it was difficult for someone to start a small business.

The Internet has transformed all of that. There are 2.3 million Hispanic small business owners. The Internet has been critical to their being able to open those small businesses because it lets them communicate with the world and get their products out.

I believe the Senate should treat the Internet as a safe haven, that it should be treated as free from taxes and regulations that would hamper the entrepreneurial spirit and make it harder for the little guy, for small business to be created, to grow, and thrive. When they become gigantic corporations, they will have a physical presence in the State, and then they will be subject to the taxes. But do not hit them when they are getting started on the Internet. I think it would be absolutely foolish to do anything to impinge on the entrepreneurial freedom of the Internet.

In conclusion, I want to say three very simple things.

No. 1, in my judgment, we should not be taxing the Internet, period. No. 2, we should not be increasing the burdens on small businesses, particularly at a time of economic challenge, period. And, No. 3, we should not be favoring politicians and big business at the expense of the little guy, at the expense of the single mom trying to start a small business to feed her kid, at the expense of the Hispanic immigrant trying to start a small business and work toward the American dream.

We should not be standing with politicians looking for more tax revenue and big businesses looking to make it harder for their competitors to survive. Instead, we should stand up with the little guy, the small business, with the American people.

I urge the Senate to reject this bill. If the Senate does pass it, I would urge

the House to listen to the American people and reject the bill as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I think we only have 2 or 3 minutes before the 20-minute period that has been reserved equally for both sides. I wish to use those 3 minutes to respond directly to my colleague from the State of Texas.

The first thing he says is, do not tax the Internet. Good news. I just went through the entire bill. There is no tax on the Internet in the bill, none. So we have taken care of point No. 1. In fact, we wanted to add the Internet Freedom Act here, which would have said expressly: We will continue the prohibition against tax on the Internet, and it was objected to by one of the opponents of this bill.

The second thing he says is, do not put a burden on small businesses. I would say to my friend from Texas, what about the small business that does not have Internet sales?

You have just put a burden on them because they cannot compete with Internet retailers that do not collect sales taxes.

I might say also, when it comes to small business exemptions, we exempt those with sales of \$1 million or less in the previous year. That exempts 99 percent of all Internet retailers. The small businesses—the Hispanic and non-Hispanic businesses—collect sales taxes in Texas on the first dollar of sales. We exempt \$1 million in sales for their competitors in Internet retail.

The final thing the Senator says is, do not favor large businesses. The coalition supporting this bill includes the smallest businesses, the mom-and-pop businesses. Of course, it includes the big-box stores and the big chains. But it goes all the way down the line. They are all in competition.

What we have put in here, with this exemption, exempts 99 percent of all online retailers. When the Senator says he looks at 9,600 different taxing jurisdictions and cannot figure out how in the world we are ever going to figure this out, I refer him to page 3 of the bill. Please start reading at line 14 through 24, where you will see that we expressly provide there must be a single entity within the State responsible for all State and local sales. So you are not going to have 9,600. You are going to have, at most, 45 separate entities—the 45 States with sales taxes—as well as audits; one audit from the State, a single audit.

We do not want to put a burden on any businesses—large, small, Internet or not—but we do want to level the playing field.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, there will now be 20 minutes of debate equally divided.

Who yields time?

If no one yields time, the time will be charged equally.

The Senator from Illinois.

Mr. DURBIN. Parliamentary inquiry: I believe the order suggests that the time is equally divided between the opponents and proponents, and the opponents have the first 10 minutes and the proponents the final 10 minutes. So I would ask the Chair to clarify his ruling.

The PRESIDING OFFICER. The Senator is correct.

The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I come to the floor again this afternoon to continue my opposition and concerns about the Internet sales tax legislation that has been submitted.

I appreciate that we are going to vote on this bill in a few minutes, and I appreciate that I am probably going to lose. But I do think it is important to raise these concerns again because I think we have to take a look at the issues that have been raised and see if there are any ways to address them.

There are a number of problems with the bill that in my State of New Hampshire—which has no sales tax—makes it anything but fair. In fact, it creates an unfair situation for small businesses in a number of ways.

First, it is unfair for businesses in my State of New Hampshire and the four other States in this country that do not collect a sales tax. We did not have an opportunity to address this issue through amendments. I think it is not fair for us to pass a bill out of the Senate that fundamentally makes an impact on businesses in States where we have no ability to address the imposition of these taxes.

I also think we should not pass a bill that is going to create unnecessary new redtape for small companies across the country. One of the real benefits of the Internet has been the innovation and the job creation it has spawned. What this legislation does is put in place redtape that is going to put small companies that sell online at a severe disadvantage, making it harder for them to compete with large online retailers.

As a former small business owner myself, I know how time consuming regulations and compliance can be. Make no mistake about it, we are creating a bureaucratic morass for small businesses under this legislation. Small companies will be looking at complying with 46 different State laws. They are going to face audits or lawsuits, potentially, in some of these States.

Small business owners, who are working hard to grow their companies, do not need additional paperwork to distract them from running their companies. I fear that is what this bill will create. I urge my colleagues to take another look and see how we can address those concerns.

I yield the floor.

Mr. LEVIN. Mr. President, the Marketplace Fairness Act is designed to address a simple problem—a significant loss in States' sales tax revenues arising from e-commerce.

Generally, retail businesses are required to collect and remit sales and use taxes on qualifying merchandise or services. While most States require consumers to remit use taxes for purchases from out-of-State vendors, compliance is extraordinarily low as States cannot legally mandate the collection and remittance of taxes by a business unless the business has a physical presence in the State.

This restriction, which was articulated in the 1992 Supreme Court case, *Quill Corp. v. North Dakota*, went so far as to invite Congress to address the issue. It is time we do that.

In an era of unprecedented e-commerce, Congress's failure so far to address this problem unfairly deprives State treasuries of much-needed tax revenue because Internet-based retailers are not required to charge sales tax to their out-of-State customers. As you might imagine, a large number of State governments have asked for this legislation to fix that problem, including the current Republican Governor of Michigan. In fact, Michigan governors of both political parties have asked Congress to pass this important piece of legislation, and I agree with them.

The Governor of Michigan says that passing this law will help the State of Michigan collect more than \$800 million over the next 2 years. Those are revenues that the State desperately needs.

I also think it's important to keep in mind some of the things this bill doesn't do. This bill does not authorize the States to create State-level financial transaction taxes, as some have erroneously argued. In fact, the Marketplace Fairness Act does not create, endorse, or recommend new Federal, State or local taxes of any kind.

This bill gives States the option of pursuing collection authority by simplifying their tax structure, but States can also choose to do nothing differently than they do today. The Marketplace Fairness Act is about more equitably collecting taxes that are already owed.

Over the past decade, many States have worked together to develop a framework to harmonize sales and use tax collection and remittance, known as the Streamlined Sales and Use Tax Agreement. Michigan is 1 of the 24 States that currently participate in that agreement. But, in order for the agreement to be legally enforceable, Congress would need to enact legislation granting States the authority to require out-of-State merchants to remit sales and use taxes. This bill would do that.

I support this effort to simplify and improve sales tax collection, and I am a cosponsor of this bill. This bill will level the playing field between on-line retailers and those with "brick and mortar" stores, ensuring that we do not give an unfair tax advantage to one type of retailer over another. This is about ensuring that our States have the ability to collect the taxes they

need to fund schools, and law enforcement, and other key priorities.

I will vote for this bill, and I urge my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Illinois

UNANIMOUS CONSENT AGREEMENT—S. 601

Mr. DURBIN. Mr. President, I ask unanimous consent that the cloture motion with respect to the motion to proceed to Calendar No. 44, S. 601, be withdrawn; further, that at 2:15 p.m. on Tuesday, May 7, the motion to proceed to S. 601 be agreed to and the Senate begin consideration of the bill.

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

MARKETPLACE FAIRNESS ACT

Mr. DURBIN. Mr. President, in the closing 10 minutes, the four proponents who will speak will be first Senator HEITKAMP of North Dakota, followed by Senator ALEXANDER of Tennessee, myself, and then Senator ENZI of Wyoming, who has for 11 years been fighting for this vote. I want him to have the last word.

The PRESIDING OFFICER. The Senator from North Dakota.

Ms. HEITKAMP. Mr. President, this is a day that has been 20 years in the making. You have heard argument after argument here about how this bill has been rushed, how it is not ready, how we have not yet had enough debate or deliberation. I tell you on behalf of the small business owners in my State who have told me it is about darn time we do something, I stand today and congratulate this body for taking on this issue and taking a system that has been grossly unjust and incredibly unfair to Main Street businesses in our country and in our State and said, yes, the Senate will not stand back and wait any longer before we give you marketplace fairness.

This bill could not be and could not have a better name than Marketplace Fairness. I got involved in this issue as a very young person—I like to say that because it was 20 years ago—litigating a case before the U.S. Supreme Court. I was moved to take that case to the Court by a woman who approached me and said: Look, I am trying to survive. I am trying to participate as a good businessperson in North Dakota, trying to support my community, trying to do everything right, collect my sales tax, but I am getting killed in the marketplace, because people are sending catalogs; people come into my store; they will look at my products. Then they order this stuff through a mail order business. Please help me.

Those pleas have for the last 20 years gone unheard by this body and by the House of Representatives. But today we have a chance. We have a chance to say to all of those businesspeople throughout our country who have been unfairly treated by a tax system that

does not recognize today's modern-day method of marketing, this modern-day way we do business and commerce in our country has not been recognized. They continue to struggle, continue to try. I congratulate the Senate. I congratulate all of the other Senators who have pursued this with such vigor and with such hope. I say today is the day that we say yes to America's small businesses.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I ask I be notified when I have consumed 2½ minutes.

The PRESIDING OFFICER. The Senator will be notified.

Mr. ALEXANDER. Mr. President, I congratulate the Senator from North Dakota on 20 years of work on this issue, Senator ENZI for 11 years of tireless work here, and Senator DURBIN for his effective advocacy. I will make four quick points.

The Senator from Texas said reinvigorating the economy should be the No. 1 priority for Federal and State leaders. That is precisely the first sentence of the column of economist Art Laffer in the *Wall Street Journal* where he says:

States can cut their income tax rates if web vendors collect the sales taxes that are legally due.

In other words, if you want economic growth, vote for the Marketplace Fairness Act.

No. 2, the idea that this is too complex to do—more than half of the sales now made on the Internet are by retailers that collect the tax when it is sold. It is a tax that is already owed, so how can it be too complex for anybody else to do? It is already being done. So that is specious.

No. 3, it has been said this should have gone to committee. It did. It just never came out of committee because the chairman, and I say that with great respect, did not want it to. It should have had amendments. Yes, it should have had amendments. Why didn't it have amendments? Because the opponents to the bill resorted to objecting to every single amendment.

Finally, I say this to my Republican colleagues: This is a conservative bill. I just mentioned Mr. Laffer. I read this earlier, but I want to read it again. The comments of the chairman of the American Conservative Union, Al Cardenas:

Dear Senators, you continue work next week on the Marketplace Fairness Act. I would like to call to your attention what conservatives are saying about the issue. They recognize, as I do, 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.

He then lists the comments of Charles Krauthammer favoring the idea, Representative PAUL RYAN favoring the idea, and, of course, as we know, William F. Buckley did before he