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Senate

The Senate met at 9:29 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, we hear again the question You put before Solomon: "Ask! What shall I give you?" Suddenly we are challenged to identify our deepest need. We agree with Solomon's response when he asked for an understanding heart, one that listens to You and responds to Your guidance. Help us to listen attentively to You. A cacophony of other voices often limits our ability to hear what You have to say about the issues we face. We really need to hear the assurance You gave to Solomon and claim it for ourselves. "See, I have given you a wise and listening heart." We urgently need that gift coupled with the gift of courage to follow Your direction.

Father, continue to bless the women and men of this Senate as they humble themselves, confess their need to hear Your voice in their souls, and give dynamic leadership to our Nation at this crucial time. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator MCCAIN, is recognized.

SCHEDULE

Mr. MCCAIN. Mr. President, this morning, the pending business will be S. 442, the Internet tax bill. An agreement has been reached on the bill allowing for relevant amendments, with the addition of a Bumpers amendment regarding catalog sales. Rollcall votes are expected during today's session on or in relation to amendments offered to

the Internet bill or possibly an executive nomination. In either case, the first rollcall vote today will occur by 10:30 a.m.

Members are reminded that a cloture motion was filed yesterday on the motion to proceed to H.R. 10, the financial services bill. That vote will occur at 5:30 p.m. on Monday, October 5. Also, during Monday's session the Senate may consider any available appropriations conference reports. Therefore, further votes could occur following the 5:30 cloture on Monday. I thank my colleagues for their attention.

MEASURES PLACED ON CALENDAR—S. 2529

Mr. MCCAIN. Mr. President, there is a bill at the desk due for its second reading.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2529) entitled the "Patients' Bill of Rights Act of 1998."

Mr. MCCAIN. Mr. President, I object to further proceedings on this bill.

The PRESIDING OFFICER. Objection is heard and the bill will be placed on the calendar.

MEASURE PLACED ON CALENDAR—S.J. RES. 59

Mr. MCCAIN. I understand there is also a Senate joint resolution at the desk awaiting its second reading.

The PRESIDING OFFICER. The clerk will report the joint resolution.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 59) to provide for a balanced budget constitutional amendment that prohibits the use of Social Security surpluses to achieve compliance.

Mr. MCCAIN. I object to further consideration of this matter at this time.

The PRESIDING OFFICER. The joint resolution will be placed on the calendar.

INTERNET TAX FREEDOM ACT

The PRESIDING OFFICER (Mr. AL-LARD). The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 442) to establish national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exaction that would interfere with the free flow of commerce via the Internet, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the committee amendments reported by the Finance and the Commerce Committees are agreed to. The bill is considered original text for the purpose of further amendment.

Who seeks recognition?

Mr. MCCAIN. Mr. President, I am pleased that the Senate is today beginning debate on S. 442, the Internet Tax Freedom Act. Shortly, Senator BUMPERS will come to the floor to propose his amendment, and we expect further amendments following that.

Before I summarize the bill, I want to note for the record the importance of this measure. The reality is that this bill could determine the fate of electronic commerce. Without it, the economic revolution we are hoping for may never take place. Without it, electronic commerce may—and we are in fact seeing this occur—be hampered by politicians who see it as not as revolutionary, but as a source of new tax revenue.

First, I want to commend Senator WYDEN for his extraordinary leadership

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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in moving this legislation forward. He kept all of the interested parties at the negotiating table when on many occasions it appeared as though we were at an impasse. After months of hard work and determination, we have come much closer to appeasing the National Governors' Association and other state and local organizations. Without Senator WYDEN's assistance, the bill may never have made it this far.

This bill will do the following: It would prohibit state and local governments from imposing any Internet access tax, bit tax or any multiple or discriminatory tax on electronic commerce for a two-year period.

The bill would establish a 16 member Advisory Commission on Electronic Commerce comprised of 4 Federal representatives (the Secretaries of Commerce, State, Treasury and USTR); 6 representatives of State and local government, as well as 6 representatives of electronic industry and consumer groups, all to be appointed by the Speaker of the House, the House Minority Leader, and the Senate Majority and Minority Leaders.

The Commission would exist for 18 months to study and develop policy recommendations on the appropriate domestic and international taxation and tariff treatment of transactions using the Internet, Internet access, and other comparable or international sales. The Commission's findings and any legislative recommendations are required to be transmitted to the Congress within 18 months after the bill's enactment.

The bill also includes a sense of the Congress that there should be no new federal taxes on the Internet; a requirement that electronic commerce be examined as part of USTR's annual trade estimates report; a declaration that the Internet should be free of foreign tariffs and other barriers; and a provision stating that nothing in this bill is intended to affect implementation of the 1996 Telecommunications Act.

Mr. President, we find ourselves at a critical juncture in the evolution of our economy and our society. The information technology industry, driven by the growth of the Internet, is connecting people and businesses around the world in ways we never dreamed possible.

At this critical juncture, we are faced with a choice. We can choose to hamper the growth of this vital medium by imposing old ways of thinking that just do not apply. Or we can seek new principles to govern in this new era of ubiquitous access to information, people, products, and services.

Mr. President, I hope that Congress will take this opportunity to establish new principles and ways of thinking and governing that will allow this vibrant medium to grow and flourish.

I believe we must embrace three fundamental principles: There must be no piecemeal regulation of the Internet, a medium with interstate and global reach. There must be no discrimination

between goods sold over the Internet and goods sold by other means. There must be no tax on the right to access information.

The vast potential of the Internet can no longer be denied. According to one recently released research report, it took radio almost 40 years to reach 50 million listeners in the United States, while broadcast and cable television took about 13 and 10 years, respectively, to reach that many viewers. The number of Internet users in the U.S. reached 50 million users in just five years.

By the end of 1998, an estimated 100 million users will be connected worldwide. Some estimate that the Internet will soon reach 500 million users—nearing universal connectivity and access.

According to a recent Business Week article, online sales are expected to reach nearly \$5 billion this year—double that of 1997. From computer software and airplane tickets to cars and investing, people are taking advantage of the Internet in new ways each day.

Now is not the time to allow complicated and unadministrable taxes to kill the tremendous potential of electronic commerce.

The Internet is creating tremendous value for business as well as consumers. The innovative use of the internet enables thousands of businesses—big and small—to establish internal networks, or intranets, that link geographically dispersed workers and information within an enterprise. Lockheed Martin and Boeing Aircraft collaborating over an Intranet developed the Darkstar aircraft in 11 months with 50 people, a process that would normally require hundreds of designers and years of work.

But a business need not be the size of a Lockheed Martin or a Boeing to utilize the advantages of the Internet. With the Internet, even small local companies can obtain a global reach that would otherwise have been unthinkable. A small supply company in Pennsylvania, the Lehigh Valley Safety Supply Company, realized a 150 percent increase in revenue when they placed 50 of their items for sale on the Internet.

Given the tremendous potential of the Internet, I see no reason for partisanship on an issue which is so vitally important to the future of America. I know we are in agreement that we want to see the Internet grow and expand. Everyone, including the experts, is astonished at how quickly the Internet has grown. Literally, every expert who has studied this industry has underestimated the growth that has taken place in the past few years. So it is very likely that they are underestimating the dramatic changes and growth that we will see in the future.

That is why we need a moratorium on Internet taxation as proposed in the Internet Tax Freedom Act. This bill will allow the various experts from industry and government to sit down and

do the difficult work of determining how the Internet is different from other media and under what circumstances it should be taxed.

The time to act is now. Over the last several months, individuals representing government, consumers, and industry have been working tirelessly to make this a bill that achieves the goal of a temporary moratorium on confusing Internet taxing schemes while preserving the states' rights to continue collecting taxes. Those states that have been collecting Internet access taxes have been specifically grandfathered in the amendment that Senator WYDEN and I offer today so they can continue to collect those taxes during the moratorium.

The Commission created by this bill will address the issues of how the Internet and all remote commerce should be taxed. This Commission will make recommendations to Congress on how best to proceed. By working to create a clear taxing scheme for the Internet, we will continue to set an example for the world on how to nurture this vibrant medium.

Mr. President, the Internet Tax Freedom Act will allow the Internet to continue to develop and ultimately reach its full potential. Given the importance of this goal to consumers, businesses, and our global economy, I urge my colleagues to support this legislation.

Mr. President, on September 4, we received "An Open Letter To Congress" in support of the Internet tax moratorium legislation. It is paid for by the National Taxpayers Union, American Conservative Union, American Council of the Blind, American Legislative Exchange Council—some 60 organizations.

Mr. President, I ask unanimous consent this be printed in the RECORD.

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

AN OPEN LETTER TO CONGRESS SEPTEMBER 4, 1998.

Congress is considering various versions of Internet tax moratorium legislation. Some Members are attempting to add an issue onto these bills which we oppose. We, the undersigned organizations, oppose efforts to force vendors to collect out-of-state sales taxes when they do not have any physical presence in a state. This position is consistent with the landmark *Quill* decision by the Supreme Court, which we support.

The laudable goal behind Internet tax moratorium legislation is to create a no-new-taxes moratorium for the Internet. It would be ironic, to say the least, if Congress added a provision to this legislation that even raises the possibility for businesses, many of them quite small, to become tax collectors for the government.

Americans now pay more in taxes than they do for food, clothing, shelter, and transportation combined. The members of our organizations, like all Americans, already pay enough taxes. Some of our members are home bound, or otherwise lack the ability to visit retail stores. They like to shop at home. We strongly urge you not to add the out-of-state sales tax issue to Internet moratorium legislation.

Sincerely,
National Taxpayers Union; 60 Plus Association; American Conservative Union;

American Council of the Blind; American Legislative Exchange Council; Americans for Hope, Growth and Opportunity; Americans for Tax Reform; Association of Concerned Taxpayers; Christian Coalition; Citizens for a Sound Economy; Coalitions for America; Council for Affordable Health Insurance; Council for Citizens Against Government Waste; Empower America; Food Distributors International; Independent Insurance Agents of America;

Bill Price, Independent Living for the Handicapped; National Association for Home Care; National Association of Manufacturers; National Association of People with AIDS; National Association of Wholesaler-Distributors; National Federation of Nonprofits; National Grange; National Tax Limitation Committee; Seniors Coalition; Small Business Survival Committee; United Seniors Association; Vietnam Veterans of America; Women for Tax Reform.

CLOTURE MOTION

Mr. MCCAIN. Mr. President, in an effort to conclude this bill in a timely fashion, and with appropriations bills and other important legislation waiting in the wings for Senate action, I sent a cloture motion to the desk to S. 442, the Internet tax bill.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 509, S. 442, the Internet tax bill;

Trent Lott, John McCain, Wayne Allard, Connie Mack, Gordon Smith, Paul Coverdell, Spencer Abraham, Mike DeWine, Conrad Burns, James Inhofe, Judd Gregg, Rod Grams, Craig Thomas, Olympia Snowe, Rick Santorum, and Larry E. Craig.

Mr. MCCAIN. For the information of all Senators, this cloture vote will occur on Tuesday, or if cloture is invoked on the motion to proceed to H.R. 10, the financial modernization bill, then this cloture vote will occur immediately following the adoption of the motion to proceed to H.R. 10. All Members will be notified as to the exact time.

I now ask unanimous consent the mandatory quorum under rule XXII be waived.

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

Mr. MCCAIN. Mr. President, we expect Senator BUMPERS momentarily to propose his amendment. We would like to have a vote on that amendment as soon as Senator BUMPERS is able to describe that amendment adequately. We will have a rather brief response.

I thank Senator DORGAN for his continued efforts to reach a compromise on some of the differences we have had, as well as Senator GRAHAM of Florida and Senator GREGG of New Hampshire. We are close to agreement on several issues. I hope we can dispatch this legislation in an orderly fashion without having to go to cloture. It is just not something that we enjoy doing, because it prevents people, over time,

from getting the attention to their amendments that they deserve. So I hope we will have an agreement and not have to have a cloture vote, and conclude this legislation as soon as possible.

Again, I thank Senator DORGAN. I yield the floor knowing that the Senator from Oregon has some important comments. I hope all of us understand as soon as Senator BUMPERS gets here we will move to his amendment as quickly as possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, first let me thank the chairman of the full committee, Senator MCCAIN. I introduced S. 442 in March of 1997. Chairman MCCAIN and his staff have worked almost nonstop with me since that time to try to put together a bipartisan bill. I thank Chairman MCCAIN for all of these efforts. I share his views. We are anxious to get to the Bumpers amendment this morning. I have a few brief comments and, hopefully, we will be able to move to that expeditiously.

If ever there was an issue that called out for treatment as interstate commerce, it is the Internet. The Internet, as we all know, knows no boundaries—not Federal boundaries, not State boundaries, in effect not even global boundaries. But what we have tried to do in our efforts over the last few months, and we have done it through more than 30 separate changes, is try to be fair to all parties—the States that are trying to look thoughtfully at the ground rules for the new economy and small businesses who overwhelmingly have endorsed this legislation. For the small businesses, the Internet is a chance to compete with the Wal-Marts and other big guys because geography becomes irrelevant. So, small businesses have supported it. I think that is why we have fashioned a bill with so much bipartisan support.

The essence of this bill is that in the 21st century the new digital economy should be built on the principle of technological neutrality. The Internet should get no preference, nor should the Internet be the target of selective discrimination. Unfortunately, around the country we have seen instances, for example, where if you purchase a newspaper the traditional way, what is called snail mail, it is sent to you in your home and you pay no tax. But if you subscribe to the same newspaper via the Internet, you pay a hefty tax as a result.

Depending on what State you are in, electronic commerce may be taxed as a telecommunications service, computer service, information service, or some combination, and there are different rates around the country. My concern has long been that if a significant number of the 30,000 taxing jurisdictions in America all decide to take a bite out of the Internet, or if we have 50 States going at it individually, the Internet is going to look like Dodge City before the marshals showed up.

Chairman MCCAIN was very right, that Internet growth is going to be

enormous. There is a fair amount of Internet commerce going on today, but it is going to grow dramatically in the years ahead. That is why in our legislation we seek to come up with some ground rules for the new economy, and to do it before we have to react to critical problems.

I submit the greatest beneficiaries of this legislation are not the affluent and the powerful. The affluent and the powerful have lots of tax lawyers and specialists who, if they run up against a crazy quilt of taxes on the Internet, they are not going to have any problem using all of their legions of tax specialists to deal with that kind of situation. The people who are really going to benefit from this legislation are folks like home-based businesses, one of the fastest growing sectors of our economy. My home State of Oregon has more than 100,000 home-based businesses, and in meeting with them, many of them have said that electronic commerce is the key to their survival.

For rural communities and at-home parents and disabled individuals, the online world is a gateway to economic opportunity. If somebody in a rural community has a home-based business, for example, selling fruit or jam or something of this nature, I cannot believe that there is a single Member of the U.S. Senate who would want to subject that kind of person to a score of different taxes. I don't think there is a Senator who would want to do that. That is why we have this legislation before the Senate today, to come up with a set of ground rules.

Mr. President, here is the kind of example we are going to be talking about: If the present Senator in the chair wants to send a gift basket from Harry and David's in Medford, OR, to his cousin, say, in Florida, paying for it with a bank card in New York, using America Online in Virginia, how many jurisdictions would have the opportunity to impose a tax on that kind of transaction?

There really are no ground rules for that sort of thing today, and if there were to be a hodgepodge of large, new taxes on electronic commerce, it would be especially punitive on those folks in rural States, like Colorado and Oregon. That is one of the reasons that I and Senator MCCAIN and others who have worked on this legislation have sought to bring this to the floor expeditiously.

I would like to take a minute to explain exactly what is in the bill and what is before the Senate.

First, the legislation is not going to preempt existing State and local taxes as long as they are technologically neutral. What that means is, if the authority is there for someone to pay a 5-percent sales tax when they buy a sweater in a particular jurisdiction, under the Internet tax freedom proposal, they will pay exactly the same

kind of tax if they order it on the Internet.

States that impose and enforce taxes on Internet access in place today are going to be able to keep them. None of the States that tax Internet access today actually has a law on the books that expressly authorizes the taxation of Internet access, but as we heard in the hearings before the Commerce Committee, there are a variety of problems already cropping up as a result of administrative rulings and reinterpretations of existing law.

In fact, there is one major firm, Ver-tex, which has tried to sort through the status at the State level of how the Internet is being taxed. In a number of States, they basically said that they couldn't give a clear answer, but if anybody was interested in doing a business deal, a deal involving electronic commerce that touched on that particular State, they would be wise to get a consultation.

The legislation will not allow any State to attempt to impose or assess or attempt to collect a tax on Internet access after October 1, 1998, unless it already had done that with a tax in effect.

It is very clear that we are trying to be sensitive to the laws in place and the concerns of the States, but at the same time making sure that there is not going to be an opportunity for discriminatory taxes on electronic commerce.

In effect, what this legislation does is it ensures a timeout so that the commission of experts called for in the legislation can study these complicated questions and make sound policy recommendations to the Congress. But during that time, we take steps that we believe will be critically important to the development of electronic commerce as it relates to the smallest concerns in America. For example, the legislation assures that a web site is treated exactly like a mail-order catalog for purposes of interstate sales, so the taxing jurisdiction cannot attempt to impose a tax on a web site with respect to an out-of-State computer server.

The fact is, the online world is racing past outdated policies. The ground rules that we seek to establish here are just the beginning of what I think is going to be needed for the digital economy.

We have begun to debate in the Commerce Committee a variety of other issues. Yesterday, an important bill of Senator BRYAN's was passed dealing with online privacy concerns as they relate to children. We may hear more about that before the end of the session, but I think that with this legislation we will begin to get the common definitions, the more clearly defined principles and standards, that are going to be essential for Internet commerce to go forward.

Recently, I was home and met with some small businesses, and one of them said that he was very excited about the

work that we were doing on this legislation. He said: "Just understand that I am not going to be able to grow my Internet business if there are 30,000 taxing jurisdictions all with their hands in our pocket."

The American taxpayers made it clear of late how they regard the IRS. If we were to have thousands of small jurisdictions collecting Internet taxes, I think that the concern we would have with respect to the IRS would be multiplied many times over at the thought of thousands of mini-IRS-taxing authorities collecting Internet taxes.

I see that Senator BUMPERS has arrived. I want to say, as Senator BUMPERS comes to the floor and prepares his amendment, that I have agreed with him on a great many concerns over the years. I have agreed with Senator BUMPERS about Social Security and the many times that he has led this body to take on spending boondoggles, environmental concerns, and the like. We don't happen to agree on this issue. I think it would be a mistake to let each State have its own sales tax arrangement for the Internet. It would certainly jack up taxes dramatically on the 100,000 home-based businesses in my State and the thousands of others across the country. I do think that if we have the States going off in their own directions, we do run the real risk of having the Internet look like Dodge City before the marshals showed up.

I will conclude by way of saying that Senator BUMPERS has worked very closely with this Senator, knowing that it is particularly important to me. We have gotten agreement on a number of key questions, and that was critical to getting the legislation to the floor.

I want the Senator to know that he is going to be somebody whom this Senator will miss very, very much next year when I cannot look over and see Senator BUMPERS and get his counsel on everything from Social Security to spending boondoggles. I thank him, because he has been aware that this legislation has been a priority of mine. I know he has strong feelings about it, and he was gracious enough to let it come forward and let us get these matters resolved. I express my appreciation to Senator BUMPERS.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have not made an opening statement on this piece of legislation. I will do that at some future point. I want to allow the Senator from Arkansas to proceed with his amendment. I will, at some more convenient time, make an opening statement.

I have some very strong thoughts about a whole range of issues, including the issue that is going to be raised by the Senator from Arkansas.

But I think in an attempt to try to move this along—we want to get to a first vote on this at some point—I will ask the Senator from Arkansas to pro-

ceed and then at some point in the proceeding I will make an opening statement.

AMENDMENT NO. 3677

(Purpose: To authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property)

Mr. BUMPERS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS], for himself and Mr. GRAHAM, proposes an amendment numbered 3677.

Mr. BUMPERS. Mr. President, I ask unanimous consent that 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.")

Mr. BUMPERS. Mr. President, first, let me thank my very good friend, my distinguished colleague from the great State of Oregon, Mr. WYDEN, for his very kind and gracious comments. He talked about how he is going to miss me. Rest assured, wherever I am, if he will just raise the window, he can probably hear me.

But on a more serious note, I consider Senator WYDEN to be one of the finest additions to the U.S. Senate in my 24-year tenure here. He is truly becoming a great Senator, but more than anything else he has great values. Great values are the first thing you have to have to be a good Senator. So while I am prepared to leave at the end of this year, Senator WYDEN is one of the Senators I will certainly miss.

Let me just start off by saying, this amendment deals with the rights of States to require mail-order catalog houses to collect sales taxes on merchandise shipped into their States.

L.L. Bean, which does over \$1 billion a year, ships a lot of merchandise into my State of Arkansas, as does Lands' End, as does 6,000 or 7,000 other mail-order catalog houses; and they do not pay one cent of tax to the State of Arkansas. They do not pay one cent of tax to any State. And I will tell you why.

In 1967, the Supreme Court said, in the National Bellas Hess v. Department of Revenue case, that States may not require mail-order catalog houses to collect use taxes for them because it violates the due process clause in the Constitution, No. 1, and, No. 2, it violates the interstate commerce clause of the Constitution—finis, end of story.

In 1992, as mail-order catalogs sales began to mushroom in this country, and States could see that their tax base was being eroded—incidentally, we depend on the sales tax in our State for 50 percent of our educational funds—being eroded by this constant stream of catalogs coming into people's homes every day through the mailbox—I have been checking; I have been averaging between 5 and 10 a day

for the past year—North Dakota said, "Enough is enough." So they brought a lawsuit that resulted in the Quill decision in 1992.

They tried to get the Supreme Court to reverse the *Bellas Hess* decision that prohibited States from making mail-order houses collect sales tax. It is called a use tax. It is the same thing, but if it comes from out of State we call it a use tax. And the Supreme Court, in a very rare remarkable case of sanity, said, "We hereby reverse the *National Bellas Hess* case to the extent that we hold that the requirement of a State to make mail-order houses collect sales taxes on goods coming into their States no longer—no longer—violates the due process clause. However, we are not removing our objection to the fact that we believe the State's right to tax mail-order houses still is a violation of the interstate commerce clause." Now because the Commerce Clause grants Congress exclusive authority over interstate commerce, Congress may, if it chooses, grant the states the authority to require out-of-state tax collection.

So here we are on October 2, 1998, about my sixth year to try to do something about this patently unfair proposition, asking Congress, please, do not impose a tax. My amendment does not impose a tax on anybody; it does not require the States to impose a tax on anybody. It simply does what the Supreme Court said in 1992 we had a right to do, and that is to give the States the right to require out-of-state sellers to collect sales tax on any goods they ship into that State. And what is wrong with that?

You know, in 1995, I offered this amendment to the unfunded mandates bill, stood right here where I am standing now, made the same speech I am making today. You remember the distinguished Senator from Idaho, Senator KEMPTHORNE, offered the unfunded mandates bill. I never saw as many tears shed in the U.S. Senate in my life as I saw during that debate—crocodile tears, of course—for those poor States and counties and municipalities that the Government was always imposing mandates on. We passed laws, and we said to the States and the counties and the cities, "You have got to do this; you must do that." And it was costing the States "gazillions." They said, "Let's get that old, mean Federal Government off the backs of the States and local governments. And in the future, any time Congress passes a law that mandates that the States and local governments do anything, we will make a computation of what it is going to cost the States to comply with it, and we will send them the money." I did not vote for that. I did not vote for it for a lot of reasons. I am not here to debate that one all over again. That is a done deal.

But the interesting thing is, when I offered this amendment on the unfunded mandates bill, I said, "Here is a mandate that you're imposing on the

States by doing nothing. If you're so concerned about the States and local governments, why don't you help them with the biggest unfunded mandate of all?" It is about \$4 billion a year we impose on the States by saying, you cannot collect taxes on anybody but the poor old sucker on Main Street who collects the tax on every sale, every bag of groceries, every refrigerator, every automobile, if he happens to live in your hometown or your State.

Yes, I was a Main Street merchant as well as a jackleg lawyer. I had a hardware, furniture and appliance store. And the catalog houses were my biggest competitors, not the guy down the street—the catalog sales. I was President of the Chamber of Commerce.

I arranged for the annual banquet. I was in charge of the Christmas parade. I was on the school board. I did all of those things to make my town a decent place to raise my children. And I made everybody who bought a dollar's worth of goods pay 3, 4 or 5 cents in sales taxes. It went to teachers' salaries. It went to law enforcement, police officers, and to sweep the streets. It went to test the purity of the water we drank. That is what we depended on, the sales tax. But only, of course, if you happen to live there.

Now, think about the fact that mail-order houses in this country are selling over \$100 billion worth of goods through the mail. There are a few who collect this tax. Do you know why? Because they know it is right. Ask Senator BENNETT from Utah, a big stockholder and one of the original finders of a big mail-order house called Franklin Quest about collecting use taxes. Don't take my word for it. Ask Senator BENNETT what they did. I will tell you and let him ratify it. They sat around the table and said, "Shall we or shall we not collect sales taxes for the States in which we sell merchandise?" He said they discussed it and they concluded that, as good citizens, they should. And they did. I said, "Bob, when I was chairing the Small Business Committee and held hearings on this subject, they always talked about how complicated and difficult it was because there are 7,000 taxing jurisdictions in this country." He said, "Don't be fooled by that. Every month we push a computer button and it is done. It isn't complicated at all."

Now, 7 or 8 years ago when I started this, that was the principal debate—"It is so complicated. It is just so much paperwork, we can't do it." You rarely hear that argument anymore, since Senator BENNETT came and since I have enlightened this body about what he said. He is immensely respected here.

The NFIB—I don't know where they are now—in 1995, they said only about 35 percent of their people wanted Congress to take this action. I was getting ready to say something unkind, but I won't pursue that any further.

I simply want to say to my colleagues, where do you think this coun-

try is headed? The underlying bill is to give all sales on the Internet a free ride. The bill before the Senate is a 2-year moratorium. There will be amendments offered here to extend the moratorium to 3 or 5 years.

Listen to this, colleagues, because as I say, I am not lambasting Senator WYDEN's bill on Internet taxes. I am simply fortifying the argument I want to make on remote sales. That is, right now in 1997 Internet sales were roughly \$8 billion. It is now estimated that by the year 2002 Internet sales will be \$300 billion. You can buy an automobile on the Internet, no sales tax; you can buy a refrigerator; you can buy your furniture; you can buy anything you want on the Internet.

Now, if we are looking at Internet sales of \$300 billion a year by the year 2002, what will they be at the end of 5 years and how much revenue will the States have lost? I ask my colleagues, why in the name of God will you go back home and tell the chamber of commerce your heart is in the right place, you are for small business, you are for Main Street merchants, and turn right around and put them at a hopeless, competitive disadvantage? Why? Why should I organize the Christmas parade, pay my taxes to go to the schools, taxes for law enforcement, the fire department, while other people ship 4 million tons of catalogs into the States for them to dispose of?

Ask any mayor, any Governor, what is their biggest headache? Almost invariably, it will come back, "We need more money." Secondly, "Our biggest headache is the landfill." Not only do states have to dispose of 4 million tons of catalogs, they also have to handle the boxes and the crates that the merchandise comes in. How can the catalog people tell us, "We don't cause a burden. We are no burden to the local jurisdictions. Why do you want to tax us? We don't send our children to school in Charleston, AR. Why should we pay sales taxes?"

I will tell you precisely why they should. Because the revenue base of the States and local jurisdictions of this country is being eroded to the point where it will wind up being about half of what it is right now or less. Let me ask you a better question: Why shouldn't they pay a sales tax and compete with the people who live in those communities that have to pay taxes? It is a mystery to me.

I don't take on these causes that I continue to lose for the fun of it. I take them on because I feel strongly about them. In 1995, the Senator from Maine, Mr. Cohen—who is now Secretary of Defense—and I got into a debate here. They said the Finance Committee had not even held a hearing. Of course, the Finance Committee hadn't held a hearing, the chairman of the Finance Committee doesn't favor this bill.

Do you know something else? Somebody else said, let's study this. That is always the way out, "Let's study it." For 7 years on the mining laws, they

said we need to study this. We have been studying the mining laws since 1872, and the law is still fully intact, just as crass, just as base, just as unfair now as it was in 1872, and we are still studying it.

We will study this some more. Somebody will make the suggestion, "We have to study this. We don't know what the full impact of it is."

Let me shift gears a moment to another item, and this is always shocking to anybody you tell it to. Unhappily, most things said on the U.S. Senate floor don't get any higher than the dome here. Nobody hears it. Forty-five States in this country have a use tax. Arkansas has one. It says to L.L. Bean, if you ship merchandise into Arkansas, the person you sell it to is liable for the Arkansas use tax. It is the same thing as a sales tax. In my State, it is 5 percent.

How many people in Arkansas do you think realize that when they buy something from a remote seller, they are responsible for that use tax? Maybe about 1 in 200,000. Nobody knows it. Yet, 45 States have it. Just 10 to 15 States—I forget which number—but it was 10 in 1995; so it is maybe 15 or 20 by now—have laws that say you must report on your State income tax whether or not you bought anything from out of State.

Now, the State of Maine does something that is really unique and, in my opinion, patently unconstitutional. If you live in Maine, when you fill out your income tax return, there is a line that says, "Did you buy anything from out of State?" You put in "yes" or "no," and if the answer is yes, you put the amount down.

Let's assume you bought some furniture for \$1,000. I don't know what the sales tax is in Maine, but if it is 5 percent, you are liable for \$50. "Please multiply 5 percent times the amount you bought." And so everybody kind of routinely ignores that because they don't want to pay it and they don't have to admit that they bought anything from out of State.

So do you know what else Maine does? They say that if this line is empty and you don't report having bought anything out of State from a mail-order house, please multiply .0366 times whatever your income is. If you make \$30,000 a year, you put \$11 on that line.

As I say, in my opinion, that is powerfully unconstitutional. That is a tax that nobody ought to have to pay, and it is the wrong way to do it. A lot of people get rude awakenings. One couple from Florida went up to North Carolina because they saw this big catalog saying, "Buy your furniture at the factory in North Carolina and pay no sales tax." Not many people do this anymore. When I started in on this issue years ago, it was very common. Or, "Buy your tile or your linoleum for your kitchen from"—such-and-such—"no sales tax."

So this couple went from Florida to North Carolina and bought \$25,000 to

\$35,000 worth of furniture. Later on, the North Carolina furniture company is audited and they find that they have sold this couple in Florida, as well as couples in a lot of other places, \$25,000 worth of furniture. They notify Florida, and Florida calls these people up and say, "You owe us \$1,000," or whatever it is. Now, that is a rude awakening, isn't it? You thought you bought something that was tax free and you find out, to your regret, that you didn't.

Well, Mr. President, I have just been handed a note that the majority leader wants to have a vote. Frankly, I don't like being interrupted in the middle of a debate. It is nothing but a bed check vote. But the majority leader apparently wants the floor by 10:30 and they want me to yield the floor. I got a note that I was going to yield so that Senator LEAHY and somebody else could talk about a judicial nomination. I don't see Senator LEAHY here. I don't see Senator HATCH here. Neither one of them is half as entertaining as I am either.

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

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

EXECUTIVE SESSION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider Executive Calendar No. 529, the nomination of Sonia Sotomayor to be a U.S. circuit judge for the second circuit.

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

NOMINATION OF SONIA SOTOMAYOR, OF NEW YORK, TO BE A UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

The legislative clerk read the nomination of Sonia Sotomayor, of New York, to be a United States Circuit Judge for the Second Circuit.

Mr. MCCAIN. Mr. President, I ask unanimous consent that there be 20 minutes for debate equally divided in the usual form. I further ask consent that following the debate the Senate proceed immediately to a vote on the confirmation of the nomination. I finally ask consent that following that vote the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

Mr. MCCAIN. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, the chairman of the Judiciary Committee is delayed in a committee of conference, but I understand that he has no objection to this side beginning on this nomination. I also notify colleagues that if we reach a point where neither side has further members wishing to speak on the nomination, it is going to be the intention of the managers to yield back whatever time we have. I mention that so that people understand that it is possible that this rollcall may occur sooner than 20 minutes from now.

Mr. President, at long last, this day has finally arrived. Senate confirmation of Judge Sonia Sotomayor has been stalled for 7 long months without any explanation or justification. I have spoken on behalf of this outstanding nominee more than a dozen times. In fact, the most recent time was Monday of this week. I hope that now those who have had the secret hold on this nomination will come forth and claim "credit" for preventing this qualified nominee from helping end the emergency that has confronted the Second Circuit since March. Throughout all the time that there have been secret holds that have kept her nomination from going forward, she has been denied her rightful seniority on the court as others have gone forward. It has not been the Senate's finest hour.

I recall the glowing statement of support from Senator MOYNIHAN to the Judiciary Committee at her hearing back in September 1997, a year ago. I appreciate, as well, the strong statement Senator MOYNIHAN made to the Senate on behalf of this outstanding nominee this summer when her nomination was being stalled. I very much appreciate the efforts he has made on behalf of this outstanding nominee. He has been persistent in his support and in seeking to bring this nomination to the floor without delay. As members of the minority party, that has been a very, very difficult task.

Along with a number of Senators, I wrote to the majority leader on April 9, 1998, urging "prompt and favorable action on the nomination of Judge Sonia Sotomayor." We noted then the judicial emergency that had to be declared by Chief Judge Winter of the Second Circuit. Since March 23, he has had to cancel hearings and proceed with three-judge appellate panels that contain only one Second Circuit judge. That crisis is continuing.

What is happening is when they have these three-judge panels, only one of the judges is from the Second Circuit. They have to bring judges from elsewhere, or retired judges to hear cases. Judge Sonia Sotomayor's nomination has taken over 15 months in spite of