

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### MORNING BUSINESS

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the Senate now proceed to a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

#### INTERNET TAX MORATORIUM

Mr. ALEXANDER. Mr. President, the House voted recently 405 to 2 to extend the current Internet tax moratorium which expires at the end of this month. They voted to extend it for 4 more years. I believe the Senate should do the same thing and do it before the end of the month rather than enact a permanent moratorium, as some want to do, because permanent action is likely to invoke a far higher law—the law of unintended consequences.

We can't imagine the future impact of the World Wide Web, and a permanent moratorium could produce at least two unintended consequences: No. 1, a big unintended tax increase, or No. 2, a big unintended, unfunded Federal mandate.

Here is an example of how a permanent moratorium could produce an unintended new tax. At the time the original moratorium was enacted in 1998, Internet access meant dial-up. Today, Internet access also includes broadband. Fortunately, Congress updated the moratorium definition in 2004 so that access to broadband is exempt from taxation.

Or, here is an example of how an outdated moratorium could produce an unintended, unfunded Federal mandate on States, cities, and counties. States and local governments collect billions of dollars in sales tax on telephone services to pay for schools, roads, police, and hospital workers. Under the old definition of Internet access, telephone calls made over the Internet might have escaped such taxation. That might sound good to conservatives like me who favor lower taxes, but most members of my Republican Party were elected promising to end the practice of unfunded Federal mandates—that is, those of us in Washington telling Governors, mayors, and county commissioners what services to provide and how to pay for them. In fact, Republican candidates for Congress stood with Newt Gingrich on the Capitol steps in 1994 and said, as part of a Contract With America, “No more unfunded mandates. If we break our promise, throw us out.” In 1995, the new Republican Congress enacted a new Federal Unfunded Mandates Reform Act, banning unfunded mandates.

Make no mistake, Mr. President, the permanent extension that is proposed would be an unfunded Federal mandate because it would not allow the grandfathered States—and there are currently nine of them collecting this tax—the ability to continue to make their own decisions about what revenues to collect. It would freeze into place forever an Internet access definition that might not be wise for industry and that might not be wise for State and local governments.

That is why so many people support the idea of a 4-year moratorium on taxation of Internet access. It has the support of the National Governors Association, the National Association of Counties, The U.S. Conference of Mayors, the National League of Cities, the Multistate Tax Commission, and the AFL-CIO.

In addition to that, even though many in the industry would like to have a longer moratorium, the Don't Tax Our Web Coalition has written a letter to JOHN CONYERS, chairman of the House Judiciary Committee, saying that they prefer the permanent extension but that they believe the House-passed bill is a step forward and one they can support.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the letter from the Don't Tax Our Web Coalition and also a copy of the Congressional Budget Office cost estimate from September 9, 2003, which makes absolutely clear that such a law would be an unfunded Federal mandate under the terms of the 1995 Unfunded Federal Mandate Act.

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

DON'T TAX OUR WEB COALITION,  
October 2, 2007.

Hon. JOHN CONYERS, JR.,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.

DEAR CHAIRMAN CONYERS: On behalf of the Don't Tax Our Web Coalition (“Coalition”), I am pleased to express the Coalition's support of your effort to extend the Internet tax moratorium. Your continued leadership on these and other important matters affecting our industry is critical to consumers, and to strengthening the economy and job creation.

H.R. 3678, if enacted, would provide a temporary, four-year extension of the moratorium that is set to expire on November 1. Your bill also contains important definitional and statutory changes that improve current law. H.R. 3678 will provide much needed clarity to the communications and internet industries. By helping keep Internet access affordable, the moratorium promotes ubiquitous broadband access.

As you know, the Coalition has long endorsed H.R. 743, the Permanent Internet Tax Freedom Act. While we prefer a permanent extension, we believe that H.R. 3678 is a step forward and thus a bill we can support.

We look forward to continuing to work with you on this most important issue.

Sincerely,

BRODERICK D. JOHNSON.

#### *S. 150—Internet Tax Nondiscrimination Act*

Summary: S. 150 would permanently extend a moratorium on certain state and local taxation of online services and electronic

commerce, and after October 1, 2006, would eliminate an exception to that prohibition for certain states. Under current law, the moratorium is set to expire on November 1, 2003. CBO estimates that enacting S. 150 would have no impact on the federal budget, but beginning in 2007, it would impose significant annual costs on some state and local governments.

By extending and expanding the moratorium on certain types of state and local taxes, S. 150 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would cause state and local governments to lose revenue beginning in October 2006; those losses would exceed the threshold established in UMRA (\$64 million in 2007, adjusted annually for inflation) by 2007. While there is some uncertainty about the number of states affected, CBO estimates that the direct costs to states and local governments would probably total between \$80 million and \$120 million annually, beginning in 2007. The bill contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: CBO estimates that enacting S. 150 would have no impact on the federal budget.

Intergovernmental mandates contained in the bill: The Internet Tax Freedom Act (ITFA) currently prohibits state and local governments from imposing taxes on Internet access until November 1, 2003. The ITFA, enacted as Public Law 105-277 on October 21, 1998, also contains an exception to this moratorium, sometimes referred to as the “grandfather clause,” which allows certain state and local governments to tax Internet access if such tax was generally imposed and actually enforced prior to October 1, 1998.

S. 150 would make the moratorium permanent and, after October 1, 2006, would eliminate the grandfather clause. The bill also would state that the term “Internet access” or “Internet access services” as defined in ITFA would not include telecommunications services except to the extent that such services are used to provide Internet access (known as “aggregating” or “bundling” of services). These extensions and expansions of the moratorium constitute intergovernmental mandates as defined in UMRA because they would prohibit states from collecting taxes that they otherwise could collect.

Estimated direct costs of mandates to state and local governments: CBO estimates that repealing the grandfather clause would result in revenue losses for as many as 10 states and for several local governments totaling between \$80 million and \$120 million annually, beginning in 2007. We also estimate that the change in the definition of Internet access could affect tax revenues for many states and local governments, but we cannot estimate the magnitude or the timing of any such additional impacts at this time.

UMRA includes in its definition of the direct costs of a mandate the amounts that state and local governments would be prohibited from raising in revenues to comply with the mandate. The direct costs of eliminating the grandfather clause would be the tax revenues that state and local governments are currently collecting but would be precluded from collecting under S. 150. States also could lose revenues that they currently collect on certain services, if those services are redefined as Internet access under the bill.

Over the next five years there will likely be changes in the technology and the market for Internet access. Such changes are likely to affect, at minimum, the price for access to the Internet as well as the demand for and the methods of such access. How these technological and market changes will ultimately affect state and local tax revenues is

unclear, but for the purposes of this estimate, CBO assumes that over the next five years, these effects will largely offset each other, keeping revenues from taxes on Internet access within the current range.

#### *The grandfather clause*

The primary budget impact of this bill would be the revenue losses starting in October 2006—resulting from eliminating the grandfather clause that currently allows some state and local governments to collect taxes on Internet access. While there is some uncertainty about the number of jurisdictions currently collecting such taxes—and the precise amount of those collections—CBO believes that as many as 10 states (Hawaii, New Hampshire, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Texas, Washington, Wisconsin) and several local jurisdictions in Colorado, Ohio, South Dakota, Texas, Washington, and Wisconsin are currently collecting such taxes and that these taxes total between \$80 million and \$120 million annually. This estimate is based on information from the states involved, from industry sources, and from the Department of Commerce. In arriving at this estimate, CBO took into account the fact that some companies are challenging the applicability of the tax to the service they provide and thus may not be collecting or remitting the taxes even though the states feel they are obligated to do so. Such potential liabilities are not included in the estimate.

It is possible that if the moratorium were allowed to expire as scheduled under current law, some state and local governments would enact new taxes or decide to apply existing taxes to Internet access during the next five years. It is also possible that some governments would repeal existing taxes or preclude their application to these services. Because such changes are difficult to predict, for the purposes of estimating the direct costs of the mandate, CBO considered only the revenues from taxes that are currently in place and actually being collected.

#### *Definition of Internet access*

Depending on how the language altering the definition of what telecommunications services are taxable is interpreted, that language also could result in substantial revenue losses for states and local governments. It is possible that states could lose revenue if services that are currently taxed are redefined as Internet "access" under the definition in S. 150. Revenues could also be lost if Internet access providers choose to bundle products and call the product Internet access. Such changes would reduce state and local revenues from telecommunications taxes and possibly revenues from content currently subject to sales and use taxes. However, CBO cannot estimate the magnitude of these losses.

Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 21, 2003, CBO transmitted a cost estimate for H.R. 49, the Internet Tax Nondiscrimination Act, as ordered reported by the House Committee on the Judiciary on July 16, 2003. Unlike H.R. 49, which would eliminate the grandfather clause upon passage, S. 150 would allow the grandfather clause to remain in effect until October 2006. Thus, while both bills contain an intergovernmental mandate with costs above the threshold, the enactment of S. 150 would not result in revenue losses to states until October 2006.

Estimate prepared by: Impact on State, Local, and Tribal Governments: Sarah Puro; Federal Costs: Melissa Zimmerman; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## HONORING OUR ARMED FORCES

STAFF SERGEANT JARRED SETH FONTENOT

Mr. SALAZAR. Mr. President, I rise today to honor the memory of SSG Jarred Seth Fontenot of the 2nd Battalion, 12th Infantry Regiment, 2nd Infantry Division, out of Fort Carson, CO. Sergeant Fontenot was killed last Thursday in an engagement with insurgents in Baghdad. He died of injuries from an explosion and small arms fire that rained down on his patrol. Sergeant Fontenot was 35 years old, a loving husband, and a father of four.

Jarred Fontenot grew up in a family steeped in military tradition. His grandfather, who helped raise Jarred after his parents died at an early age, served in the Army. His two great uncles attended West Point, later joining the Navy and Marines. One of his great uncles died in Korea, a place Jarred would later serve.

Jarred's family speaks of him as a man who loved his job and who embraced the virtues of military service. "He loved being a soldier," his grandmother recalls, "and he died doing what he loved."

Sergeant Fontenot was on his second tour in Iraq, on a mission to help bring security and stability to a region torn by violence and tragedy. Every day, he and his unit put themselves in harm's way to give Iraqi citizens a chance at a society governed by the rule of law, free from the threats of sectarian strife, terrorism or autocratic rule. He served bravely and was highly decorated, earning the Overseas Service Ribbon, the Parachute Badge, and the Army Commendation Medal, an honor bestowed upon those who have distinguished themselves by their service and acts of heroism.

Between deployments, Jarred devoted himself to law enforcement in his hometown of Port Barre, LA. On his days off, he would volunteer his expertise and his time to help his fellow peace officers. Needless to say, he earned the respect and appreciation of those with whom he served.

Mr. President, how can we properly honor the deeds of a man such as Jarred Fontenot, so devoted to his country, his family, and to those with whom he served? No words can match the magnitude of his virtue.

Pericles, the great Athenian general, suggested that we honor the sacrifices of soldiers like Jarred Fontenot by reflecting not only on his life and loss, but also on the rewards that he and other soldiers have delivered to the nation for which they fought.

At a funeral oration to honor soldiers who had died in one of the first battles of the Peloponnesian War, Pericles told the crowd that:

Any one can discourse to you for ever about the advantages of a brave defense, which you know already. But instead of listening to him I would have you day by day fix your eyes upon the greatness of Athens, until you become filled with the love of her; and when you are impressed by the spectacle of her glory, reflect that this empire has

been acquired by men who knew their duty and had the courage to do it, who in the hour of conflict had the fear of dishonor always present to them, and who, if ever they failed in an enterprise, would not allow their virtues to be lost to their country, but freely gave their lives to her as the fairest offering which they could present at her feast.

In this Chamber, the greatest deliberative body in the world, I ask that we honor Sergeant Fontenot by fixing our eyes on those freedoms which, for more than two centuries, have endured and prospered in this Chamber and across America. Our freedom of speech, our freedom of assembly, our freedom from self-determination, our freedom from tyranny and violence—these are the rewards that the American soldier has delivered, generation after generation, to a grateful and humble nation. So long as the United States remains a beacon for freedom, democracy, and justice, their sacrifices will never be forgotten.

To the family of SSG Jarred Fontenot—to his wife, Dana, his four children, to his grandparents Charles and Dorthy, and to his sister—I know of no words that can describe or assuage the pain you feel. I pray that in time you can find comfort in the knowledge that Jarred was doing something he truly loved, of which he was extraordinarily proud, and for which his country is eternally grateful.

"For where the rewards of virtue are greatest," Pericles reminded the departing Athenian crowd, "there the noblest citizens are enlisted in the service of the state." Jarred Fontenot was among the noblest of our citizens. May his legacy endure in the strength of our democracy.

Mr. LAUTENBERG. Mr. President, another 2 months have passed, and more American troops lost their lives overseas in Iraq and Afghanistan. It is only right that we take a few moments in the U.S. Senate to honor them. Outside my office here in Washington, we have a tribute called "Faces of the Fallen." Visitors to the Senate from across the country have stopped by the memorial. I encourage my colleagues to come see this tribute on the third floor of the Hart Building.

I last came to the Senate floor to honor our fallen troops in early August. Since that time, the Pentagon has announced the deaths of 182 troops in Iraq and in Operation Enduring Freedom, including in Afghanistan. They will not be forgotten. So today I will read their names into the RECORD:

PO3 Mark R. Cannon, of Lubbock, TX  
SPC Chirasak Vidhyarkorn, of Queens, NY  
SGT Randell Olguin, of Ralls, TX  
GYSGT Herman J. Murkerson Jr., of Adger, AL  
SGT Robert T. Ayres III, of Los Angeles, CA  
SGT Zachary D. Tellier, of Charlotte, NC  
SSGT Donnie D. Dixon, of Miami, FL  
James D. Doster, of Pine Bluff, AR  
SPC Ciara M. Durkin, of Quincy, MA  
Randy L. Johnson, of Washington, DC  
SPC Mathew D. Taylor, of Cameron Park, CA  
PFC Christopher F. Pfeifer, of Spalding, NE