

trafficking, smuggling, and other crimes that, unfortunately, occur along our borders because the organizations—these transnational criminal organizations—really don't care about human life.

We saw that recently when a number of immigrants died in the back of a tractor trailer in a parking lot at Walmart in San Antonio, TX. They are a commodity, a way to make money in the eyes of these cartels who care nothing about human life. Drugs, weapons, and other threats to our country are also part of what they move across the border, and that is why border security is so important.

Our bill also focuses on criminals, gangs, and repeat offenders who return to the United States in defiance of our laws. We have zero tolerance for those criminals in this bill. We end catch-and-release, and we include Kate's Law, a bill recently passed by the House that increases penalties for those who repeatedly cross our borders illegally. The bill is named after Kate Steinle, who was so tragically murdered in San Francisco.

We hold sanctuary cities accountable because no city should be able to defy cooperation with Federal law enforcement officials. We are not asking them to do the Federal Government's job, but they do have an obligation, as we all do as American citizens, to cooperate and work with our law enforcement officials.

We impose tough penalties on Federal funds for jurisdictions that fail to comply with lawful Federal immigration enforcement requests. To curb the abuse of visas, our bill utilizes a biometric entry-exit system at ports of entry to identify visa overstays and cut off immigration benefits to those who exploit the system.

We also make sure to invest in our ports of entry. These are the ways that people come into our country legally and engage in commerce and trade, which is mutually beneficial. We can't neglect our trading partnerships with our neighbors to the south because we depend on that trade to create and sustain 5 million jobs in the United States alone.

The Building America's Trust Act will also help boost the flow of commerce through our ports so that legitimate trade can continue to flourish. This bill also includes a large investment of resources to improve our ports of entry, to help target and isolate illegal immigration and drug trafficking at ports while facilitating increased, legitimate trade and travel.

Perhaps most importantly, this bill also requires that the Department of Homeland Security and law enforcement officials consult with local officials every step of the way. The people who live in our border communities know best how to help control illegal traffic and illegal activity, but it is the Federal Government's responsibility to step up and help them. They understand the benefits of legitimate travel

and trade and traffic, all of which are important parts of a successful border security effort.

Border security really is not a one-size-fits-all plan. As Chief Padilla said, it is always a combination of technology, personnel, and tactical infrastructure—wall systems, fences, and the like. We need an approach that will work for each unique area with input and stakeholder consultation at every step to ensure that the right solution is achieved for all involved.

As I have said, I am happy to have support for this legislation from several law enforcement organizations. I look forward to working with all of my colleagues in both Chambers, as well as the administration, toward our goal of protecting our Nation and securing our borders.

I firmly believe that border security, ultimately, is a matter of political will. This President has the political will, and this Congress should have the political will to get the job done. This was the commitment that he made and that we need to make to the American people and that, I think, informed their vote on November 8, 2016.

With this legislation as a guide, we aren't just securing our borders for tomorrow. We are looking ahead and locking in a framework that will exist long after President Trump leaves office.

With the Building America's Trust Act, I hope we can do just that and, again, finally regain the public's confidence by earning that confidence and restoring order and lawfulness to our broken immigration system.

I yield the floor.

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

**MR. HATCH.** Mr. President, I agree with the distinguished Senator from Texas. I thought his remarks were very much on point and very good.

#### MODERN ANTITRUST LAW

**MR. HATCH.** Mr. President, I rise today to speak on a policy matter that has been generating substantial attention recently, and that is modern antitrust law. This issue is critical. In the perennial debate over the proper role of government in economic affairs, it will grow all the more critical in the years to come.

New technologies, creating markets not even imaginable only a decade ago, are spurring fundamental shifts in the economic landscape. In the national news, mergers between corporate giants or new fines imposed by foreign regulators are becoming an acceptable thing almost every day. In the Senate, we increasingly see antitrust law dragged into larger economic arguments that are heavier in inflammatory rhetoric than in careful deliberation. Allow me, then, to offer a few thoughts on the matter, and to directly address the rising controversy.

America has always been—and, I haven't a doubt, will remain—the eco-

nomic and technological marvel of the world. Cradled in the best traditions of the West and animated by a culture equal parts industrious, creative, and restless, our system has produced the most prosperous people in human history. It has shown its shortcomings, to be sure. But on the whole, the American economy is unrivaled by any other. Indeed, at times its blessings are so bountiful, its provisions for the creation of wealth so effective, that we tend to take it for granted in this country. We tend, at times, to forget what got us here.

A big part of what got us here is American antitrust law. You see, all throughout history, societies and governments have tended toward the central planning of economic activity.

America, however, chose a different path. We refused to yield to the false comforts of collectivism. We opted, instead, for an economy that was vibrant, tumultuous, competitive, and free. It is fortunate that we did, for we have found that in the impossible complexity and unsettling chaos of the market—wherein millions of consumers and producers make millions of individual and uncoordinated decisions each and every day—a spontaneous order arises that serves all of us far better than any central authority ever could. Of course, our markets work toward those ends only when they are genuinely free, fair, and competitive. That is where antitrust comes in.

In a very real sense, antitrust is the capitalist's answer to the siren song of the central planner. When antitrust doctrine is referred to as the Magna Carta of the free enterprise system, I suspect this is what we mean.

Let me be clear: Antitrust doctrine in this country has not always gotten it right. As we all know, early antitrust policy tended to confuse protection of market participants for protection of the market itself; it was quick to micromanage particular industries, to choose ad hoc intervention over predictable systems of incentives, and to cast suspicion on any market too concentrated or business too big.

Fortunately, antitrust doctrine grows and adapts. It develops in the same wonderful tradition and manner as the common law. Just as the common law historically gave us property, contract, and commercial rights, so too upon their basis does antitrust seek, year by year, to give us markets that are competitive and free. Thus, the modern era of antitrust has produced a fundamental improvement in our competitive doctrine.

We have steadily adopted the consumer welfare standard, which judges the conduct of firms and the arrangement of markets by what will maximize efficiency and therein serve consumers most completely.

There will always be market failures to account for and noneconomic concerns to keep in mind. But when it comes to the core, basic functioning of the market—how to deliver the most

goods to the most people at the highest quality and lowest cost—consumer welfare still works best.

In most industries, most of the time, we ought to think a little less about how best to regulate the market and a little more about how best to set the market upon regulating itself. The disciplining effects of competition and the limitless store of American ingenuity do far more for consumers than the well-intentioned intervention of government authorities.

The consumer welfare standard has, consistently over the years, proved an absolute boon to our economy and our society. Of course, a legal standard means little unless handled with care.

We have chosen the right standard; now we must keep choosing the right officials to implement it. You see, under the consumer welfare standard, good antitrust enforcement is a lot like good sports officiating. It harnesses, rather than stems, the flow of the action. It lays out limited, predictable, and reliably enforced rules. It gets the most out of the players and the competition itself, regardless of which team is in the lead. Most importantly, as any sports fan could tell you, when officiating is done right, we hardly notice the refs at all.

With the right antitrust officials cognizant of their role, we can expect a spirited contest in which American entrepreneurs keep putting points on the board and American consumers keep reaping the reward.

Federal judges, naturally, are critical. In disputes of consequence, they provide the ultimate backstop.

Also critical are our executive officials. Makan Delrahim, for instance, has been nominated to lead the Antitrust Division at the Department of Justice. He is eminently qualified, enjoys broad, bipartisan support, and is at the ready to start as soon as he receives our consent. I will urge my colleagues in the Senate, once again, to take up his nomination and confirm him to this important post. He has both Democrat and Republican support. He is well known. He ran the Judiciary Committee under my jurisdiction.

On the other side of the enforcement equation, we are still waiting on nominations to the Federal Trade Commission. The FTC is an important agency that will play a central role in the years ahead. Whoever is put in charge will face the monumental task of setting the agency on the right track. I have supreme confidence that the President will make the right choice on this one, and I look forward to supporting his nominees.

As these vacancies linger, however, uncertainty lingers as well. Critical merger and acquisition activity remains sidelined as innovation is chilled and expansions are put on hold. All of this comes at an unnecessary cost to our businesses and consumers.

I want this whole body to hear me clearly: There is no need for the same

old partisan food fight over our antitrust officials. Let's get Makan Delrahim to work. FTC nominations will likely include two Republicans and a Democrat. There is no reason they can't be swiftly confirmed as a package. If delay on these important confirmations persists, I will be back on the floor to make sure everyone—from consumers to industry—knows it.

As I mentioned earlier, antitrust has been increasingly drawn into the broader public debate on economic and innovation policy, and not for the better. With each passing day, it seems the consumer welfare standard finds itself besieged from the left. Their rhetoric may not yet have made its way into traditional precedent, but it certainly has made itself known.

Some in academia insist that recent market concentration and technological progress compel a return to bold, persistent experimentation. Many in the media call for antitrust to pursue everything from industrial democracy to campaign finance reform to material leveling. Above all else, we hear again the old, lazy mantras that big is bad, disruption is suspect, and public utility designation is welcome.

Professor and former FTC Commissioner Joshua Wright has referred to this particular set of proposals as “hipster antitrust.” Well, as you might imagine, nobody would mistake me for a hipster. So for my part, and for ease, I will go ahead and call it the progressive standard. Truth be told, as a proposed replacement for the consumer welfare standard, the progressive standard leaves me deeply impressed. From what I can tell, it amounts to little more than pseudoeconomic demagoguery and anti-corporate paranoia. Nevertheless, it must not be dismissed out of hand.

Over the last 8 years, policymakers laid the groundwork for it by routinely disregarding some of the most basic elements of the consumer welfare standard. Now we see the same stirrings of this radical approach in many speeches on the other side of the aisle, as well as in the recently released platform curiously titled “A Better Deal.”

As such, I believe a response is in order. In defense of the consumer welfare standard, we could, of course, run through the more technical deficiencies of the progressive standard. We can mention that as doctrine, it lacks manageable standards, dispensing with intellectual rigor and inviting political mischief. We can mention that as theory, it accounts for neither tradeoffs nor scarcity. We can mention that as aspiration, it subordinates the productive incentives of the entrepreneur to the fanciful designs of the bureaucrat.

Truth be told, the real trouble for the progressive standard is, it fails to grasp the bigger picture of our history, economy, and national character. It fails to appreciate that our time is not so distinct from times past and that our mo-

mentary insights are not so superior to the lessons learned over generations prior.

Of course, anyone can see that changes are afoot. As chairman of the Senate Republican High-Tech Task Force, I have seen it firsthand. The new technological age, having dawned in the late 20th century, continues to ripen into the 21st.

New innovation is relentlessly spurring transformation across the economy, and many markets are concentrating as a result. Yet supporters of the progressive standard seem to think this presents historically unique problems. They rely, as academics are wont to do, on sleek, new jargon to argue that today's antitrust challenges are not only tangibly but conceptually distinct from those of the past. They argue, in other words, that things really are different this time around. At the end of the day, terms like “platform economics” and “network effects”—commonly used to attack the consumer welfare standard—do less to define new economic concepts than to explain how old economic concepts are manifesting themselves in modern markets.

Through history, we have seen this time and time again. As the saying goes, the more things change, the more they stay the same. Markets concentrate and then disperse; dominant firms rise and then fall; with innovation comes creation in one sector and destruction in another. Anxiety over this evolution is very real, and the strident calls we hear to do something about it—whatever that may be—are on some level understandable, but this lurch toward the progressive standard is not.

Change, sometimes furious change, is a constant in our system. For all its rancor, for all its chaos and uncertainty, it is, alas, what propels us forward. We hope, not fear, that each age looks better than the last.

Now, in anticipation of an objection from my friends across the aisle, nobody is suggesting that no enforcement is necessary. Genuinely anti-competitive conduct must be stopped, and mergers prone to abet such conduct must be heavily scrutinized. That is all a part of keeping markets fair and free in the best tradition of American capitalism.

Again, as I mentioned earlier, we should aim to regulate markets such that in their basic core functioning they regulate themselves. Market discipline imposed by competition and driven by innovation should be our aim. To that end, nobody doubts that new developments in the market will require a fresh look at doctrine. Nobody questions that the consumer welfare standard will have to adapt. For example, categories of anti-competitive conduct may need to be tweaked, refastened or even expanded in light of technical advancement and market evolution. Merger review, never an exact science, will seize upon new econometric tools for measuring ancient

economic concepts like quality, preference, and efficiency. The rule of reason, I am sure, will continue to bedevil judges, practitioners, and law students alike, but that is just fine.

Antitrust, as I keep saying, is ultimately a common law exercise. I am here to argue merely that the consumer welfare standard, when handled prudently, is a far better steward of our economy than the progressive standard, which is deeply misguided and potentially quite destructive.

Take, for instance, the proposed Amazon-Whole Foods merger, which has generated so much interest lately. It would, of course, be inappropriate for me on the floor of the Senate to pass judgment. I would caution my colleagues the same. There is an established process for review, but the question should be asked: Upon what basis should antitrust authorities evaluate a proposed merger like this? What we need is the consumer welfare standard. It carefully examines the basic and critical question of whether such a deal helps consumers or whether it hurts consumers. It relies on a coherent doctrine to strike a balance. It is a balance between the merger's pro-competitive effects, such as integrative efficiencies and innovation, and the antitrust competitive potential, such as market domination by one firm or facilitated price coordination by the few that remain. What we absolutely do not need, on the other hand, is the progressive standard.

Under no doctrinal limitations to cabin discretion, antitrust officials would gladly follow vague institutions in shifting intuitions. With a broad mandate to pursue aims far grander than mere market efficiency, officials would be free to engage in ad hoc theorizing about whether corporate consolidation, writ large, can be squared with universal justice, common fairness, and community values, or of whatever else their creativity recommends. To take another example, across the Atlantic, our friends in the European Union have leveled a massive fine against Google for anti-competitive conduct. Again, it is not for me to say on the floor whether those fines are justified. I don't think they are, but it is not for me to say.

Once more, what we need is the framework provided by the consumer welfare standard. We must weigh the pro-competitive aspects of Google's conduct with its anti-competitive potential. The ultimate inquiry should be whether consumers are better off as a result of Google's actions. Under the progressive standard, however, instead of asking what lowers prices and increases quality—instead of considering actual proof of harm to consumers—we would be asking what best serves the social goals in vogue at the moment. The result would be an open invitation to market intervention that is more politically motivated than economically sound.

In conclusion, for all the past rhetoric, for all the claims that a new age requires a new doctrine, the ideas behind the progressive standard are not new. They are terribly old. They may

be adorned with original terminology or aimed at novel markets, but it is the same old collectivist impulse it has always been. In that sense, these ideas are not unique to Americans. Every day we receive concerning reports from around the world that foreign governments are increasingly turning to antitrust for industrial policy. Whether domestically or abroad, the stakes are simply too high, the consequences too grievous for the consumer welfare standard to be swept away in an instant, merely because a new breed of central planners—falsey conceiving themselves different from their predecessors—imagine they know best.

In America, we have always opted for the invisible hand of the free market over the heavy hand of government intervention. Let's keep it that way.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

#### BOB DOLE CONGRESSIONAL GOLD MEDAL ACT

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be discharged from further consideration of S. 1616 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (S. 1616) to award the Congressional Gold Medal to Bob Dole, in recognition for his service to the nation as a soldier, legislator, and statesman.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROBERTS. Mr. President, I ask unanimous consent that the bill be considered read a third time.

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

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. ROBERTS. I know of no further debate on the bill.

The PRESIDING OFFICER. Is there further debate?

Hearing none, the bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 1616) was passed, as follows:

#### S. 1616

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Bob Dole Congressional Gold Medal Act".

#### SEC. 2. FINDINGS.

Congress finds the following:

(1) Bob Dole was born on July 22, 1923 in Russell, Kansas.

(2) Growing up during the Great Depression, Bob Dole learned the values of hard-

work and discipline, and worked at a local drug store.

(3) In 1941, Bob Dole enrolled at the University of Kansas as a pre-medical student. During his time at KU he played for the basketball, football, and track teams, and joined the Kappa Sigma Fraternity, from which he would receive the "Man of the Year" award in 1970.

(4) Bob Dole's collegiate studies were interrupted by WWII, and he enlisted in the United States Army. During a military offensive in Italy, he was seriously wounded while trying to save a fellow soldier. Despite his grave injuries, Dole recovered and was awarded two Purple Hearts and a Bronze Star with an Oak Cluster for his service. He also received an American Campaign Medal, a European-African-Middle Eastern Campaign Medal, and a World War II Victory Medal.

(5) While working on his law degree from Washburn University, Bob Dole was elected into the Kansas House of Representatives, serving from 1951-1953.

(6) Bob Dole was elected into the U.S. House of Representatives and served two Kansas districts from 1961-1969.

(7) In 1969, Bob Dole was elected into the U.S. Senate and served until 1996. Over the course of this period, he served as Chairman of the Republican National Committee, Chairman of the Finance Committee, Senate Minority Leader, and Senate Majority Leader.

(8) Bob Dole was known for his ability work across the aisle and embrace practical bipartisanship on issues such as social security.

(9) Bob Dole has been a life-long advocate for the disabled and was a key figure in the passing of the Americans with Disabilities Act in 1990.

(10) After his appointment as Majority Leader, Bob Dole set the record as the nation's longest-serving Republican Leader in the Senate.

(11) Several Presidents of the United States have specially honored Bob Dole for his hard-work and leadership in the public sector. This recognition is exemplified by the following:

(A) President Reagan awarded Bob Dole the Presidential Citizens Medal in 1989 stating, "Whether on the battlefield or Capitol Hill, Senator Dole has served America heroically. Senate Majority Leader during one of the most productive Congresses of recent time, he has also been a friend to veterans, farmers, and Americans from every walk of life. Bob Dole has stood for integrity, straight talk and achievement throughout his years of distinguished public service."

(B) Upon awarding Bob Dole with the Presidential Medal of Freedom in 1997, President Clinton made the following comments, "Son of the soil, citizen, soldier and legislator, Bob Dole understands the American people, their struggles, their triumphs and their dreams. . . In times of conflict and crisis, he has worked to keep America united and strong. . . our country is better for his courage, his determination, and his willingness to go the long course to lead America."

(12) After his career in public office, Bob Dole became an active advocate for the public good. He served as National Chairman of the World War II Memorial Campaign, helping raise over \$197 million dollars to construct the National WWII Memorial, and as Co-Chair of the Families of Freedom Scholarship Fund, raising over \$120 million for the educational needs of the families of victims of 9-11.

(13) From 1997-2001, Bob Dole served as chairman of the International Commission