

I said: If you don't take American beef, I am going to go right to the Senate floor and do all I can to get that domestic content legislation passed because that will be two way; that will be fair.

My gosh, I could see scribbling of all kinds of notes, cameras going on. The next day there was a big article about my statement in the Japanese newspapers. My photo was in the Japanese newspapers. I can't read Japanese, but I know basically what I had said.

Guess what. Within a couple of weeks, the Japanese sat down at the bargaining table. Mike Armstrong was our trade negotiator at the time. They needed to negotiate, and they agreed to eliminate that quota entirely. But they did replace it with a 70-percent tariff. That is pretty high, but at least our industry said: That is great; the quota is eliminated. We can start importing beef into Japan.

I go over to Japan a couple, three times. I know about two words in Japanese. I learned this one. It is "Oishii," which means delicious. I would stand in front of the Japanese cameras and say: American beef is Oishii, delicious. At the same time, a Japanese polling company showed that the Japanese housewives and Japanese citizens of Tokyo wanted American beef by far. Under the Japanese constitution, because the rural districts have disproportionate voting power, they want to protect themselves. That is why they had that quota. The quota was eliminated, replaced with a 70-percent tariff.

We also agreed to bring that tariff down. The Senator from North Dakota says it is now down to around 28 percent. That could well be. It is my recollection that eventually that tariff will be down at a lower rate. The point is that we have made progress with Japan. We now, by the way, export more beef overseas than we import. That line was crossed about 2 years ago. So there is progress.

These things are more complicated than meets the eye. But we certainly have a lot more to do and further to go. As in the Korean situation, Korea had this provision—this was about 2 years ago—called the shelf life law. They wouldn't let boats unload beef products, canned beef, for over 2 weeks. Their distribution system wouldn't let foreign beef get to the grocery stores. That was bad beef under Korean law.

The Korean Prime Minister was, for about 2 or 3 months, coming over to the United States.

So I got ahold of him. I said: Mr. Ambassador, your Prime Minister is coming over. I have a letter signed, with many Senators cosigning who are opposed to this. I don't think you want your Prime Minister to come over when we are getting up on the Senate floor being critical of Korea.

He got the message. Within 2 weeks, they repealed the provisions and allowed in American beef.

So it is important for us to think of how we can get this job done and make

sure these other countries play fair. If we work well in a concerted effort with the trade negotiators, we can get some things done. But I have also learned deeply that no country altruistically is going to lower a trade barrier. You need leverage.

I urge that as we move forward to protect American interests, we find the proper persuasion to help each other. I see the assistant majority leader anxiously waiting to seek recognition.

I yield the floor.

(Ms. CANTWELL assumed the Chair.)

Mr. REID. Madam President, I thank my friend. I extend my appreciation to the chairman of the Finance Committee, the senior Senator from Montana, who is so important to this institution.

#### UNANIMOUS CONSENT AGREEMENT—H.R. 1552

Mr. REID. Madam President, I ask unanimous consent that we now proceed to the consideration of Calendar No. 204, H.R. 1552, the Internet tax moratorium bill; that when the bill is considered, it be under the following limitations: that there be 20 minutes for general debate on the bill, with that time divided as follows: 5 minutes each for the chairman and ranking members of the Senate Commerce and Finance Committees, or their designees; that the only first-degree amendment in order be the following: an Enzi-Dorgan amendment regarding extension, on which there will be 60 minutes for debate prior to a vote in relation to the amendment; that if the amendment is not tabled, then Senator GRAMM of Texas be recognized to offer a relevant second-degree amendment to the Enzi-Dorgan amendment; that there be 20 minutes for debate prior to a vote in relation to the Gramm of Texas amendment, with no amendments in order, with all time equally divided and controlled between the proponents and opponents; that upon the disposition of all amendments, the use or yielding back of all time, the bill be read the third time, the Senate vote on passage of the bill, with this action occurring with no further intervening action or debate.

I further ask unanimous consent that the Enzi-Dorgan and Gramm of Texas amendments, which are at the desk, be the amendments in order under the provisions of this agreement.

The PRESIDING OFFICER. Is there objection?

The Senator from Minnesota.

Mr. WELLSTONE. Reserving the right to object, and I say to the whip that I will not object, I want to be clear that on the record tonight the Senate, in wrap-up, will proceed to Calendar No. 191, S. 739, the Homeless Veterans Improvement Act, which Congressman LANE EVANS and I have worked on for the last 3 weeks. There has been an anonymous hold. My understanding is that tonight this will pass in wrap-up without any objection.

Mr. REID. The Senator has our assurance that will be handled in wrap-up.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### INTERNET TAX NONDISCRIMINATION ACT

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1552) to extend the moratorium enacted by the Internet Tax Freedom Act through November 1, 2003, and for other purposes.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Since I see the Senator from North Dakota here, I suggest that perhaps we could make our opening statements as part of the 60 minutes of debate on the Dorgan-Enzi amendment. If that is agreeable, I would be glad to do that. I move to modify the agreement that we move immediately to the Enzi-Dorgan amendment with the 60 minutes of debate equally divided.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Madam President, reserving the right to object—

Mr. MCCAIN. I withdraw that. I will proceed with my statement. I was trying to save the Senate some time. Obviously, we will take more time in discussing whether I was saving the Senate time or not.

First, I ask unanimous consent to have printed in the RECORD a Statement of Administration Policy concerning H.R. 1552, the Internet Tax Nondiscrimination Act, from the President of the United States.

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

#### H.R. 1552—INTERNET TAX NONDISCRIMINATION ACT

The Administration supports Senate passage of H.R. 1552. The Administration believes that government should be promoting Internet usage and availability, not discouraging it with access taxes and discriminatory taxes.

As passed by the House, H.R. 1552 extends the Internet tax moratorium enacted by the Internet Tax Freedom Act for two years. While a five-year extension would be preferable, a two-year extension will provide additional time to analyze the impact of e-commerce on local and State tax receipts while ensuring that the growth of the Internet is not slowed by new taxes.

The moratorium expired on October 21, 2001. The Administration supports rapidly reinstating the moratorium. The Administration encourages the Senate to pass H.R. 1552, without amendment, to enable its expeditious enactment into law.

It basically says that the administration supports Senate passage of H.R. 1552. He concludes by saying that the administration encourages the Senate to pass H.R. 1552, without amendment, to enable its expeditious enactment into law.

On Sunday, October 21, the Federal moratorium on Internet taxes expired.

State and local taxing jurisdictions, reportedly over 7,000 of them, are now free to tax Internet access, and to impose multiple and discriminatory taxes on e-commerce.

I strongly support H.R. 1552, which would extend the moratorium by 2 years. This proposal for a simple, short-term extension of the moratorium is supported by diverse interests, including, among many others, the National Conference of State Legislatures, the United States Conference of Mayors, the Information Technology Association of America, the American Electronics Association, and the National Association of Manufacturers.

I urge my colleagues to support this measure that has already passed the House of Representatives, and to oppose the Enzi/Dorgan amendment. Let me explain why.

There is broad consensus that the moratorium on the imposition of access taxes should be extended. This has not been done, however, because of the separate issue of the collection of sales taxes on remote transactions. A number of Senators believe that this separate issue must be addressed if the moratorium is extended for more than a few months.

State and municipal governments are concerned that they will lose significant revenue as more and more consumers buy goods on-line. Most of these consumers are required by state laws to pay taxes on these transactions, but they seldom do. While the loss of tax revenue from remote catalog sales has been of concern to states for many years, the prospect of many more untaxed on-line transactions has worried main street merchants and state and local governments that rely on sales tax revenue to support critical functions including education and emergency response. Their concerns are legitimate.

A group of Senators have tried, literally for years, to address these concerns. Senators DORGAN, ENZI, KERRY, VOINOVICH, HUTCHISON, WYDEN, and ALLEN, among others, have held countless meetings to try to balance concerns about loss of State and local revenue with concerns about imposing unwarranted and perhaps unbearable burdens on remote transactions. I have participated in many of these meetings at which countless drafts of legislation have been circulated, and I have been continually impressed at how committed, creative, and open to compromise these Senators have been.

Unfortunately, however, there is not yet a consensus on if or how Congress should permit states to require out-of-state retailers to collect sales taxes on remote transactions. After the events of September 11 refocused our efforts, it became clear that we would not resolve this issue before the moratorium on Internet taxes expired.

While we are much closer to an agreement on legislation relating to the collection of sales taxes we are not yet there. In the past, Congress has

held protracted debate on the question of Internet taxes. Although the issue is extraordinarily controversial, we don't have time to thoroughly consider the still-divergent proposals. This controversy, however, should not prevent us from proceeding on the separate, and non-controversial issue of extending the moratorium on Internet access taxes.

Just as there is agreement that the moratorium on Internet access taxes should be extended, there is also agreement that state sales taxes must be radically reconciled and simplified to remove both practical and legal barriers to remote collection and remission.

This simplification, however, has not yet occurred. And it is not the Federal Government's responsibility to see that it does.

Recognizing the need for simplifications, thirty-two states last year joined the Steamlined Sales Tax Project to develop a plan for simplifying remote sales and use tax collection. The National Conference of State Legislatures has since undertaken to develop model legislation to create uniform definitions and remove the burden on retailers of collecting and remitting sales taxes. Next month, the 20 states that have passed legislation this year indicating their intent to proceed on sales tax simplification will meet in Salt Lake City to do this.

Although these efforts are underway, the simplification is complex and will not happen overnight. Reconciling definitions among states of what is or is not taxable, and resolving the allocation of tax revenues among localities within states will not happen in 8 months. Frankly, it probably will not happen in 2 years. Nevertheless, I think that substantial progress toward simplification can be made in 2 years, and Congress will be in a much better position then to determine whether to consent to allowing states to require out-of-state retailers to collect and remit sales taxes on remote transactions.

In the meantime, I think it is imperative that we extend the moratorium on the separate issue of Internet access taxes.

The recent economic success experienced by the United States, the longest economic expansion in U.S. history was due, in part, to the Internet. Now the sectors of the economy tied to this vehicle of growth are experiencing troubled times and the nation is spiraling into recession. During times of economic uncertainty, we must restrain ourselves from further burdening an already ailing sector, particularly one which provides the most promise for successful recovery and further growth.

Prior to September 11, the high tech sector began to suffer dramatic losses. Since the beginning of this year alone, revenue for U.S. Technology sales, including computers, semiconductors, and communications equipment, had fallen by 35 percent. Mass layoffs plagued the sector with 479,199 high

tech jobs eliminated since the beginning of the year, 47,250 of which were eliminated in September alone.

Industry leaders such as AOL, Sun Microsystems, and Intel have seen both stock prices and profits plunge. According to the research firm of Thomson Financial/First Call the high technology companies on the Standard & Poor's 500 are expected to see fourth quarter profits fall to 58 percent of last year's levels.

This grim picture is expected to decline further, with tech profits expected to fall sharply in the first quarter of 2002, before recovering by the end of next year. Allowing access and multiple and discriminatory taxes on electronic commerce will inevitably lead to harder times for an ailing industry.

We are now faced with the choice, will we allow the Internet tax moratorium to remain expired, further hampering the recovery of the high tech sector and the entire economy, or will we act now to extend the moratorium and support the recovery of this economy.

Again, I reiterate my appreciation to the Senator from North Dakota, Mr. DORGAN, who has, along with myself, the Senator from Oregon, the Senator from Virginia, and others, had countless meetings. We have tried to come to an agreement. I believe there will come a time when we reach agreement. There will come a time when there are enough States that have come together to come up with a simplified system of sales taxes that can be fair to everybody. But we are not there yet.

Other colleagues of mine will make arguments on both sides of this issue. I wish we could reach that stage because I am fully aware that State and local revenues are being unfairly diverted, or not collected because of the failure to have any taxes imposed on Internet transactions. But we are not there yet. I believe, particularly at this time when we are in an economic situation that is clearly unpleasant, it would not be the time for us to impose taxes on the Internet which is already in a state of fragility.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator has used his time. Who yields time?

Mr. BAUCUS. Madam President, who is controlling time?

Mr. MCCAIN. May I ask the parliamentary situation?

The PRESIDING OFFICER. The Senator from Arizona has consumed his 5 minutes. There is 5 minutes to the chairman of the Commerce Committee and 5 minutes each to the chairman and ranking member of the Finance Committee.

Mr. MCCAIN. In other words, there is no time available under the unanimous consent agreement, so we would have to move to the amendment in order for other Members to speak; is that correct?

The PRESIDING OFFICER. There is 1 hour available on the first-degree amendment.

Mr. McCAIN. On the amendment. Madam President, parliamentary inquiry. I suppose the next speaker will then be taking time on the amendment.

The PRESIDING OFFICER. If the amendment is called up, time will be available on the amendment.

The Senator from Montana.

Mr. BAUCUS. Madam President, I understand I have 5 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. BAUCUS. Madam President, I will try to make the best use of those 5 minutes.

Madam President, I rise in support of a simple 2 year extension of the Internet Tax Freedom Act. In my judgment, a short-term extension represents a reasonable, bipartisan compromise.

While I support a clean 2-year extension, we should be firm in our resolve that this will not be the first of an endless line of moratorium extensions.

I make a strong plea that this be the last time we impose a moratorium without taking the meaningful steps needed to bring interstate tax rules into the 21st century.

While progress has been made on the issue of sales tax simplification, State and local governments will certainly need more than 6, 12, or even 18 months to come up with a system that works.

Moreover, we do not need a quick fix; we need a real solution. Let us continue to keep the parties at the table long enough to make a meaningful change that works.

The debate and negotiations that occur from this point forward must be about resolving issues regarding taxation of the Internet and not about the length of any future extensions.

More importantly, the focus must be on how the traditional tax rules should apply to "new economy" businesses. These are issues the Finance Committee has been and will continue to examine.

The States have been working hard to create a model simplified sales and use tax system. A limited extension of the moratorium for 2 years is needed in order to provide an adequate time to assess their progress.

More importantly, as chairman of the Finance Committee I represent the State of Montana, which does not have a sales tax.

As a Senator from Montana, I will work to ensure that any simplification plan will not place a undue burden on Montana businesses. Sales tax simplification should also be truly simple, and easy for businesses to comply with.

Hopefully, by making this a short 2-year extension, we can encourage the States and the business community to move expeditiously to resolve outstanding issues and design a truly simplified sales and use tax system.

This debate is not only about the structure of State sales and use taxes. There is also concern with how States assert a direct tax liability on an out-of-State company.

States impose business activity taxes—corporate income and/or franchise taxes—on corporations that have property or employees in the State. The businesses that pay these taxes receive some governmental benefits and protections afforded by that State.

A similar situation exists internationally, where foreign jurisdictions impose a direct tax liability on businesses operating within in the country.

Therefore, as the rules for sales and use taxes are simplified, it is also important that we pay special attention to the rules regarding business activity taxes.

What we used to think of when we heard "property," "goods," or even "employees," is now very different in a world of digital goods, bits of electrons, and telecommuters.

I stress the need to sort through these issues because I am certain that the rules we establish for "interstate" commerce will be the model for "international" commerce.

We need to be very careful we do not set up a system that makes U.S. companies a tax collector for every jurisdiction around the world.

On Internet access taxes, I believe we should look for ways to reduce barriers to access, including taxes.

If our intention is to make Internet access tax-free, we must be certain that an appropriate definition of access is developed. Moreover, it is important to ensure that otherwise taxable product provided over the Internet are not inappropriately shielded from tax.

I appreciate the hard work of my friends, Senators ENZI, GRAHAM, DORGAN. They have worked hard. They have a proposal which may have merit.

But the devil is always in the details, and the details have not been examined by the Finance Committee, or any committee for that matter.

In fact, there have been no hearings on the Dorgan-Enzi amendment to give interested parties, academics, and Members of the Senate the opportunity to discuss the consequences of this legislation and assess the workability of this bill.

This amendment may be a reasonable starting point, but as with all legislation of this magnitude, the Senate, through its committees, should give it careful consideration.

Some people may say that we have talked too much already. They say that the parties have already had three years to iron out their differences.

That may be, but we must be very careful because this bill raises more questions than it answers.

For example, how does this legislation make sure that the uniform rates among states stay uniform over time?

Does the definition of "Internet access" allow nonincidental content, such as music and movies, to be provided tax free if bundled with Internet access?

Are business activity taxes adequately addressed?

These are difficult issues, and they deserve serious and deliberative consideration.

It is for this reason, that I encourage my colleagues to support a short, 2-year clean extension of the Internet Tax Freedom Act.

In my judgment, 2 years is adequate time to give the Finance Committee an opportunity to address these important, but difficult, tax issues.

I emphasize that the work remaining involves tax issues that must be resolved by the Finance Committee. There is a long-term precedent of the Senate Finance Committee having jurisdiction over issues involving the taxation of the Internet.

A 2-year extension of the Internet Tax Freedom Act is a reasonable compromise and deserves the support of the Senate.

Mr. LEAHY. Mr. President, I want to add my support to promoting electronic commerce and keeping it free from discriminatory and multiple State and local taxes.

I strongly support the Senate quickly passing H.R. 1552 to extend the Internet tax moratorium for 2 years.

Last month, I was pleased to join the senior Senator from Oregon and the senior Senator from Arizona as an original cosponsor of the Internet Tax Moratorium Extension Act, the Senate counterpart to H.R. 1552. I commend Senator WYDEN and Senator McCAIN for their continued leadership on Internet tax policy.

Although electronic commerce is beginning to blossom, it is still in its infancy. Stability is key to reaching its full potential, and creating new tax categories for the Internet is exactly the wrong thing to do.

E-commerce should not be subject to new taxes that do not apply to other commerce.

Indeed, without the current moratorium, there are 30,000 different jurisdictions around the country that could levy discriminatory or multiple Internet taxes on e-commerce.

Let's not allow the future of electronic commerce, with its great potential to expand the markets of Main Street businesses, to be crushed by the weight of discriminatory taxation.

Many Vermont companies have contacted me in the last month and weeks in support of extending the moratorium, including Green Mountain Coffee Roasters, the Army & Navy Store in Barre, and the Vermont Teddy Bear Company.

Cyberselling is working for Vermonters.

We also need a national policy to make sure that the traditional State and local sales taxes on Internet sales are applied and collected fairly and uniformly. This 2-year extension of the current moratorium gives our Governors and State legislatures time to simplify their sales tax rules and reach consensus on a workable national system for collecting sales taxes on e-commerce.

Indeed, the National Conference of State Legislatures has endorsed our legislation to extend the Internet tax

moratorium for two more years to give States time to complete work on sales tax simplification.

I must also raise some serious questions about the approach of some Senators to pass legislation to waive Congress's authority to carefully review and approve interstate compacts. As chairman of the Senate Judiciary Committee, which has jurisdiction over interstate compacts, I cannot understand why we should recede congressional authority to approve an interstate compact on sales tax issues if 20 States join any compact.

Despite good intentions of its proponents, this approach is asking the Senate to buy a pig in a poke.

I am a strong supporter of interstate compacts where appropriate, such as the Northeast Dairy Compact, but the Senate should not approve of any interstate compact without carefully reviewing its details first. When the Northeast Dairy Compact was approved by the Congress, every detail and every aspect of it was known far in advance.

It also raises constitutional questions for legislation to mandate that Congress automatically approve an interstate compact on sales taxes without reviewing its text since the Constitution explicitly requires Congress to approve interstate compacts.

The Enzi amendment allows 11 jurisdictions to continue to tax Internet access, but permanently bans Internet access taxes everywhere else in the country. By permanently prohibiting taxation of Internet access in some States, but approving of such taxation in other States, the Enzi amendment may violate the "uniformity clause" in Article I, 8 of the United States Constitution.

The uniformity clause states that "all Duties, Imposts and Excises shall be uniform throughout the United States."

The uniformity clause requires that Federal legislation levying taxes follow a consistent plan and apply in all portions of the United States where the subject of the tax is found.

In *United States v. Ptasynski*, the Supreme Court held that it will subject geographic distinctions in Federal taxation to heightened scrutiny. In a unanimous decision, the Court stated that "Where Congress does choose to frame a tax in geographic terms, we will examine the classification closely to see if there is actual geographic discrimination."

The Enzi amendment proposal to lock in discrimination between States in taxation of Internet access raises questions under the uniformity clause that require careful consideration.

In the case of a temporary moratorium, such as the one in the House bill, the grandfathering of Internet access taxes in a limited number of States may be explained as freezing the status quo while Congress comes up with a permanent solution to the Internet tax issue. Thus, it is unlikely to raise the geographic discrimination problem the

Supreme Court discussed in *Ptasynski*, and would survive heightened scrutiny.

In contrast, the Enzi amendment's permanent discrimination on the basis of where an Internet user lives is much harder to explain under the heightened scrutiny required by the Supreme Court. If courts treat the Federal Government's establishment of a discriminatory regime of taxation by the States as raising the same uniformity clause issues as the Federal Government's levying of discriminatory taxes, the Enzi amendment's Internet access tax moratorium will be ruled unconstitutional.

As a result, this amendment appears to raise serious constitutional concerns.

E-Commerce is growing, our moratorium law is working, and we should keep a good thing going. I am proud to cosponsor the Internet Tax Moratorium Extension Act to encourage online commerce to continue to grow with confidence and to continue to allow the States to move ahead with sales tax simplification efforts.

I urge my colleagues to vote for a straight forward 2-year extension of the internet tax moratorium.

Mr. BURNS. Madam President, multiple, confusing and inconsistent State tax rules impose an incredible burden on interstate commerce and the economy, and therefore it is imperative that the Senate move quickly to extend the moratorium on Internet access taxes and to continue protecting electronic commerce from multiple and discriminatory taxation.

As a result of the U.S. Senate's failure to extend the moratorium before it lapsed on October 21, 2001, it is now possible for the more than 7,600 State and local taxing jurisdictions to impose multiple and discriminatory taxes on electronic commerce and taxes on internet access.

On October 16, the House adopted H.R. 1552 under expedited floor procedures. This bipartisan legislation would extend the current moratorium created by the Internet Tax Freedom Act for 2 years. H.R. 1552 is supported strongly by a wide range of groups, including the entire high-tech business community, the National Conference of State Legislatures, State and local municipal groups, the U.S. Chamber of Commerce, the National Association of Manufacturers, and many other business and retail groups that have put aside their differences in support of a clean, 2-year extension of the moratorium.

Given recent events and the current economy, this is the wrong time to saddle consumers with Internet access taxes or with multiple and discriminatory State taxes on electronic commerce. Enacting H.R. 1552 now would provide us with additional time to continue to work together to try to reach consensus on clear and simple tax rules for a borderless marketplace.

We should not be focusing on how to make our tax codes less cumbersome

for the purposes of Interstate sales tax collection, especially at this late hour. That is why I ask that my colleagues table this amendment.

SECTION 5(a)(8)

Mr. DURBIN. Madam President, I would like to have a discussion with the managers that I hope will clarify the meaning of an important element of this legislation. Section 5(a)(8) of the bill calls for "State administration of all State and local sales and use taxes" to be part of the streamlining process that would allow States and localities to be able to collect taxes due on remote sales. I believe it is important to make clear—in the legislation itself—that the requirement for "State administration" applies only to those taxes on out-of-State remote sales. The fact that, in a particular State, a single locality might on its own continue to collect local taxes on other sales would not affect that State's eligibility to be part of the streamline compact.

By way of example, the city of Chicago has a number of local use taxes that are imposed on different types of transactions. The city both imposes and collects those taxes from sellers wherever they are located in the State of Illinois. While the city and the State might agree to State administration of out of State remote sales, I would not want to see this legislation mandate that only the State of Illinois could collect these taxes on other sales.

I believe that this interpretation is intended by the legislation. Section 5(a) call for States and localities to work together to develop a streamlined tax system "in the context of remote sales." However, I am concerned that this intent is not clearly enough spelled out. When the legislation returns from conference, I hope that this intent would be made absolutely clear. This could be done by changing section 5(a)(8) to read "State administration of all State and local sales and use taxes on remote sales." It would also help to add a general use clause that would state that "nothing in this Act shall be construed to divest the authority of local governments to collect taxes on sales other than remote sales as defined in this Act."

Would the managers agree to this interpretation and assure me that the final legislation will make this interpretation absolutely clear?

Mr. DORGAN. I thank the Senator for his observations. I agree with his interpretation that the requirement of State administration of sales and use taxes applies only to remote sales. While I believe that this is the intent of the current wording, I will work in conference to assure that this point is absolutely clear.

Mr. ENZI. I am in agreement with both the Senator from Illinois and the Senator from North Dakota. I also agree that the requirement for State administration of sales and use taxes applies only to remote sales, and that this is the intent of the current wording. However, I will join with the Senator from North Dakota in working to

further clarify this language in conference.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time? The Senator from Wyoming.

AMENDMENT NO. 2155

(Purpose: To foster innovation and technological advancement in the development of the Internet and electronic commerce, and to assist the States in simplifying their sales and use taxes)

Mr. ENZI. Madam President, apparently under the unanimous consent agreement, that brings us to the amendment itself. As such, I yield myself 8 minutes, and I call up amendment No. 2155.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. ENZI], for himself, Mr. DORGAN, Mrs. HUTCHISON, Mr. GRAHAM, Mr. VOINOVICH, Mr. BREAUX, Mr. HUTCHINSON, and Mr. CARPER, proposes an amendment numbered 2155.

Mr. ENZI. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, 2 years ago we passed a simple extension of the moratorium. That is exactly what we did 2 years ago, and now we are saying there have been no hearings held on it and there has been no committee work on it.

There have been individuals working on this because 2 years ago there were a number of us who were deeply concerned about what was going to happen to revenues for cities, towns, counties, and States. We have been working on it in the meantime. We have been working with people from the committees. We have been having groups come in.

I particularly want to mention Senator DORGAN of North Dakota, Senator GRAHAM of Florida, Senator WYDEN of Oregon, Senator VOINOVICH of Ohio, Senator ALLEN of Virginia, and Senator Carper of Delaware. A lot of us have been working and meeting with any group that would meet with us to talk about how we could handle this sales tax loophole.

There is pain out there, there is agony out there, and through a process—not a popular process because this amendment does not wind up with what any one group wants. Usually the process around here is to say: This group has enough votes to pass this, and I am going to join that group and we will build in what we can for other people and expand the vote. That is not what can happen because it does not put in any degree of fairness for anybody who is involved in the system.

So what we tried to do with this bill was go into a leveling process, one that would provide for sales tax collections

so sales tax revenues would not go down. It would take care of an extension of the access tax, and it would provide some encouragement for the States to do something to streamline and simplify their sales tax system.

A very important procedure in this provision is one that protects start-up and small businesses, and that is an exclusion from having to collect any tax, even should the Congress at a future date say that needs to be done, on sales of less than \$5 million. That is not a start-up business. That is not a small business. So what this amendment actually does is extend the access taxes, in a very conservative way, so we would not overreach on access taxes, but so we would put a prohibition on access taxes.

Then it gives some encouragement to the States to simplify their tax systems. It does not agree it will be done. It does not put any tax into effect. It gives them encouragement, and that is something Congress has not been giving them for the last 2 years. We have not been giving them encouragement, other than a few meetings we have had with them to see what kind of work they can do, and they have been meeting. They have been streamlining. They have been working to come up with a system that will make it possible for people to collect the sales tax in a way that will benefit the States and the marketers.

I hope my colleagues will take a look at the bill. I know this is something that has been talked about, reviewed by a lot of people, particularly since we turned in this last version of the bill, but through all of the versions that we have worked on. I know the guidelines have been seen that are outlined for the States. There is some flexibility for the States yet, and that is a necessity while they finish out their work, but this bill contains some guidelines for them. Then it provides for us to vote on their provision when they get 20 States together, if they can get 20 States together. That is a pretty large group of people to be able to get into a compact. The encouragement for them to join the compact is, even if Congress approves the compact, they cannot have remote sales tax collections without joining the compact. So we have some requirements we have asked for them for the simplification, and then we have put a provision in if they can get 20 States together—and again, I want to mention how hard that is—the Congress will vote on whether they have simplified or not, whether they have met criteria that we have imposed either in the bill or in our minds since that time. It will require a vote of Congress, and that complies with Federal and Supreme Court direction we have had before.

I have a bill. I am pleased with the support. I do want to mention it has been a difficult process. We have worked with the National Governors Association. We have worked with the National League of Cities. We have

worked with the International City-County Management Association. We have worked with the National Association of Counties and the Council of State Governments. All of those folks have endorsed what we have done and asked for Congress to take this step of extending the moratorium with encouragement.

In their letter they state, irrespective of previous letters on the Internet tax moratorium and contrary to some dear colleague letters circulating in the Senate, we do not support legislation to reinstate the Internet tax moratorium for 2 additional years. The letter is from those groups I mentioned.

Besides those groups, we have been working with retailers from virtually every State. We have been working with direct marketers and the Direct Marketing Association. We have been working with realtors. They have a huge stake in this whole process as well.

I have to say there are not provisions in this bill that satisfy any one of those groups, but they recognize the need to do this in order to get the States in a position where they can provide for the kinds of services they have to provide in their communities.

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

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, as the original Senate sponsor of the Internet Tax Freedom Act, I have spent 18 months trying to find common ground on this issue. For hour after hour, we have gone at it, because obviously the technology sector is being pounded and local governments are understandably concerned about their revenues. Today, however, and I want to emphasize this to the Senate, many in both camps are in agreement on what the Senate should do. Groups as diverse as the American Electronics Association and the National Conference of State Legislatures are in agreement.

There ought to be a simple 2-year extension of the current Internet Tax Freedom Act. It would be a mistake to support the substitute, although well-intentioned, by the Senator from Wyoming. The current Internet Tax Freedom Act makes it illegal to discriminate against electronic commerce, and no jurisdiction in the country has been able to show that they have been hurt by their inability to discriminate. I want to emphasize to our colleagues tonight, a vote for the Enzi substitute means millions of Americans could be hit with new taxes for clicking on a Web page.

The substitute is bad news because it changes the definition of Internet access so if Internet access includes receipt of content or services then Internet access can be taxed. That would mean, for millions of Americans, the first thing they would get when they get on to the Web, news or weather or sports, that could be taxed. If this were

not damaging enough, the substitute actually makes it possible to inflict those taxes retroactively to 1998.

I am of the view most Senators believe there ought to be a permanent ban on Internet access taxes, that Internet access taxes widen the digital divide, and yet the substitute goes in the opposite direction.

Our first economic responsibility ought to be to do no harm, but the substitute creates new opportunities for economic mischief.

For many Americans, basic Internet access is about plugging the computer into a plain old phone line, dialing an Internet Service Provider, such as Erol's or Earthlink, and logging on to the Internet. Obviously, the blank screen does no one any good; most people when they click on to the Net they get a Web page and start receiving information and content on that Web page. For that, the substitute opens those millions of people up to new taxes.

The second flaw with the substitute is it would not prevent every tax jurisdiction from imposing new taxes on the Internet. Any of the 7,600 taxing jurisdictions in America could go out and concoct new taxes. For the life of me, I cannot figure out why that would be good for the economy right now.

The third flaw in the substitute is it allows discrimination against remote and on-line sellers, forcing them to pay different tax rates than in-State businesses. The substitute permits the remote seller to be taxed differently than an in-State business and, as a result, millions of small businesses will face significant large, new burdens trying to navigate a system of multiple and varying tax rates.

For example, in one part of Colorado there are five distinct tax rates within a single zip code. No software exists today that can help the small businessperson navigate the sea of bureaucracy and redtape, and I hope the Senate won't force that daunting task on unsuspecting small businesses.

I will conclude with this comment. Tonight, the Senate is being presented with two different views of Federal policy towards the Internet. The first, which is contained in the underlying bill, stipulates that there ought to be a short, clean extension of current law barring discriminatory taxes on electronic commerce and nothing else. The substitute—the Senate Finance chairman is absolutely right, and I am grateful for his support on this—hasn't had a hearing. It exposes millions of Americans to the prospects of new taxes, creates the possibility of a crazy quilt of Internet regulation throughout the country, and looks to the possibility that we would see scores of forms and paperwork that would chew up a vast amount of time in compliance.

I hope my colleagues will support the underlying bill, will reject the substitute, and join a diverse coalition that includes the American Electronics Association and the National Con-

ference of State Legislatures, two groups that, on this issue, have in the past disagreed again and again. Those two groups, the American Electronics Association and the National Conference of State Legislatures, are united saying the way for the Senate to proceed is to go for a clean 2-year extension of this moratorium and reject the substitute.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I request the Chair please notify me when I have used 4 minutes.

Madam President, we need to decide what this debate is about and what it is not about. This is not a debate about a new tax. It is not a debate about a new tax. My colleague referred to that. That is not accurate, and I would be happy to have a long and extended debate about that. But let's understand what it is and is not.

I support the Enzi-Dorgan substitute. I think it is an important piece of legislation. Let me describe what it does.

We have two problems. One of the problems is that more and more sales in this country now are being conducted by remote sellers—Internet, catalog, and so on. On Main Streets of our communities we have sales being conducted by small business men and women. When they make those sales, they collect the tax. They compete against a remote seller who makes a sale but does not charge the tax, even though a tax is owed on the transaction. The tax is owed on a transaction with the remote seller, but it is never paid because it is a use tax and people don't file millions and millions of use tax returns. The result is State and local governments are losing a substantial amount of money—\$13 billion it is estimated this year; by the year 2006, \$45 billion, most of which goes to support local schools. So State and local governments are rightly concerned about funding for their schools.

There is also the issue of fairness for Main Street. That is a problem: Lack of funding for schools, a tax that is owed but not paid, fairness for Main Street retailers.

The second problem is a problem for remote sellers. A remote seller says: I don't want to have to collect a tax and submit it to 5,000 or 7,000 jurisdictions. That is a fair point. They should not have to do that. That is burdensome and too complicated. So we say solve both problems.

Require State and local governments to make dramatic simplifications in their tax systems. When they do, through a compact, submit that compact to the Congress for approval or disapproval. If the Congress approves that, then allow them to require remote sellers to collect the tax that is already owed on the transaction, solving both problems and dramatically simplifying compliance for the remote sellers. And we will not approve it if it does not do that.

Second, at the same time, collect a tax that is already owed and make it much simpler for those who owe that tax to comply with current law.

We can do both of those. We can solve both of those by beginning with this substitute. This substitute itself doesn't solve the problem, but we have two choices. We can decide to ignore this problem and do nothing. But you know and I know it will not go away. We will be back here next year or the year after or 5 years from now. This problem is going to grow, not recede. We can solve this problem now or we can just do the moratorium, which, incidentally, I have supported and do support, but I support it with a solution to the other problem.

We can do these in tandem by providing support for the Enzi substitute, saying we want to do a number of things. We want to extend this moratorium. We don't believe in punitive taxation. We don't believe in taxing access. We want to do all the things Senator WYDEN talked about with respect to the moratorium, but we want to do more than that. We want to solve another problem out, festering, and growing. It is not a problem that deals with a new tax. Anybody who talks about that is just dead wrong. It is a problem dealing with school finance, with fairness on Main Street, a problem with ballooning revenues that need to come to support our schools, revenues that are now being lost because they are not being paid.

That is the choice, and I hope we make the right choice tonight.

Let me make one final point. When we pass the Enzi substitute, we have not done anything except say to the States: You go ahead and develop this process and submit it to us later, and we will then make a judgment on whether we will allow you to impose this collection. But our judgment will be based on whether you substantially have simplified your tax laws.

That is what the Enzi substitute does, and that is why I support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Madam President, I yield myself 8 minutes off the time of the opponents of the amendment.

The PRESIDING OFFICER. The Senator is recognized for 8 minutes.

Mr. ALLEN. Madam President, the reality is, if we pass the Enzi-Dorgan amendment, the substitute, what we are in effect doing is imposing Internet access taxes and allowing discriminatory taxes on the Internet. This is a measure on which I know Senator ENZI and Senator DORGAN have worked hard. Nevertheless, it has been changing almost by the day and certainly almost by the hour in recent weeks. There has not been any scrutiny to it.

Let me associate myself, though, with the remarks and observations of Senator WYDEN of Oregon. This does complicate the Tax Code. It is a very complex issue which actually makes it

worse. There are unfair taxes that could occur even within a State if this were adopted and, indeed, it has added taxes.

If we allow this amendment to be put on, let's have no doubt about it; the House is not going to conference. We will have this expired moratorium continuing. There are already States that have access taxes that are grandfathered. These are taxes, such as the Spanish-American war tax that was put on for telephone service, a luxury. Once taxes are put on by a State or locality, it is very hard to get them off.

There are two sides. There is a choice Senators are going to need to make. The opponents are for a tax-free Internet. The other side is on the pro-tax-collector side. The first decision we need to make is whether we extend the Internet access tax moratorium or do we vote for the Enzi-Dorgan amendment which would result in allowing Internet access taxes and discriminatory Internet taxes.

The opponents of this amendment side with individuals. We side with entrepreneurs rather than siding with the tax collectors.

We have heard that this is a loophole, the fact that someone who has no physical presence in a State, gets no benefits from fire or police services, that they do not have to collect and remit sales and use taxes to 7,600 jurisdictions—that that is not a level playing field, or it is a loophole.

I look at the Internet as an individualized enterprise zone where the consumer, the individual, the human being is the one making the decisions, not tax-collecting bureaucracies.

As far as this level playing field, let's assume you wanted to get your son or daughter a Harry Potter CD. If you ordered it on line, it would cost \$16.26. That is including shipping and handling. That would be getting it in 3 to 5 days in shipment. It would be 5 times more in cost of shipping if you wanted it overnight. Off line, at a store, it would be \$14.62.

With the velour dress, here are cowboy boots and a computer. Let me go through the specification on each of these to show how this playing field is relatively level and, in fact, you actually save money by going to a store, as well as convenience. Amazon.com on line, total price, shipping and handling, is \$16.26. If you go to Best Buy in Springfield, VA, paying a sales tax, it is \$14.62. Savings by going to the store is \$1.64. Again, we took the lowest shipping and handling.

Again, this is where we take the lowest shipping and handling.

Let's assume you wanted to buy yourself or your bride a dress. There is a velour dress from Spiegel.com, on line, at \$89. The price at the store is actually a little more. At Tyson's Corner, at Macy's, it is \$95. But when you put in the tax versus shipping and handling, you save money by going to the store.

Say you wanted to buy yourself some boots. This is what it would cost on

line—\$120. It is \$121 at the store in Springfield. But, again, the savings is \$3.50 if you go to the store over shipping and handling.

If you buy a Dell computer on line, the price is exactly the same price as it is at Circuit City in Charlottesville, VA. But you would save money in that the sales tax is \$71. Shipping and handling is \$95. You would save approximately \$24.

Put all of that into context. If you are buying a dress, or somebody is buying boots, you may like to try them on. You may want to put them on to see if they fit. That is the advantage those in the stores have over somebody buying on line. You can touch it. You can feel it. You can see how they fit. If there is a problem, you bring them right back to that store. You don't have to pay handling and shipping and go through all that annoyance and aggravation of handling and shipping.

Say you wanted to buy your son or daughter the Harry Potter soundtrack but didn't want to wait 5 days. Maybe you wanted to get an Allen Jackson soundtrack and listen to it driving home. You would want to get it right away. Again, the convenience is there.

The point is there is competition. The idea that this is not a level playing field is not just borne out by the facts. While this is all very well intentioned, the solution is not burdening the free enterprise system. The solution is not harming the Internet, and the capabilities and potential and possibilities of the Internet for education, communication, and commerce.

Indeed, what is being tried here with the Enzi-Dorgan amendment is to abrogate and negate a settled constitutional law from Supreme Court decisions, whether it was the Quill decision or whether it was the Bella Hess decision, which say there cannot be taxation without representation.

I would like to work with the proponents of this amendment to find a system where the folks who care about their local schools, as Senator DORGAN said, can pay those use taxes. But I am going to stand on the side of freedom—freedom of the Internet, trusting individuals and entrepreneurs—and not on the side of making this advancement in technology easier to tax for the tax collectors.

I reserve whatever time I may have remaining.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, I yield myself 4 minutes.

Madam President, I rise in support of the amendment offered by my colleagues, Senators ENZI and DORGAN. Most experts agree that this explosion in electronic commerce, made possible through the Internet, helped fuel our most recent economic surge and contributed to the greatest sustained period of growth in our nation's history. However, most would agree that the current framework of thousands of state and local tax jurisdictions is now

well-built for this "new economy." Technology has made it possible for commerce to transcend traditional local, state and even national borders.

The issue here is how can we continue to grow the Internet while at the same time preserving state's rights to collect revenues on sales that traditionally would be generate sales taxes. Frankly, I believe that no state is in favor of creating new taxes so as to cripple the growth of the Internet. But I do feel that states and localities should be able to collect taxes on legitimate transactions that have a substantial nexus with their state so that they would be able to collect sales taxes on those transactions if they were to physically take place in their state.

And many other organizations agree.

This legislation is supported by the National Governors Association, National Association of Counties, National League of Cities, Council of State Governments, International City and County Management Association, National Retail Federation, National Association of Retailers, E-Fairness Coalition and companies such as Gateway, Compaq, VerticalNet, Walmart, Target, HomeDepot, and Circuit City.

This issue is truly about federalism—the delineation of the role the federal government plays relative to state and local governments and the people.

With regard to sales taxes, there are currently 45 states that rely on some form of sales tax. These states receive, on average, almost 33 percent of their annual operating budgets from sales taxes. In my state of Ohio, it's 31.4 percent.

Our States are in a very serious situation. A recent study prepared by the University of Tennessee shows that states could lose nearly \$440 billion in sales tax revenue over the next decade in Internet tax revenues if Congress does not empower our states to collect revenues from remote sales.

These are revenues that would not be available to build schools, pave roads, pay for emergency services or meet other fundamental responsibilities.

In my home state of Ohio, our state government will lose more than \$475 million in fiscal year 2002 and Ohio is projected to lose \$596 million in fiscal year 2003 in revenue forgone from their ability to raise funds from Internet sales.

And as our economy moves more and more towards E-commerce, the fiscal impact on Ohio and other states will continue to damage the abilities of our states to fund their own services. This lost revenue merely exacerbates the difficult fiscal challenges Ohio and other states face as they suffer revenues losses from the current economic downturn.

For the federal government to shield Internet sellers from state tax collection responsibilities would usurp the autonomy of the states and force them to cut services and/or raise revenue elsewhere through additional taxes or fees.

In my view, preempting the states in such a critical area as e-commerce without addressing the state and local revenue needs suggests that Congress is not as committed to the principles of federalism.

And it could force the states to come to Washington in order to make up the funds we have taken away from them. For those concerned about the growth of the federal government, as I am, it will be very difficult to say "no" when states argue for more money if Congress by inaction has taken away a revenue source.

That is why this amendment by Senators ENZI and DORGAN is so important.

It provides a permanent extension of the moratorium on Internet access taxes, and extends the moratorium on multiple and discriminatory taxes for five years.

In addition, this amendment encourages states to develop a streamlined system of sales and use taxes that provides: a centralized multi-state registration system for sellers; uniform rules for attributing transactions to particular taxing jurisdictions; uniform procedures for exempt purchases; uniform software certification procedures; uniform tax return and remittance forms; consistent electronic filing and remittance methods; and protections for consumer privacy.

This amendment will also allow Congress to remain involved before any state moves to tax any Internet transactions. Once 20 states have developed and adopted an Interstate Simplified Sales and Use Tax Compact, the states will submit the Compact to Congress.

Our State and local governments are not interested in putting a damper on the expansion of the Internet; they want it to prosper like all of us.

The real question before us is: how can we ensure that our businesses and our nation are able to compete in this new, technology driven economy without sacrificing the principles of federalism which have served us well for over 200 years? State economies benefit from the healthy and unfettered growth of electronic sales. All they and traditional retailers ask is fair treatment.

Federalism can adapt and even flourish when we remember to work as partners with our state and local governments. That is why I urge my colleagues to support the Enzi-Dorgan amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, I yield myself 5 minutes in opposition to the Enzi amendment.

The PRESIDING OFFICER. The Senator may proceed.

Mrs. BOXER. Thank you very much, Madam President.

I rise in strong opposition to the Enzi amendment, and I hope we will defeat it by a very strong bipartisan vote.

I have read this amendment over and over. It has changed mightily during

the last month or so. But it is very clear to me that if this amendment were to become law—the way, the House would never allow it to become law. But let's say it could become law. I think it would wreak havoc on Internet commerce. Let me tell you why.

Look at page 3 of the amendment. Look at section 3, and look at paragraph A. There is a 1, which clearly states that Internet service providers could be forced to go back retroactively to 1998 and remit Internet access taxes to the States.

Can you imagine the burden that would put on this country at a time in our history when we are in a major recession?

Second, Senator ENZI's amendment would not prohibit new taxes on Internet access and, although it would keep the moratorium on "discriminatory and multiple" taxes, it may not prevent "new" taxes on electronic commerce.

Finally, I want to state that these are statements made by my friend and colleague from Oregon, RON WYDEN, in a far more articulate way than I. I am trying to underscore what he said.

If you look at page 4, you see that the Enzi proposal would allow taxes on Internet content. It is very clear that the moratorium on Internet access taxes would no longer apply to Internet content.

Can you imagine people connecting to the Internet and suddenly being charged every time perhaps they connected to the Web?

In my view, this is a very dangerous kind of amendment because if it does become law it will wreak havoc on business on the Internet, and not only business, but just the right to get on the Web and read content and to be able to do that without extra charges. This is not the time for that.

Madam President, this was updated as of October 5, 2001. The Wall Street Journal has printed 30 pages of companies that have gone out of business. I will give you some of them. AdMart: announced plans to shut down, lay off 334 employees. Advertising.com: announced plans to lay off 72 employees, or 25 percent of its staff. And it goes on and on and on.

You will remember some of these companies. We remember the Webvan that went out of business. But it just goes on and on. You would recognize some of these companies.

Is this a time, I would ask my colleagues, to go after this industry? It is the wrong time. It is the wrong time, and it is a dangerous time. I will give you some more examples.

Barnes & Noble.com said in February 2001 it will cut 350 jobs, or 60 percent of its workforce.

Beautyjungle.com, a cosmetics seller, laid off 60 percent of their workforce and then shut down.

I will go on. eToys: In January 2001, it said it would lay off 700 people, or 70 percent of its workforce. In February 2001, it said it would let go the remain-

ing 293 employees by April. Later in February, it said it would file for bankruptcy protection.

Here is the Webvan Group story. Cut staff in April 2001 by 30 percent or 885 employees. They also closed operations in Sacramento, CA, and in Atlanta, the latest in a series of shutdowns. In July 2001, they announced plans to close all remaining operations and terminate 2,000 employees.

The general economy is in trouble. We have seen more layoffs in 1 month than we have in 21 years.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. Madam President, I ask unanimous consent for 30 seconds to conclude my remarks.

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

Mrs. BOXER. So, in closing, this amendment is flawed. It will allow new Internet access taxes. It will force the collection of Internet access taxes going back to 1998. It will allow taxing on content. And it comes at a time when the economy is tanking.

For goodness sakes, we cannot even get an economic stimulus package passed, and the first thing we do, late on a Thursday night, is look at ways to get more people laid off.

I hope we will vote, in a bipartisan way, against the Enzi amendment.

I yield back my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Florida.

Mr. GRAHAM. I yield myself 5 minutes off the proponents' time.

The PRESIDING OFFICER. The Senator may proceed.

Mr. GRAHAM. Madam President, this is the most important vote that we are going to take in this Congress, first or second session, on education, on public services, and on fundamental fairness in America's marketplace.

Why do I make that statement? I make that statement because, first, State and local governments are very dependent on the sales tax in order to fund their basic public service responsibilities, specifically education, police, and fire.

Let me just give you some examples. The city of Boston: 10 percent of its revenue comes from its local sales tax. That represents approximately half of its annual cost of its police and fire services.

The city of Detroit: 10 percent of its total revenue comes from its local sales tax. That represents two-thirds of the cost of its police and fire services.

In Milwaukee, 23 percent of the local revenue comes from its sales tax which represents almost 100 percent of the cost of its police and fire.

At a State level, to use my State of Florida as an example, 73 percent of our general revenue comes from the sales tax, and 70 percent of that general revenue is used to finance education and the public emergency services, such as State police and our judicial system.

If there were to be a significant erosion of our sales tax, in these cities in my State, and the other 45 States which are very dependent on the sales tax, there would be an immediate impact on their primary responsibilities of education and public services.

Second, State governments and local governments are facing a hemorrhaging of the sales tax. To use my State again as an example, the State of Florida collects approximately \$30 billion a year in sales tax. The General Accounting Office has estimated that by the year 2003, there will be a 4-percent erosion of that sales tax revenue by virtue of sales tax that will not be required to be collected because the sale will be made by a distant seller.

Then, according to a study made by the University of Tennessee, 3 years later, in the year 2006, that will go up from 4 percent to almost 8 percent of our State's sales tax revenue.

That is what I call a hemorrhaging of the ability of a major State—illustrative of the other 45 sales tax States—to be able to finance basic public services.

Third, there is no rationale for this discrimination in favor of one group of retailers over another group of retailers. This is not a new tax. This is a responsibility to collect a tax which is paid by the ultimate consumer and which has been in place in most States, including mine, for over a half a century. This is not a new tax. It is a responsibility for equality of treatment in the collection of an existing tax.

This will do serious harm. It will do more harm to our traditional Main Street retailers. Why should we say to a local bookstore that they have to collect the sales tax on the Harry Potter book, but that if you buy it from a distant store, they do not have to collect the sales tax? There is no rationale to that policy.

There have been, in the past, times in which there has been a public policy that said, we will provide a lessened sales tax or some other preferential benefit in order to stimulate the sale of a product that we consider to be in the public interest.

In my State, we did it, for instance, for solar energy. But we are not talking about new products here; we are talking about books, we are talking about clothes, we are talking about electronic items. It is not the product; it is the method of sale of the product that is getting the discriminatory beneficial treatment.

Finally, there have been statements made about all of the horrors that are going to happen if we pass this amendment. People forget, this amendment had no life, had no vitality until this Congress, by a separate independent affirmative act, at some point in the future, voted to institute this authority of the States to collect the sales tax through distant sellers.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GRAHAM. Madam President, this is an extremely important issue

for the most important services rendered by our State and local governments. I urge a vote against the motion to table.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Madam President, I rise in opposition to the amendment and yield myself 5 minutes.

The PRESIDING OFFICER. The Senator may proceed.

Mr. GREGG. Madam President, there are a number of issues that are raised by this amendment which are very significant. It comes to us tonight without having any hearings, without having any airing in the public sector of any significance. Yet it addresses some of the most fundamental issues of constitutional law, and the relationship between States and between the Federal Government and States, that we could confront as a Congress. It is simply precipitous to pass this amendment in this rushed format.

The amendment would go right at the heart of what has been a long history of case law settled by the Supreme Court and reverse it. It would reverse the *Bella Hess* case and the *Quill* case which, essentially, are cases which said that there must be a nexus between the seller of the goods and the State in which the goods are sold before a tax can be assessed against the seller of the goods.

This amendment would reverse that. That is the purpose of this amendment. It does not affect just Internet transactions.

There is an equally large effort here to reverse the issue as it has been dealt with in catalog sales. Yet the proposal is going to be dealt with in 2 hours in the Senate Chamber. Clearly, it is precipitous because the implications are huge.

The second major constitutional problem with the amendment is that it creates this brandnew regime where 20 States can bind the other 30 States. This is truly an excess of the minority over the majority. It reverses the concept of federalism and turns it on its head and says if 20 States reach agreement, then the rest of the 30 States have to follow that agreement. If you are going to change constitutional law, you have to have a three-fifths vote. There is no way you can do it with 20 States. And yet that is the attempt here.

This is a roundabout way of trying to amend what is essentially a constitutional procedure without using the appropriate constitutional procedures. If it were passed, it would truly set up a precedent which would fundamentally harm the concept of federalism. If it is used here, I can see this concept of 20 States getting together and ganging up on the rest of the States being used fairly regularly.

The amendment itself on the issue of substance is wrong and inappropriately presented. It certainly is wrong on the issue of the manner in which it has been brought forward in that it should

have gotten more hearings. If this idea makes sense, it should go through a proper hearing process before it comes to the floor. It would create an atmosphere where 7,000 different jurisdictions across the States could end up taxing the Internet. That would be chaos and would fundamentally undermine this engine of prosperity and economic growth which we had and which we continue to have and which we continue to lead the world in, which is the Internet.

Those are the substantive reasons why this is a bad idea at this time. There is probably an equally, if not more important procedural reason. If this amendment passes, it is a poison pill. It will kill the Internet tax moratorium. It will mean that there will be no moratorium for the next 2 years.

The House has said it is not going to take this language. It is not going to conference this language. So as a practical matter, the Internet tax moratorium is dead. The underlying bill here would cause a 2-year tax moratorium. And if the language of this amendment makes sense, that will give us more than ample time to proceed in the proper course through the proper hearing procedure to listen to the arguments for this proposal. It can be passed any time during this next 2 years.

What can't be done during the next 2 years, if we don't have an Internet tax moratorium, is put back together Humpty Dumpty because we will literally have thousands of jurisdictions which will put in place taxes against the Internet as soon as they have that opportunity, as soon as it is clear that there is going to be no moratorium. We will have chaos which we will never be able to sort out.

The amendment, although obviously sincerely principled and aggressively pursued, has serious substantive problems. I hope we will not pass this amendment because it will represent a poison pill and it will end up killing the Internet tax moratorium.

The PRESIDING OFFICER (Mr. MILLER). Who yields time?

The Senator from Delaware.

Mr. CARPER. Mr. President, I rise in support of the amendment and yield myself 4 minutes.

The PRESIDING OFFICER. The Senator may speak.

Mr. CARPER. Mr. President, Delaware is one of five States that has no sales tax. One might think as a result we have no dog in this fight. We do. I think we all do, whether we happen to be from a sales tax State or not.

My colleague who spoke immediately before me said we haven't had hearings on this proposal. We have had discussion in this Chamber, in the House, in State houses across the country, certainly in Governors' meetings for the last 3 years. We don't need a hearing to know that States are under duress. Their economies are struggling. Their revenue growth is down and in some cases negative. Spending is up. Unemployment is up. Out-of-pocket costs for

health care for Medicaid are up, and they are in between a rock and a hard place.

We have been debating this week how can we help those States in their time of need. Some have said: Let's increase the Federal share for Medicaid. Others have said: Let's provide an extension of unemployment insurance and pay for it with Federal dollars. Others have said: Let's pass a stimulus package. Maybe we should provide a sales tax holiday and let the Federal Government pay for that—something I don't think is a good idea, but that has been put forward.

A much better idea is the Enzi-Dorgan amendment that lies before us today, the product of many years work between the States, between Governors, mayors, county executives, legislators here, and previous administrations as well as the current administration. What does it do? Anybody listening to this debate has to be confused.

This amendment provides for extensions of bans on multiple and discriminatory taxes for 5 years, and it extends the ban on access taxes permanently. That is what it does. What it also does is it empowers the States to work among themselves to see if 20 of them can agree on a simplified approach toward collecting taxes from remote sellers. If they can come to an agreement and provide that kind of a simplified approach, then that plan would come to us and we would have the opportunity to vote yes or no as to whether or not States can actually proceed. If we vote no, they can't proceed.

Our voting for this amendment today, even if it ended up in the final bill signed by the President, would not authorize the collection of a sales tax by remote vendors. It simply sets in motion a process which could lead to another vote by us somewhere down the line.

My last point: If you happen to be a brick and mortar vendor in a State and you have a sales tax and you are required to collect a sales tax and are selling a piece of luggage or a shirt or wallet, a CD player, and you have to collect sales taxes on those items and charge more for those items and there is somebody who is buying it remotely from another State, where are people going to shop? More and more they are shopping on the Internet. They are not going to the local vendor. It is not fair to the local vendor who is collecting the taxes that pay for the schools and public safety and transportation and other things. It is just not fair.

One aspect of this amendment I am not comfortable with deals with Amazon.com and the eBay issue which I have discussed with Senators ENZI and DORGAN. I hope when we get to conference, we will have an opportunity to address those issues.

I yield to Mr. ENZI for whatever time he consumes.

Mr. ENZI. I thank the Senator from Delaware, particularly since he is from a non-sales-tax State, for supporting

this issue and realizing how important it is to other States. I will definitely work to get that done. What we are trying to do is have an even playing field here. I will work to get that as part of the definition and clarification.

Mr. CARPER. I thank the Senator for his assurances.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I rise as an opponent to the amendment and yield myself 3 minutes.

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

Mr. SMITH of New Hampshire. Mr. President, I rise in opposition to this amendment because e-commerce is at the very heart of our economy. It brings billions of dollars in revenues, provides huge surpluses to local, State, and Federal coffers throughout the country. Why, particularly in an economic slowdown, would we want to saddle an industry with huge new tax increases and heavy bureaucratic and regulatory burdens? It does not make sense.

The National Bureau of Economic Research concludes that imposing these multibillion dollar tax increases and government burdens would result in a 30 percent reduction in purchases over the Internet. Think of what that would do to the economy. It would have a devastating effect.

For the first time in history, government bureaucrats in one State will have the power to tax the people in another State. That is not right. The hours and capital required to comply with the Tax Code from the IRS and State and local taxing agencies are going to be overwhelming under this amendment. Not only would businessowners be under the glass with the usual suspects, but now they are going to be open to thousands of bureaucratic agencies looking into their business to get a cut.

I can assure you if a State or local official spends money to come across the country to audit you, he is going back with some money. In New Hampshire, we don't have a sales tax, and I believe it is a regressive tax that disproportionately affects the poor and working class. It is a State's decision as to whether they want to impose the tax. Under this legislation, New Hampshire residents would be forced to pay these taxes to businesses all across the country. Due to the increased costs of paying these out-of-State taxes, and the flood of audits, our residents would pay substantially higher prices for goods and services.

So allowing State and local governments the power to target taxpayers outside their own State, where those people have nothing to say at the ballot box, would set a horrible precedent. Frankly, I believe it is unconstitutional.

States would then be able to use this new sword to target businesses and States that were competing with their

own. Of course, with local businesses and consumers in an uproar, States would have to retaliate. Then we come to lawsuits. At some point, the Federal Government is going to step in and be called to set regulations and taxing levels, and here we go on down the road where the Government sets the sales tax rate. They would then have the venue they needed to have a national sales tax.

Some have argued for a national sales tax, but this would be on top of the income tax. If you don't like the income tax, you are not going to be too happy about having a sales tax on top of it.

This is a multibillion-dollar increase, a regulatory monster, and it must be stopped. I urge my colleagues to vote against the Enzi amendment and support Main Street and freedom.

The PRESIDING OFFICER. Who yields time?

Mr. WYDEN. Mr. President, we are moving to wrap this up. I want to come back to a couple points because I think there is confusion, for example, on the Internet access charge issue. There is a sense among some Senators that this is something that would have to be approved by this body. That is not correct. This amendment—the substitute—changes the definition of Internet access, and it can be applied to millions of Americans without any further action by the Senate.

In particular, what the amendment says is that it would be possible to "tax content or services." That is virtually everything. Nobody wants a blank screen on their computer. Of course, they are going to have a Web page with news, weather, and basic information. The fact is that the substitute means that millions of Americans could be hit with new taxes just for clicking on a Web page, and this could be done without any further action by the Senate.

I think most Senators believe there ought to be a permanent ban on Internet access taxes, that Internet access taxes widen the digital divide. Yet the substitute on the Internet access tax issue goes in just the opposite direction. A lot of Americans think Internet access is plugging the computer into a phone line, dialing up the Internet provider, and logging onto the net. Then you would get a blank screen. Of course, you want information and content. People need to know, as they move to this vote, that they could be taxed for getting those kinds of services that many of them believe are essential, such as the weather.

At the end of the day, I pledge to continue to work with the Senator from Wyoming. He has been extremely sincere and extremely dedicated. However this vote comes out, I want to make it clear that I will work closely with him, Senator DORGAN, and all the Senators who see this differently than I, Senator BAUCUS, Senator MCCAIN, and others. We are going to have to stay at it.

When you vote tonight, you are talking about two very differing approaches with respect to Internet policy. One approach that we advocate tonight is backed by the American Electronics Association and the National Conference of State Legislatures. The other is opposed by virtually all of the technology groups in the country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield myself 3 minutes.

I thank all of those people who have been dedicated in their work on this issue. There have been innumerable meetings, and Senator MCCAIN, Senator DORGAN, Senator KERRY, Senator WYDEN, and I have been the primary people. We have met with these different groups to see what parts of the Internet were their interests.

This bill is as close as we can come to pulling everybody to the center. No, it doesn't please everybody. Does it please most of the people? I certainly hope so, and we will have a vote to determine whether it does or not. But this does make permanent the Internet access tax prohibition. Now that is something that Gateway, VerticalNet, Compaq, and other high-tech folks have wanted and do want.

This bill does not have new taxes in it. This bill has a provision so that States will be encouraged to simplify their taxes and, at some future time, in order to comply with the Supreme Court decisions mentioned here, there will be a vote to see if Congress approves of their simplification. Unless the vast majority of the States are involved in that, I am sure they won't get approval.

We passed a moratorium 2 years ago, and we promised all of these governmental agencies and all of the other people with an interest in sales tax that we would put a bill together, solve their problem, bring them a solution. Have there been hearings? Everybody says there have not been hearings. There have been a lot of meetings. There has not been a bill produced other than what we have here.

This is a promise we made to local and State governments 2 years ago. This is some action we can take on it. It doesn't make anything final, but it provides incentive to get people together to work on a problem that is necessary. Cities, towns, and counties, not to mention States, have been put under some unusual circumstances just since September 11. We need to have a mechanism for them to be able to fund them. We have not promised funding for everything. We have made them do a lot. This gives them an opportunity to work out a system whereby they can continue to operate, continue to have revenues that are on a declining basis at the moment, and this is something so that we can have a vote. This just provides for a vote of Congress at a future date when there has been streamlining.

The extension of the current moratorium of the Internet Tax Freedom Act of 1998 expired this past Sunday on October 21, 2001. I believe this amendment would thoroughly address this issue as well as the simplification of State and local use tax systems.

We had to take a look at the Internet sales tax issue for people who might be using legislative vehicles to develop huge loopholes in our current system. We need to preserve the system for those cities, towns, counties, and states that rely on the ability to collect the sales tax they are currently getting. I believe that the moratorium on Internet access taxes and multiple and discriminatory taxes on the Internet should not be extended without addressing the larger issue of sales and use tax collection on electronic commerce.

Certainly, no Senator wants to take steps that will unreasonably burden the development and growth of the Internet. At the same time, we must also be sensitive to issues of basic competitive fairness and the negative effect our action or inaction can have on brick-and-mortar retailers, a critical economic sector and employment force in all American society. In addition, we must consider the legitimate need of State and local governments to have the flexibility they need to generate resources to adequately fund their programs and operations.

As the only accountant in the Senate, I have a unique perspective on the dozens of tax proposals that are introduced in Congress each year. In addition, my service on the state and local levels and my experiences as a small business owner enable me to consider these bills from more than one viewpoint.

I understand the importance of protecting and promoting the growth of Internet commerce because of its potential economic benefits. It is a valuable resource because it provides access on demand. Therefore, I do not support a tax on the use of Internet itself.

I do, however, have concerns about using the Internet as a sales tax loophole. Sales taxes go directly to state and local governments and I am very leery of any Federal legislation that bypasses their traditional ability to raise revenue to perform needed services such as school funding, road repair and law enforcement. I will not force states into a huge new exemption.

While those who advocate a permanent loophole on the collection of a sales tax over the Internet claim to represent the principles of tax reduction, they are actually advocating a tax increase. Simply put, if Congress continues to allow sales over the Internet to go untaxed and electronic commerce continues to grow as predicted, revenues to state and local governments will fall and property taxes will have to be increased to offset lost revenue or States who do not have or believe in state income taxes will be forced to start one.

Furthermore, State and local revenues and budgets are especially critical now as these governments are responding to protect the security of all of our citizens and businesses. Any action to extend the current moratorium without creating a level playing field would perpetuate a fundamental inequity and ignore a growing problem that will gravely affect the readiness of the nation.

After months of hard work, negotiations, and compromise, this amendment has been filed. I would like to commend several of my colleagues for their commitment to finding a solution. I know this amendment is the solution. The amendment makes permanent the existing moratorium on Internet access taxes, but extends the current moratorium on multiple and discriminatory taxes for an additional four years through December 31, 2005.

Throughout the past several years, we have heard that catalog and Internet companies say they are willing to allow and collect sales tax on interstate sales, regardless of traditional or Internet sales, if states will simplify collections to one rate per state sent to one location in that state. I think that is a reasonable request. I have heard the argument that computers make it possible to handle several thousands tax entities, but from an auditing standpoint as well as simplicity for small business, I support one rate per State.

I think the States should have some responsibility for redistribution not a business forced to do work for government. Therefore, the amendment would put Congress on record as urging states and localities to develop a streamlined sales and use tax system, which would include a single, blended tax rate with which all remote sellers can comply. You need to be aware that states are prohibited from gaining benefit from the authority extended in the bill to require sellers to collect and remit sales and use taxes on remote sales *if* the states have *not* adopted the simplified sales and use tax system.

Further, the amendment would authorize states to enter into an Interstate Sales and Use Tax Compact through which members would adopt the streamlined sales and use tax system. Congressional authority and consent to enter into such a compact would expire if it has not occurred by January 1, 2006. The amendment also authorizes states to require all other sellers to collect and remit sales and use taxes on remote sales once Congress has acted to approve the compact by law within a period of 120 days after the Congress receives it.

The amendment also calls for a sense of the Congress that before the end of the 107th Congress, legislation should be enacted to determine the appropriate factors to be considered in establishing whether nexus exists for State business activity tax purposes.

I strongly support this amendment because I do not think there is adequate protection now. It is very important we do not build electronic loopholes on the Internet, an every-changing Internet, one that is growing by leaps and bounds, one that is finding new technology virtually every day.

Mr. President, I recognize this body has a constitutional responsibility to regulate interstate commerce. Furthermore, I understand the desire of several senators to protect and promote the growth of Internet commerce.

I am very concerned, however, with any piece of legislation that mandates or restrict State and local governments' ability to meet the needs of its citizens. This has the potential to provide electronic loopholes that will take away all of their revenue. This amendment would designate a level playing field for all involved—business, government, and the consumer.

The States, and not the Federal Government, should have the right to impose, or not to impose, consumption taxes as they see fit. The reality is that emergency response personnel, law enforcement officials, and other essential services are funded largely by states and local governments, especially through sales taxes. Passing an extension of the current moratorium without taking steps toward a comprehensive solution would leave many states and local communities unable to fund their services. I urge my colleagues to vote for this amendment.

In the current definition in §1104(5) of the ITFA:

The term "Internet access" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services.

I do want to address one very important issue that has not been addressed in this amendment. One of the most important aspects of this legislation deals with State and local taxation of Internet access services. There is general agreement in this body that there should be no new State and local taxes on basic Internet access as a way to assist every American to be able to take advantage of the Internet and its resources. That is a goal I obviously support, and my amendment will do that.

As you know, however, I have serious concerns with the current definition of Internet access. I am concerned that without further work, it will subvert our intent, discriminate against some Internet Service providers, and impact state and local governments. Thus, I want to continue to work with my colleagues at a later date to refine that definition so that we accomplish our aim without doing harm.

The problem is that the current definition is so broad, and technology is changing so fast that the current definition could unfairly discriminate against many businesses that provide

similar content or services over the counter, over a cable wire, or via any other means. The discrimination could affect a variety of products and services that I don't think any of us envisioned as part of access to the Internet. In a nutshell, the current definition essentially includes anything and everything, except telecommunications that could be offered as a part of a package of Internet access services, including television programs, radio broadcasts, games, books, music, motion pictures and other such products and services.

Following mergers of Internet service providers and media and entertainment companies, it is not hard to envision an ISP that provides these services and includes all of the items in one bill to a customer. For example, an ISP could provide downloadable movies to customers—allowing a customer to download a set number of movies each month includable in their monthly fee for Internet access, while paying extra for any movies beyond the included amount. This sets up some perverse and discriminatory situations. First, for example, someone who pays \$9.95 for basic Internet service that doesn't include movies would have to rent movies separately and pay tax on those rentals, while customers of an ISP that include movies in its \$21.95 service would not pay tax on those movies. Second, the tax-exempt benefit of purchasing more expensive Internet access services doesn't stop at just movies. Providers could also include music, publications—and someday soon, downloadable nightly cable broadcasts—and under the current definition these would also be exempt from tax. I don't think any of us ever envisioned when we first debated and enacted a temporary moratorium that the scope of services provided over the Internet was intended to cover anything beyond basic access.

I believe that the current definition of Internet access needs to be examined closely by the Congress so that we don't do damage where we intend to do good. I have tried a number of different approaches to defining it, and each of them has issues and problems. I am not ready to give up, however.

Furthermore, there are also some that believe the current definition of Internet access needs to be changed because it unfairly discriminates among providers of Internet access and gives some providers advantages over others. The current definition favors large companies over small. It also excludes telecommunications services from the definition of access. In doing so, the language could be interpreted to exclude Wireless Web Access because all services provided by wireless companies are considered "telecommunications." Thus, Internet access purchased from one company might be exempt, but it could be taxable if purchased from a wireless provider. I know our intent is not to discriminate among Internet access providers, but that is the effect of current law.

If we don't continue to work on this definition, we will go contrary to the findings in the legislation we are considering. If we allow the current definition of Internet access to remain unchanged, we will be authorizing the disparate treatment of the sales of identical products depending on whether the sale occurs online or not. In simplest terms, the current definition of Internet access would exempt the sales of many products and services that would be taxed if sold in any other way. Besides the fiscal problem this would cause for states, this is also fundamentally unfair, and should be prevented. I think formulating a good definition of Internet access presents a host of opportunities that we should not let pass by. It gives us an opportunity to define a critical component of the infrastructure of our new economy—and, in doing so, provide a definition that allows all new economy companies, both large and small, to operate on a level playing field. It provides us with an opportunity to provide a clear definition that reduces the probability of litigation over the exact meaning of the statute. And, it provides us with an opportunity to insure that we do no harm to the fiscal stability of many levels of government—while providing a positive environment in which business can survive.

I hope to continue to work with my colleagues at a later date to develop a definition of Internet access that preserves the tax-exemption for access to the basic services and resources of the Internet.

The Internet is such a powerful tool of education and commerce that we should do everything we can to make sure that each American can take advantage of it. At the same time, we need to insure that our goal assisting in the provision of basic access is not subverted by an overly broad definition of access that allows a host of digital goods and services to be bundled together and sold tax exempt. Such subversion would only serve to weaken state and local governments at this important time in our nation's history.

I ask unanimous consent that a letter from the National Governors Association, National League of Cities, International City/County Management Association, National Association of Counties, and Council of State Governments be printed in the RECORD.

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

NATIONAL GOVERNORS ASSOCIATION,  
NATIONAL LEAGUE OF CITIES,  
INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, COUNCIL OF STATE GOVERNMENTS,

November 6, 2001.

Hon. THOMAS A. DASCHLE,  
Majority Leader, U.S. Senate, The Capitol,  
Washington, DC.

Hon. TRENT LOTT,  
Minority Leader, U.S. Senate, The Capitol,  
Washington, DC.

DEAR SENATOR DASCHLE AND SENATOR LOTT: Irrespective of previous letters on the

Internet tax moratorium and contrary to some "Dear Colleague" letters circulating in the Senate, we do not support legislation to reinstate the Internet tax moratorium for two additional years. Four organizations listed below support legislation by Senator Enzi (S. 1567) that would create a level playing field so that remote and Main Street sellers receive equal treatment. The National League of Cities is working closely with Senator Enzi and believes that S. 1567 represents a promising opportunity to resolve this critical issue.

Sincerely,

RAYMONG C. SCHEPPACH,  
*Executive Director,*  
*National Governors Association.*  
DONALD J. BOUNT,  
*Executive Director,*  
*National League of Cities.*  
WILLIAM H. HANSELL,  
*Executive Director, International*  
*City/County Management Association.*  
LARRY MAAKE,  
*Executive Director,*  
*National Association of Counties.*  
DANIEL MY. SPRAGUE,  
*Executive Director*  
*Council of State Governments.*

The PRESIDING OFFICER. The Senator has consumed his 3 minutes. Does the Senator yield back his time?

Mr. ENZI. I reserve the remainder of my time. The other side has used their time?

The PRESIDING OFFICER. The opponents have used all of their time. The proponents have 2 minutes.

Mr. ENZI. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, on behalf of myself and Senator WYDEN, I move to table the Dorgan-Enzi amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 341 Leg.]

YEAS—57

Allard	Edwards	McConnell
Allen	Ensign	Miller
Baucus	Feinstein	Murkowski
Bennett	Frist	Murray
Biden	Gramm	Nelson (FL)
Bond	Gregg	Nickles
Boxer	Hagel	Reid
Brownback	Hatch	Roberts
Bunning	Inhofe	Schumer
Burns	Inouye	Sessions
Byrd	Kennedy	Smith (NH)
Campbell	Kohl	Smith (OR)
Cantwell	Kyl	Snowe
Cochran	Landrieu	Stevens
Corzine	Leahy	Thompson
Craig	Lieberman	Thurmond
Crapo	Lott	Torricelli
Dodd	Lugar	Warner
Domenici	McCain	Wyden

NAYS—43

Akaka	Carnahan	Clinton
Bayh	Carper	Collins
Bingaman	Chafee	Conrad
Breaux	Cleland	Daschle

Dayton	Hollings	Rockefeller
DeWine	Hutchinson	Santorum
Dorgan	Hutchison	Sarbanes
Durbin	Jeffords	Shelby
Enzi	Johnson	Specter
Feingold	Kerry	Stabenow
Fitzgerald	Levin	Thomas
Graham	Lincoln	Voinovich
Grassley	Mikulski	Wellstone
Harkin	Nelson (NE)	
Helms	Reed	

The motion was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCAIN. Mr. President, I think we are in agreement the major aspects of this legislation have been decided. So I do not think, unless someone desires it, that we need another recorded vote.

The PRESIDING OFFICER. If there be no amendment to be offered, the question is on the third reading of the bill.

The bill (H.R. 1552) was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is on the passage of the bill.

The bill (H.R. 1552) was passed.

Mr. MCCAIN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I appreciate the debate. I appreciate the efforts made on both sides of this very difficult issue. The closeness of it really dictates that we do sit down and work something out on this issue with Senator DORGAN, Senator KERRY, Senator ALLEN—all of those with whom we have met in numerous, countless hours on this issue. It is very clear we need to come to some kind of agreement rather than go through moratorium after moratorium.

Mrs. BOXER. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

The Senator from Arizona.

Mr. MCCAIN. Mr. President, I conclude by saying I think we should begin meetings as soon as possible so we can resolve this issue so there is a reasonable resolution. I know the proponents of this amendment which was just defeated spent great labor and effort on it. I congratulate them for their arguments. I look forward to working with them. This is an issue that needs to be resolved.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I say to the distinguished Senator from Arizona, we spent a lot of hours working through this with Senator ENZI, Senator DORGAN, Senator MCCAIN, myself, and many others. This was a very dif-

ficult vote for many of us. We do not support any tax on the Internet itself. We don't support access taxes. We don't support content taxes. We don't support discriminatory taxes. Many of us would like to see a permanent moratorium on all of those kinds of taxes.

At the same time, a lot of us were caught in a place where we thought it important to send the message that we have to get back to the table in order to come to a consensus as to how we equalize the economic playing field in the United States in a way that is fair.

I hope the Senator from Arizona will follow up with us, so we can come back to that table to do what is sensible and fair. I look forward to the chance to do that.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, before the Senator from Massachusetts leaves, I want him to know, as the original Senate sponsor, I want to redouble my efforts to work with him and Senator ENZI and all of our colleagues. We may be able to see that there is a technological fix here that is going to make it possible to collect taxes owed.

There is a lot of good will on both sides. This is by no means the end of the issue. I am very pleased the Senator from Massachusetts is ending this discussion in a conciliatory way because we are going to have to stay at it. He has my pledge as the original sponsor of this effort to do it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, as an original author and cosponsor of the moratorium, which I believe in, I appreciate the comments. I had hoped, and in many ways thought this was not ripe for this vote, but I think it was important for us to have gone through the process. I look forward to seeing if we can come up with a sensible resolution.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I thank my colleagues, who have just spoken, for their comments, for the effort they put forth. I thank all the people for allowing the debate that happened. That had to be done by unanimous consent.

Now we know our work is cut out for us. Two years ago we passed a moratorium. Tonight we passed a moratorium. Hopefully before 2 years is up we will have done something that will solve the problem. I appreciate the commitment of the chairman of the Commerce Committee to make that happen. I am sure all the people who are involved in this issue will be extremely happy that some work will be done on it. The hearings will be held. The consensus will be arrived at because it is necessary for our cities, towns, counties, and States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I have been involved in a number of issues in

my time here. I know of no two people who have worked harder on an issue than the Senator from Wyoming and the Senator from North Dakota.

That renews my commitment to try as hard as I can to come to an agreement because they deserve an all-out effort on an issue on which we are fundamentally in agreement.

I thank the Chair. I thank my colleagues.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Mr. President, I thank all of those Senators who were involved in the array of legislative items that we have taken up today. This has been quite a busy day, with a lot of coordination and a tremendous amount of work. I think we have accomplished a good deal today.

I also report that the Commerce Committee has completed its work. I compliment the chair and ranking member of the Commerce Committee for their work on the aviation security bill. We will be addressing that bill a little later.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar Nos. 547 through 566, and 568, and the nominations on the Secretary's desk; that the nominations be confirmed, the motions to reconsider be laid upon the table, any statements thereon be printed in the RECORD, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nominations considered and confirmed are as follows:

#### THE JUDICIARY

Odessa F. Vincent, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

#### DEPARTMENT OF STATE

Raymond F. Burghardt, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Socialist Republic of Vietnam.

Ronald Weiser, of Michigan, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Slovak Republic.

J. Richard Blankenship, of Florida, to be Ambassador Extraordinary and Pleni-

potentiary of the United States of America to the Commonwealth of The Bahamas.

George L. Argyros, Sr., of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Spain, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Andorra.

Larry Miles Dinger, of Iowa, a Career Member of the Foreign Service, to be Ambassador to the Federated States of Micronesia.

Darryl Norman Johnson, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Thailand.

Lyons Brown, Jr., of Kentucky, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Austria.

William D. Montgomery, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Yugoslavia.

Melvin F. Sembler, of Florida, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Italy.

Charles Lawrence Greenwood, Jr., of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Coordinator for Asia Pacific Economic Cooperation (APEC).

Stephan Michael Minikes, of the District of Columbia, to be U.S. Representative to the Organization for Security and Cooperation in Europe, with the rank of Ambassador.

Ernest L. Johnson, of Louisiana, to be an Alternate Representative of the United States of America to the Fifty-sixth Session of the General Assembly of the United Nations.

William J. Hybl, of Colorado, to be Representative of the United States of America to the Fifty-sixth Session of the General Assembly of the United Nations.

Nancy Cain Marcus, of Texas, to be an Alternate Representative of the United States of America to the Fifty-sixth Session of the General Assembly of the United Nations.

Robert M. Beecroft, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Head of Mission, Organization for Security and Cooperation in Europe (OSCE), Bosnia and Herzegovina.

Charles Lester Pritchard, of Virginia, for the rank of Ambassador during his tenure of service as Special Envoy for Negotiations with the Democratic People's Republic of Korea (DPRK) and United States Representative to the Korean Peninsula Energy Development Organization (KEDO).

#### AFRICAN DEVELOPMENT BANK

Cynthia Shepard Perry, of Texas, to be United States Director of the African Development Bank for a term of five years.

#### INTER-AMERICAN DEVELOPMENT BANK

Jose A. Fourquet, of New Jersey, to be United States Executive Director of the Inter-American Development Bank for a term of three years.

#### UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Constance Berry Newman, of Illinois, to be an Assistant Administrator of the United States Agency for International Development.

#### UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

John Marshall, of Virginia, to be an Assistant Administrator of the United States Agency for International Development.

#### FOREIGN SERVICE

PN1139 Foreign Service nomination of Terence J. Donovan, which was received by the Senate and appeared in the Congressional Record of October 16, 2001.

PN1140 Foreign Service nominations (23) beginning Keith E. Brown, and ending Olivier C. Carduner, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2001.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

#### UNANIMOUS CONSENT AGREEMENT—CONFERENCE REPORT ACCOMPANYING S. 1447

Mr. DASCHLE. Mr. President, I ask unanimous consent that the majority leader, following consultation with the Republican leader, may proceed to the conference report to accompany S. 1447, the Aviation Security Act; that it be considered under the following limitations: 90 minutes for debate, with the time equally divided and controlled between the chairman and ranking member of the Commerce Committee or their designees; that upon the use or yielding back of time, the conference report be adopted, and the motion to reconsider be laid upon the table, with no further intervening action or debate.

Mr. BURNS. Reserving the right to object, and I will not object, is that S. 1447?

Mr. DASCHLE. That is correct.

Mr. BURNS. Reserving the right to object, and I will not object, there are some of us who did not and will not sign the conference report. I will make my statement this evening, but we have not seen the bill and will not see it until the morning. I think it is asking a little bit of those of us who have a responsibility to the aviation industry and the security of this country to not see that legislation before it passes. We understand there are some dogs and cats in there and some things to which we cannot agree.

So I want to put myself on record that I will oppose this piece of legislation, but I will not hold it up.

I thank the leader.

Mr. DASCHLE. I thank the Senator from Montana.

Mr. MCCAIN. If the majority leader will yield to me for a second, I can inform the Senator from Montana that I understand his concerns. A copy of the bill is available at this time in room SD-512.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, with that understanding, I inform all Senators there will be no more rollcall votes tonight, nor do we anticipate now that there will be any rollcall votes tomorrow.

We have a number of other matters we will take into account during wrap-