

considering subcategorization by coal type, which does not constitute one of these allowable distinctions. Including such a subcategorization in the MACT rule would not be legally defensible.

As you know, the Executive Order on regulatory review (No. 12866) enhances planning and coordination with respect to new and existing regulations, with the understanding that the, "... American people deserve a regulatory system that works for them, not against them; a regulatory system that protects and improves their health, safety, environment, and well-being. . . ." In particular, E.O. 12866 states that in deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, including potential economic, environmental, public health and safety, and other advantages, as well as distributive impacts and equity.

Despite that directive, we are concerned that EPA and OMB may not be considering a full range of regulatory options that includes accurate implementation of the Clean Air Act, namely, a standard based on technologies available today that can achieve a 98%+ reduction in mercury emissions. We expect the upcoming proposal to reflect what the law requires by offering either the most stringent technology standard for public comment, or at least a range of options that includes this most stringent standard. We also expect that the regulatory impact assessment, as required by the Executive Order, which accompanies the proposed rule to include an assessment, and the underlying analysis, of the costs and benefits (including reductions in other air pollutants such as fine particulate matter) of potentially effective and reasonably feasible alternatives to the proposed rule that have been identified by the public.

We are also troubled that the Clean Air Act Advisory Committee established under the Federal Advisory Committee Act to advise EPA on development of utility MACT standards has not received promised analyses and has been inappropriately and abruptly excluded from the regulatory process. EPA worked with industries, environmental organizations, and State and local agencies in the context of these FACA workgroup meetings over a two year period. During these meetings, environmental stakeholders requested specific considerations and mercury reduction scenarios to be included in a model the Agency was developing.

The Agency promised to incorporate group recommendations and deliver findings of this updated modeling to the workgroup by March 4, 2003, yet the analysis was not available by that time. The Agency promised then to share the analysis by April 15, 2003, yet the analysis was again not available, and EPA staff abruptly cancelled that day's workgroup meeting, saying, "We will get back to you regarding a future meeting." The utility workgroup was never able to schedule a subsequent meeting with the Agency, and has still not received the modeling analysis promised almost eight months ago. This failure to deliver promised analysis is unacceptable, and the abrupt exclusion of stakeholder involvement is not good governance.

We expect the Environmental Protection Agency and the Office and Management and Budget to propose utility MACT standards on schedule. We expect that proposal will use the best performing facilities as the guide in setting standards that obtain the maximum reductions achievable. We also expect EPA to deliver on its promises by swiftly com-

pleting and distributing to the workgroup the modeling analysis for group-specified mercury reduction scenarios. Further, we expect EPA to continue to work in good faith to incorporate public comment on the proposal and finalize a thoughtful rule by December 15, 2004, while maintaining the December 2007 compliance date. To do any less would be legally indefensible, and would prolong damage to the public's health.

It is well documented that mercury from utility air emissions endangers our health and environment by depositing into our lakes, streams, and oceans and bioaccumulating in the fish we eat. The National Academy of Sciences has confirmed that fish consumption by pregnant women can lead to neuro-developmental damage in fetuses, and that all other adults can be put at greater risk of heart, kidney, and liver effects. Due to this public health threat, 44 States now post advisories warning the public about the risks of fish consumption. Dozens of other toxic air pollutants are released in significant quantities from power plants as well, including arsenic, cadmium, and lead, many of which are known carcinogens. The Clean Air Act does not allow for promulgation of a rule on this matter that is ineffectual in reducing to the maximum extent achievable the major HAPs emitted by utilities.

Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,

Jim Jeffords, Olympia Snowe, Joseph Biden, Ted Kennedy, Hillary Rodham Clinton, Jack Reed, Dick Durbin, Patrick J. Leahy, Susan M. Collins, Frank Lautenberg, John F. Kerry, Lincoln D. Chafee, Charles Schumer.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak in morning business for as much time as I may consume.

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

#### UNFUNDED MANDATES AND THE INTERNET TAX NONDISCRIMINATION BILL

Mr. ALEXANDER. Mr. President, Mr. CARPER, the Senator from Delaware, is on the floor. He may want to speak in a few minutes. I have a few comments I would like to make about the debate we are having about unfunded mandates and Internet access taxes.

First, I thank Senator MCCAIN, the chairman of the Commerce Committee, who has been working very hard to help bridge what is a fairly big philosophical difference of opinion some of us have, and I express my appreciation to the leader, BILL FRIST, because he created some time today and last night for us to debate and talk about the issues. I think we have made some progress.

But here is where we are. As with most of our debates in the Senate, we have two valid principles in which most of us believe: First is, no taxation of Internet access. I have yet to run into a Senator who really wants to tax Internet access. Virtually all of us are willing to keep State and local governments from taxing Internet access.

I am a little bit of a purist on unfunded Federal mandates, with Washington politics telling State and local officials what to do, but the amendment which I have offered, and which Senator CARPER and others have joined in, would ban State and local government taxation of Internet access.

That is the first principle. We want the Internet to grow. We don't want local taxation. We don't want taxation that discriminates.

The second principle is, we don't want unfunded Federal mandates. That may be a little bit of a Washington word, but most people know what it means. It means Senators and Congressmen who come to Washington and pass laws and claim credit and send the bill to the school boards and Governors and mayors. Nothing makes local officials madder. This Congress, to its great credit, since 1995, has been very resolved against unfunded Federal mandates. So we don't want to tax Internet access and we don't want unfunded Federal mandates.

We haven't found out how to put the two together. We have offered a solution. There are really two basic ones out there. Ours would be to just take the current law, the current ban on taxing Internet access or allowing State and local governments to make that decision, and extend it for 2 years, and then to make a change to minimize discrimination between providers, providers being phone companies and the cable companies. That is our proposal.

The proposal on the other side was to create a much broader definition of what we mean by Internet access which would create a huge unfunded Federal mandate and take away, we believe, billions of dollars from State and local government tax bases, cause them to cut services or raise taxes on many other things, and make it permanent. That is the proposal.

Our argument is that our 2-year extension of the current law, with one adjustment to level the playing field between telephone companies and cable companies, is better for the country than a permanent installation of a very broad definition. So the issues are duration and definition.

The reasons for our amendment are these. One, we want to preserve the original intent of the Congress. The 1998 law was to keep the basic Internet access tax free. By that we mean, when you hook up your computer to AOL, the intention is that that is tax free. In our amendment, even as the telecommunications industry moves more on to the Internet, that would continue to be tax free. It is really a significant infringement on State and local prerogatives to decide what taxes to raise

on their own. We want to make sure no one will be able to tax e-mail or surfing the Web. We want to make sure that States don't lose the bulk of their telecommunications revenues. Those were our major goals.

The opponents have raised many objections to these ideas. They say the Internet is so valuable that it should not be taxed. Well, we don't tax it any more than it is now. We don't allow taxing any more than it is now. And it makes me wonder. I agree the Internet is valuable. I supported the first moratorium. But it is a grown-up business now. It is no baby in a crib. We had 3 years and then 2 years. Now we are talking about another 2 years.

The telephone is valuable. Television is valuable. Airplanes are valuable. The automobile was a great invention. We don't tell State and local governments what to do about their tax policy for those businesses. The Internet is not a baby in a crib anymore. It can at least afford to hire some of the most expensive lobbyists; we know that.

Then they talk about interstate commerce, that we are messing around with interstate commerce when we talk about telling States what to do about taxing Internet access. I read the Constitution again to make sure I was right. Article I, section 8, says Congress has the power to regulate commerce among the States, but it doesn't say exactly what to do about it. It means Congress can impose limits. They can do some things.

There is also another provision called the 10th amendment which reserves all the powers to the States unless they are specifically delegated to the Congress. That is where the whole prohibition against unfunded Federal mandates came from. That is why, in 1995, this Congress passed as its first bill S. 1 of the new Republican Congress, to stop unfunded Federal mandates—Congress telling Governors and mayors and school boards what services to provide and how to spend their money.

As long as we are allowing States to make decisions about taxation on telephones and telegraphs and bus tickets and airline tickets and severance taxes, all of which are interstate commerce, I don't know why we worry so much about that.

There is the assertion that we might be taxing broadband. That is Internet service delivered by telephone and cable companies. We are really not taxing anything. We are trying to decide whether we should write some rules for what States should do. Broadband is a wonderful thing. It is always just around the bend. We want to it come. What we have said is that except for grandfathered States that now tax DSL Internet phone service, it can't be taxed in the next 2 years. We are just trying to level the playing field for 2 years, as we take the current law and extend it for that period of time.

Multiple taxation would be banned under our amendment, just as it is today. Discriminatory taxation is

banned under our amendment, just as it is today. Taxes on e-mail and basic Internet access, banned, just as they are now.

So it seems to us our amendment is a good one. We are willing to continue to visit and talk with the Senator from Virginia and the Senator from Oregon, who have worked very hard and believe very strongly in this. But our arguments are, the Congress has promised not to pass any more unfunded mandates. We have made it a violation of the Budget Act to do so. We should respect that as much as we possibly can. No. 2, their proposal is potentially a huge unfunded Federal mandate which we have promised not to do.

We believe our amendment is better at reconciling two valid principles: One, continuing the ban on basic Internet access and, two, making an adjustment to create a more level playing field between cable and telephone while making a minimum offense to the principle of unfunded Federal mandates.

We also believe that a short term—a couple of years—allows us to craft wise decisions about what is happening in a rapidly changing technology, and theirs would impose an inordinately broad definition of what we mean by Internet access permanently or for an unreasonably long period of time.

There was a letter sent around from the Republican Policy Committee which asserted that the objective of the unfunded mandate law was to stop the Federal Government from imposing affirmative duties or regulations on the States. It basically argues that the Allen-Wyden amendment is not an unfunded mandate. All I can think is that that memo didn't make it all the way through the vetting process. It argues that the unfunded mandate law Congress passed in 1995 doesn't apply to situations where the Congress might say, for example, States may not collect taxes on telephones and telegraphs. If we were to say that, that would mean State and local governments would be deprived of \$20 billion of their tax base next year, and they would have to raise taxes on food or medicine or income or property or something else, or cut services.

By the very plain terms of the Unfunded Mandates Act of 1995, it includes both affirmative actions. For example, when we pass a bill that says Memphis shall do thus and so for disabled children but we only pay for half of the cost, that is one kind of unfunded mandate.

But according to the Congressional Budget Office and the plain English in the 1995 law, it also includes the definition of direct cost of a mandate, "the amounts State and local governments would be prohibited from raising in revenues to comply with the mandate." An unfunded Federal mandate also includes our telling the States you cannot raise revenues from these sources. If we think it is so important to do that, we are supposed to pay that.

I am afraid in this case the Allen-Wyden amendment, while they have

worked hard to try to narrow it, still raises the possibility many billions of dollars would be lost to State and local tax bases. In other words, we would be imposing a multibillion dollar unfunded Federal mandate on State and local governments.

We believe there is a better way, that we can continue the ban on Internet access, but do it in a way that minimizes the unfunded Federal mandate. Because the leader asked us to, and we want to, we will be working over the weekend, and our staffs are meeting this afternoon. We will be working early next week, and we hope we can come to some agreement in a very short period of time.

I am grateful to Senator CARPER for his leadership in helping us come up with a sensible path in the future. I wanted to give that report on the status of where we are.

Mr. CARPER. Will the Senator yield?

Mr. ALEXANDER. Yes.

Mr. CARPER. Let me just say if I have provided leadership, I know the Senator from Tennessee has. I have enjoyed the opportunity to work closely with the Senator from Tennessee, Senator VOINOVICH, Senator GRAHAM of Florida, and others on this issue. I reflect on the role we as Senators are trying to play in this and the disadvantage some of us operate from. The Presiding Officer and I serve on the Banking Committee together. If the issue before us is like the Fair Credit Reporting Act, we have a fairly good idea, using our background and experience, as to what is fair and reasonable; what makes sense and what is good public policy. If the issue is energy policy, I think our background prepares us to make reasonably good judgments there.

When we come to issues with respect to the Internet and the transmission of information over the Internet, for a lot of our colleagues—certainly this one—it doesn't take long to get in over our heads. If we are honest, I think most will say that. In order to help us through a difficult issue like the one we have now, whether there should be a continuation of a moratorium on Internet taxes and in what form, and should it be extended, we have bright people who work on our staffs, and we speak to people from the outside, whether they happen to be from the industry or State and local governments, to round out our knowledge. But it is still a different result.

For this Senator—I suspect I speak for the other Senators here at this moment—what I think we can maybe best do is figure out the fair thing to do. I always like to talk about the Golden Rule, to treat others like I want to be treated. I try to apply that even in this instance. If you look back to the 1995 law Senator ALEXANDER talked about, the genesis of that law was Governors like he and I used to be, and even mayors in places like Gillette, WY, who didn't want the Federal Government to tell them what to do and not give them

the money to do it. Similarly, whether you are a Governor or mayor, we didn't much appreciate the Federal Government coming in and saying we are going to take away your ability to raise revenues as you see fit and not make up for the shortfall.

That sense of outrage sort of grew out of State and local officials, and eventually came here and compelled the Congress to take steps to enact the 1995 legislation, banning unfunded mandates both under spending and on the revenue side. Today you cannot do that. For the most part, Congress and the President since have done a good job adhering to that law.

What is before us now is how do we be true to the spirit of the unfunded mandates law, not taking away the revenue base of the States and, at the same time, trying to be fair to consumers. People want to have access to the Internet, whether residential consumers or businesses, and how do we manage to be fair to the businesses that are providing these services? I am not going to suggest any of that either. If I could, we would have finished before this week and we would all be in Wyoming, Tennessee, or Delaware, doing other things. But we are not there yet.

The hangup is, as the Senator suggested, the moratorium that has been in effect for the last 5 years says you cannot access the Internet and add a tax to somebody who has a monthly internet bill. It says if two States or more want to tax in that transaction, you cannot do that. Multiple taxes are something you cannot do. The same legislation has said if there is a discriminatory tax somebody wants to impose on Internet transactions, you cannot do it. For example, Delaware has no sales tax. To say for a person who goes to the local book store and buys a book in Delaware that you don't have a sales tax, but if you buy that same book over the Internet, you have a tax imposed, that is a discriminatory tax. The law in effect for 5 years said you cannot do that.

What Senator ALEXANDER, Senator VOINOVICH, Senator GRAHAM, Senator ENZI, and a number of others are seeking to do is to simply say the law in effect for the last 5 years, which prohibits those kinds of activities, stays in effect. Because the world is changing in the way people access the Internet, through broadband and DSL, which a couple of months ago I could not even spell, today turned out to be a key component of this debate. But how do we change the old 5-year moratorium in a way that is fair, for instance, to the baby bells, to their business interests? What can we do that is fair and will enable them to be competitive, level the competitive playing field for them. They have suggested that whether you are getting your Internet service from a cable provider or a telephone company, State and local governments should not be allowed to tax that access to the Internet, at least for the end user.

Here is where our divide is with our friends, Senator ALLEN of Virginia and Senator WYDEN from Oregon. The question is: Where do we prohibit the imposition of the tax? At what point? Starting with the consumer in his or her home, the business in its operation, all the way back up to the ISP, through the infrastructure to the backbone—where does access to the Internet begin? We argue in our definition in our proposal the access begins between the provider, ISP, and the consumer, whether a business or an individual.

Other colleagues, who have a different view, have a much broader vision of where the Internet access comes from—much more expansive, and by their expanded definition, they expand the prohibition dramatically on what State and local governments can tax to raise revenues. I think there is an honest disagreement here. We believe we should focus on what I call the last mile. There are others who believe we should focus on the first mile, all the way through the last mile. When we do that, we take for the States potentially a fair amount of revenue generation capability off of the table at a time when obviously they are hurting and they need every dime they can raise.

I don't know if we can resolve this difference. I think we had a good honest go of it today. Senator MCCAIN is trying very hard to broker some kind of agreement. We may be successful or we may not. Ultimately, we may have to just vote.

I say this to our friends who have a different view than Senator ALEXANDER, Senator VOINOVICH, the Presiding Officer, and myself: We in Delaware have learned over the years to make our State a real attractive place to do business. If other States want to impose fees or taxes on services, and we are smart enough in my State to not do that and then go to the businesses that are maybe being mistreated by regulatory or tax policies in another State, and say, Come to Delaware; you won't have to put up with any of that frankly, it has a good argument.

In a variety of ways, financial services and other sections of our economy are stronger today because we have chosen not to impose certain taxes or fees. We have gone to sections of the economy and said: Look what we have in our State.

I say to those who have a different view than Senator ALEXANDER, Senator ENZI, and myself: Don't discount the competitive nature of States and how some of us will elect not to impose a tax on any of this business in an effort to be far more attractive to those kinds of businesses as we go down the road.

I thank my colleague for the good work he is doing and say to him how much I have enjoyed working with him on this issue, clean air issues, and others. I hope this is a harbinger of things to come.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. The Senator is still under a unanimous consent agreement to yield as much time as the Senator wishes to the Senator from Delaware.

Mr. ALEXANDER. Mr. President, as I was listening to Senator CARPER, I was thinking about what he just said. I believe I am right about this, but Senator CARPER can correct me: What we are saying in our amendment is if the Senator from Delaware or I hook up a computer to the Internet, our amendment would prohibit State and local governments from taxing that event; isn't that right?

Mr. CARPER. I think the Senator has that right.

Mr. ALEXANDER. That would be true even if Internet access moved over from the current way many people do it—and this is hard for people to understand many times—over to the cable or the phone company; is that right as well?

Mr. CARPER. Five years ago when this legislation was written on the moratorium, I don't believe DSL existed. The idea of people accessing the Internet over broadband was not something people thought much of. The idea of accessing the Internet over wireless I don't think is something we thought we had the capability of doing. The world has changed.

Mr. ALEXANDER. So from the point of view of the Federal Government interfering with local governments, we would be making a pretty significant interference there because we would be affording to the Internet access connection a protection that we didn't afford the telephone, that we didn't afford the telegraph, that we didn't afford the purchase of food, the purchase of medicine—anything. If you hook up your Internet, nobody can tax you. That would be our proposal.

The other point the Senator from Delaware is making—Delaware in particular has done this—is, say, in the District of Columbia there was a big cable company or big phone company, and the District of Columbia said: We may not be able to tax the connection between Senator ALEXANDER's computer, but we can sure tax the cable company, we can sure tax the telephone company that provides that connection, and they raise the taxes to a very high level for certain of these points along the Internet architecture. I assume it is entirely possible the Governor of Delaware may ride the train down to the District and say: The tax may be 20 percent, but come live with us in Delaware; come to our State; we don't have a right-to-work law; other States do; we don't have an income tax; other States do. We may have a higher corporate tax than other States. States have these differences all the time, and if one State gets out of line, people leave, businesses leave, elections are held and people are

thrown out of office. That is the way we have operated the government for a long time.

This is a nation that from its beginning operated community by community and State by State and has had a great aversion to central direction of too many of these decisions.

Mr. CARPER. Mr. President, I say in response, that is the way States and competition—friendly competition—have worked over the years, and if it worked in the last century, it is going to work out that way in this century as well.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to print in the RECORD two editorials from Tennessee newspapers: One from the Tennessee and one from the Chattanooga Times Free Press. They just came today.

The last sentence in the Chattanooga Times Free Press article says:

If the federal tax ban becomes permanent, state and local governments may have to come up with great amounts of tax money in other burdensome and permanent ways that taxpayers will not like.

The Tennessean says:

Sen. Lamar Alexander is not voting to raise taxes. He is not trying to increase the cost of Internet access, nor is he advocating a new tax on e-mail.

Instead, Alexander is trying to protect states from excessive control by the federal government. Yet the conservative states-rights position the senator has taken on Internet access has been turned on its ear by some of his critics. . . .

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

[From the Tennessean, Nov. 7, 2003]

ALEXANDER'S PRINCIPLED STAND FOR STATE CONTROL

Senator Lamar Alexander is not voting to raise taxes. He is not trying to increase the cost of Internet access, nor is he advocating a new tax on e-mail.

Instead, Alexander is trying to protect States from excessive control by the federal government. Yet the conservative, States-rights position the senator has taken on Internet access taxes has been turned on its ear by his critics, many of whom are Republicans.

Congress placed a moratorium on Internet access taxes in 1998. The few states, including Tennessee, that had taxed Internet access before the moratorium were allowed to keep their tax. The moratorium officially ended last week.

Now the House has passed legislation cosponsored by Representative Marsha Blackburn that would make the moratorium permanent and would eliminate all exemptions. In the Senate, Alexander opposes a permanent moratorium. He points out that Congress shouldn't micromanage the financial affairs of cities and States. And he points out that the few States that are exempt from the moratorium would lose between \$80 million and \$120 million in revenue if their exemptions end. That loss of revenue would force the States to increase taxes elsewhere.

Up until last week, Alexander was one of several senators who had placed a hold on the moratorium legislation, but he agreed to lift his hold on the bill last week in exchange for a Senate debate on the issue this week.

No one wants to pay more taxes. No doubt, Tennesseans, who are already paying tax on

Internet access, would love to pay less for Internet connections.

But the question in the Senate isn't whether the Internet taxes should go up or down, or whether they should exist at all. The question is whether the Federal government should tell States what they can and cannot tax. Alexander says it should not, and he is right. Tennesseans who want to eliminate Internet access taxes should contact Governor Phil Bredesen and members of the General Assembly.

Tennesseans elected Lamar Alexander to the Senate because they believed he would exercise his own good judgment and act in the best interest of Tennessee. On this bill, he is.

[From the Chattanooga Times Free Press, Nov. 7, 2003]

IT'S ABOUT TAXES—YOURS

It's not the kind of issue that generates lots of public attention or quick understanding. But when Senator Lamar Alexander, R-Tenn., took the Senate floor this week to discuss it, he wanted to make sure everyone understood that the proposed Internet Tax Nondiscrimination Act involves "an unfunded Federal mandate"—which could result in State and local tax losses of \$80 million to \$120 million a year, that local taxpayers might have to make up.

Some time ago, to promote development of the Internet and other electronic communications, Congress banned taxes on Internet access until November 1, 2003, with some exceptions to expire October 1, 2006. The bill now before Congress would make those taxing bans permanent. Since most people don't like any kind of taxes, why shouldn't the ban be permanent?

Senator Alexander explained: "We are not talking about the issue of whether to authorize States to require out-of-State companies, such as L.L. Bean, that sell by catalog or Internet, to collect the same Tennessee sales tax" that local stores must collect. . . . "That is an entirely different piece of legislation." (We believe such legislation should be passed to provide more State revenue and thus avoid the necessity of imposing other taxes on Tennesseans.) Senator Alexander continued: "What we're talking about is whether Tennessee and other States can collect a sales tax from an Internet service provider when it connects my computer to the Internet, just as it collects a sales tax from the telephone company when it connects my telephone or from the cable TV company when it connects my cable."

He said some senator seemed surprised when he suggested the proposed permanent ban on State and local taxation is "an unfunded Federal mandate." But, Senator Alexander insisted, it "is an unfunded mandate, plainly in violation of the Unfunded Mandates Reform Act of 1995. . . ."

Senator Alexander said the Tennessee Department of Revenue estimates that making the tax ban permanent would cost Tennessee many millions of dollars a year. With Tennessee finances already pinched, how would that amount be made up without new State taxes?

So, said Senator Alexander, "I am filing tonight an amendment I call the Unfunded Federal Mandate Reimbursement Act. If a majority of the Senate should decide that banning State and local taxation of the Internet is important enough to create an unfunded Federal mandate—that is, claim the credit up here (in Washington), but make it be done down there (in Tennessee and other States)—then my amendment would provide a way for Congress to pay the bill for that by authorizing our Department of the Treasury to reimburse Tennessee and Min-

nesota and other State and local governments each year for the cost of this new mandate."

Don't expect Congress to rush to embrace Senator Alexander's amendment. But he has made a point that deserves serious consideration.

If the Federal tax ban becomes permanent, State and local governments may have to come up with great amounts of tax money in other burdensome and permanent ways that taxpayers will not like.

Mr. ALEXANDER. Mr. President, I believe the more Senator CARPER, Senator VOINOVICH, Senator ENZI, Senator GRAHAM, and I talk about this issue, the more people are coming our way. I look forward to continuing to work with other Senators who have different views, and I hope we can come up with a good conclusion to this that respects both principles: banning taxation of Internet access and not imposing large unfunded Federal mandates on State and local governments.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. Mr. President, I rise today to support the amendment to be offered by my friends and fellow former Governors, Senators GRAHAM, ALEXANDER, CARPER, and VOINOVICH.

The amendment is a very simple one. Every Senator who is aware of the fiscal crisis faced by States across the Nation, which I think at this point is virtually all States, ought to support this amendment, in my judgment.

The amendment simply says we ought to continue the current moratorium on Internet taxes for another 2 years, giving the industry additional time to reach out to new customers and ensuring that we do not undercut States' long-term ability to balance their budgets, because there is an enormous relationship between Internet taxes and State budgets. In fact, this amendment improves on the previous moratorium by ensuring that consumers' access to the Internet is tax-free. Regardless of the technology they prefer, be that DSL, cable modem, wireless phone, traditional dial-up access, they would all be treated the same under this amendment.

I know many of my colleagues are interested in providing a permanent moratorium on the taxation of Internet access, but I ask them to take a moment to consider the potential harm of the bill we are debating today.

Governors, State legislators, and mayors from across this country have called my office, and I would think the offices of most Senators, to implore us not to pass the legislation. I understand the moratorium envisioned in this other amendment applies only to taxes imposed on access to the Internet. However, our good intentions are

not enough to ensure that this legislation is properly applied and that the States are able to collect taxes on other telecommunications services.

Technology, as you well know, is still developing. In the near future, the providers of Internet services may offer telecommunications services as part of a premium package of technology products. Digital content presents additional challenges. I believe somebody purchasing a new movie should be taxed on that, whether they download the movie from the Internet provider or they purchase it from Amazon.com or they walk over to Blockbuster and buy it off the shelf. As technology develops and more and more options are available to consumers, Congress will obviously need to revisit this issue of what exactly falls within this moratorium since the technology changes so often.

This amendment would protect States' rights to impose fair and equitable taxes on products other than Internet access. As a former Governor, I remember very well the difficulty of financing critical State services. I was Governor some 20 years ago, but we were having those troubles then. They are much worse now.

I worked hard with the State legislature to achieve the right balance of taxes and spending. That was hard. I needed the maximum flexibility. It has been some time now, as I indicated, since I was Governor, but over the last few years we have witnessed again how States often struggle to balance their budgets and how, in fact, virtually every single State is going through that process.

It seems somewhat arrogant and unfair for us as Federal legislators to permanently limit the options available to States. I feel very strongly about that. I in no way want to disadvantage development of the Internet, but I want to respect the rights of other elected officials in West Virginia and in other States, and I believe in that strongly.

I believe a 2-year extension of the moratorium is the best of all solutions. It protects Internet access from State and local taxes for a while longer, as more Americans get access to the benefits of the Internet. It preserves for the future the flexibility that State and local governments need as they try to balance their budgets while providing for good education, improved infrastructure, adequate police and fire-fighting forces—all these things in this new age of terrorism. And it gives Congress the responsibility and the opportunity to revisit the issue, which is absolutely key, in 2 years, as the technology evolves.

Let me be clear. I strongly supported the previous moratorium on Internet access taxes because I recognized the value of expanding Internet use to more Americans. I believe Congress ought to do what it can to ensure the Internet becomes like the radio and the telephone and the television before it—

technology that connects with all Americans and connects all Americans to each other.

In my home State of West Virginia, we are still working hard to ensure that all our citizens will have access to the latest broadband technology, so I am eager to support efforts that can make the Internet more affordable and more available, including extending the current moratorium for 2 years. However, I cannot ignore my concerns with the permanent moratorium we are asked to consider today.

I urge my colleagues to join me in supporting this amendment which a number of other former Governors and I have put forward.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### POLITICIZING THE SENATE INTELLIGENCE COMMITTEE

Mr. FRIST. Mr. President, I want to spend the next several minutes commenting on a matter that I regard, as majority leader of this body, to be one that is very serious. As is the case with a number of my colleagues, in fact, most of the U.S. Senators, we have been given the opportunity to reflect on the publication of a very disturbing internal memorandum, a memorandum that lays out a blatant, partisan strategy to use the Senate Intelligence Committee to politically wound the President of the United States.

That is unacceptable. There is really no other way to read this memo. I am deeply disappointed that anyone—that anyone—would have a plan to so politicize the Intelligence Committee of the U.S. Senate, to render it incapable of meeting its responsibilities to this institution, to the U.S. Senate, and, indeed, to the American people.

Moreover—I had hesitated to come to the floor to address this directly, but now is the time to do that—the response by those behind this memo has been miserably inadequate, has been disappointing, and has been disturbing.

We are at a time of peril in our Nation's history. As our intelligence agencies and our Armed Forces in the Middle East are at war against our mortal enemies, those responsible for this memo appear to be—and anybody can read this memo. It is available now. The copy I have here is actually on the FOXNews Web site. But if you read it, those responsible for this memo appear to be more focused on winning the White House for their party than on winning the war against terror.

Those priorities are wrong. They are dead wrong.

As majority leader of the U.S. Senate, as one responsible for preserving the integrity of this institution and the direction of this institution, it is incumbent upon me to make sure we address this matter properly, appropriately, and adequately.

In the aftermath of the war in Iraq, the failure thus far to find deployed weapons of mass destruction is a legitimate matter for inquiry by this body, this institution, for our colleagues. After all, for nearly 10 years—throughout the 8-year tenure of President Clinton and the first 2 years of President Bush—the U.S. Congress and the White House were given a steady flow of information by the intelligence community that suggested such weapons did exist.

In fact, it was this information that precipitated, in 1998, the U.S. military attack Operation Desert Fox, ordered by President Clinton at that time, and, in part, Operation Iraqi Freedom, ordered by President Bush in 2003.

Thus, if there is incomplete or imprecise information that had been provided to President Clinton or President Bush and the U.S. Congress over a 10-year period, the intelligence community should be asked to explain. That is what the Intelligence Committee is expected to do; it is really charged by this body to do; and that is exactly—that is exactly—what Senator ROBERTS, chairman of the Intelligence Committee, set out to do.

Last spring, Senator ROBERTS, as chairman of the Intelligence Committee, made a commitment, jointly with Senator ROCKEFELLER, to conduct a thorough review of U.S. intelligence on the existence of and the threat posed by Iraq's weapons of mass destruction programs.

The review was also intended to cover Iraq's ties to terrorist groups, Saddam Hussein's threat to stability and security in the region, and his violations of human rights, including the demonstrated actual use of weapons of mass destruction; namely, chemical weapons against his own people.

The review was intended to examine the quantity of information, the quality of U.S. intelligence, the objectivity, the independence, the accuracy of the judgments reached by the intelligence community, whether or not those judgments were properly disseminated to policymakers in the executive branch, as well as to this body and the Congress, and whether any influence was brought to bear on anyone to shape the analysis to support policy objectives.

Thus, that was the initial charge and what, in fact, has occurred over the past 5 months. The Intelligence Committee staff has reviewed thousands of documents. It has interviewed over 100 individuals, including private citizens and analysts and senior officials with the Central Intelligence Agency, with the National Security Council, with the Defense Intelligence Agency, with the State Department's Bureau of Intelligence and Research, and even the United Nations.