

have just as severe an impact. I would like to spend a minute or two talking about the destructive taxes that are in this legislation.

When we add it all up, the new health care law basically requires new taxes of about $\frac{1}{2}$ trillion—not to pay down the national debt, not to solve the Nation's debt woes but to create a new entitlement. The Treasury Department's Inspector General for Tax Administration has looked at the impact of the health care law on the Tax Code and said this: "The law is the largest set of tax law changes in 20 years."

That is no small undertaking when we think about all that has happened over the last couple of decades, that we ended up with an impact on the Tax Code that is the largest set of tax law changes in 20 years, according to the Treasury expert who looked at this. There are 42 separate provisions adding to or amending the Internal Revenue Code in the health care law. So much of this law was put together in the last days of this debate, people were scrambling around trying to read it and understand it and get information out to their constituents.

Speaker PELOSI said: We will probably have to pass this law to figure out what is in it. And we are now figuring out what is in it, and it is so much more than a health care law. There are 42 separate provisions that add to or amend the Internal Revenue Code.

The Boston Globe weighed in on this. They pointed out the 2.3-percent excise tax on medical device suppliers, according to the Globe, "will force industry leaders to lay off workers and curb the research and development of new medical tools." There is no question about it. When we add up the tax law changes, the impact from a regulatory standpoint and the other provisions of this law, this is not going to result in the promised jobs that Speaker PELOSI spoke of. It is a job killer.

If we look at what this law is doing, it will actually shrink the labor force, actually create a disincentive to work or to receive a pay raise. I referenced earlier in my comments a small business owner in the Bellevue, NE, area. I was sitting in a Business Roundtable a little more than a year ago. We were just going around the room, and I was listening to small businesses describe to me some of the challenges they face.

A woman, a small business owner, said to me: MIKE, we have studied this health care law every which way we can. I am right on the edge of having 50 employees. I am told if I go over 50 employees, I am now subject to all of the ramifications of the health care law. After looking at this I have decided I will not grow my business beyond 50 employees. I do not want to deal with this health care law.

Her discussion with me has stuck with me all of these months. Why is it that Washington would actually pass legislation that would discourage her from hiring additional employees to grow her business? It makes no sense

whatsoever. Why are we here in Washington creating a disincentive for the small business owner? Why are we costing Americans jobs?

The Congressional Budget Office has looked at this legislation. They have come to the conclusion that the American labor supply will be reduced by 100,000 workers. The CBO quote is this:

The law will encourage some people to work fewer hours or to withdraw from the labor market.

The more we learn about this health care law, the more we come to realize this is flawed policy. It passed and it was signed into law by the President of the United States, but it goes beyond flawed policy. It impacts real people who are trying to make a real living.

My comments today started with a story about 50 Nebraskans who lost their jobs or are about to lose their jobs because of the health care law. I am concerned that it is not going to stop there; that as employers are more and more burdened with the thousands of pages of regulations, they will come to realize their best strategy is to try to figure out how to deal with these new requirements and they will pull back on hiring, which is exactly what we do not want to have happen in this economy.

With that, I conclude my remarks and our colloquy today.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ENZI. I also ask unanimous consent that the Senator from Illinois and the Senator from Tennessee be allowed to enter into a colloquy with me for the time that we have allotted.

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

MARKETPLACE FAIRNESS ACT

Mr. ENZI. Mr. President, I am going to talk about a problem I have tried to solve for 14 years. Today, I think we have a new solution and "the" solution—The Marketplace Fairness Act. Our solution has to do with sales taxes that are not being collected at the present time. It is a loophole in the tax law.

I used to be a retailer. I never thought it was fair that I had to collect the sales taxes but the people from out of State did not have to collect the same sales tax. I used to be a mayor, and this bill is a jobs bill and an infrastructure bill. A lot of people do not realize that sales taxes help pay for schools, police and firemen. They may not realize it pays for infrastructure, such as streets and sewers. I always tell people it is a little tough to flush the toilet over the Internet.

The Marketplace Fairness Act would allow States—not require States—to be able to have the out-of-State online sellers, providing they sell more than \$500,000 in a year, to collect the State sales tax. I have also been a State legislator, and I can tell you we never intended to pass a law to tax the people on Main Street who buy the yearbooks and participate in community activities to be the ones to collect the tax, and anyone from out of State to not have to do it. This bill cleans up that problem at the same time. Does it make much of a difference? Yes.

We are being asked as a Congress to give money to the States for their teachers, their firemen, and their infrastructure. It is because there is a decreasing amount of revenue going to them through sales taxes that are owed, but are not currently being collected. People may not realize it, but when they buy something online, if the tax is not collected by the seller, they still owe it. This is not a new tax; it is a tax that is already on the books. No legislator ever intended for it to just be for Main Street retailers. If States so choose, sales taxes should be collected by all retailers. In our attempts to fix this problem, we have received a number of support letters for this new bill. I hope everybody will take a look at them. They can view them online. I ask unanimous consent these letters be printed in the RECORD.

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

NATIONAL CONFERENCE
OF STATE LEGISLATURES,
November 9, 2011.

Hon. RICHARD DURBIN,

*U.S. Senate,
Washington, DC.*

Hon. LAMAR ALEXANDER,

*U.S. Senate,
Washington, DC.*

Hon. MICHAEL ENZI,

*U.S. Senate,
Washington, DC.*

Hon. TIM JOHNSON,

*U.S. Senate,
Washington, DC.*

DEAR SENATORS DURBIN, ENZI, ALEXANDER AND JOHNSON: On behalf of the National Conference of State Legislatures (NCSL) we would like to express our support and appreciation for your introduction of the Marketplace Fairness Act, which will provide those states that comply with the simplification requirements outlined in the legislation, the authority to require remote sellers to collect those states' sales taxes.

At a time when states continue to face severe budget gaps—states closed shortfalls totaling \$72 billion leading into the FY 2012 budget process—it is essential states be allowed to collect the revenue generated by uncollected sales taxes. In 2012, states will collectively lose an estimated \$23.3 billion in uncollected sales taxes from out-of-state sales, with more than \$11.3 billion alone from electronic commerce transactions, according to a study by the University of Tennessee. The amount of uncollected sales taxes will continue to grow, especially with the unprecedented growth of online commerce.

The enactment of the Marketplace Fairness Act is imperative in light of the current deliberations by the Joint Select Committee

on Deficit Reduction and resulting sequestration if the "Super Committee" is unsuccessful. Under either scenario, states will likely face hundreds of billions in reductions in many state-federal programs. While the \$23.3 billion in uncollected sales taxes will not match any funding reductions, it will provide states with some fiscal relief. In the words of Senator Roy Blunt, a sponsor of this legislation, it is "fiscal relief for the states that does not cost the federal government a dime."

The Marketplace Fairness Act is also a win for local main street businesses throughout the country by leveling the playing field between these main street businesses who have to collect sales taxes and out-of-state merchants who currently do not. Allowing some remote sellers to avoid collecting this tax is unfair to the main street merchants that make up the lifeblood of our local communities. The legislation also removes the liability for businesses collecting sales taxes, ensuring that sellers are held harmless for calculations and collections using the information and certified technology provided by the states that have complied with the Act.

There will be some who claim that this is a new tax; nothing could be further from the truth. This legislation will not require any state to levy a sales tax on any product or means of buying a product. It merely corrects a tax avoidance problem that if not closed now, will only get worse and possibly push states to seek new revenue sources to make up for the uncollected sales taxes.

On behalf of our colleagues from across the country, we thank you for introducing this vital legislation and in doing so, enhancing state sovereignty and fiscal federalism.

Sincerely,

SENATOR STEPHEN MORRIS,
*President, Kansas Senate,
NCSL President.*

SENATOR RICHARD MOORE,
*Massachusetts Senate,
NCSL Immediate Past President.*

—
STREAMLINED SALES TAX
GOVERNING BOARD, INC.,
November 9, 2011.

Hon. RICHARD DURBIN,
Hon. TIM JOHNSON,
Hon. MIKE ENZI,
Hon. LAMAR ALEXANDER,
*U.S. Senate,
Washington, DC.*

DEAR SENATORS DURBIN, ENZI, JOHNSON AND ALEXANDER: The 24 Streamline states want you to know they support your introduction of the Marketplace Fairness Act.

Online retailers have a competitive price advantage over brick-and-mortar retailers harming the brick-and-mortar retailers. Many main street businesses are little more than showrooms where consumers go to "kick the tires" on products they later buy online harming the local business and the community depending on the sales tax from that sale.

At a time when Main Street retailers face enormous competitive challenges it is appropriate for Congress to end this unfair treatment.

After our ten years of effort to simplify sales tax administration we are encouraged by your effort to get Congress to level the playing field for all retailers.

Sincerely,

SENATOR LUKE KENLEY,
President.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, DC, November 9, 2011.

Hon. RICHARD DURBIN,
*U.S. Senate,
Washington, DC.*
Hon. TIM JOHNSON,
*U.S. Senate,
Washington, DC.*
Hon. MIKE ENZI,
*U.S. Senate,
Washington, DC.*
Hon. LAMAR ALEXANDER,
*U.S. Senate,
Washington, DC.*

DEAR SENATORS DURBIN, JOHNSON, ENZI AND ALEXANDER: On behalf of the National Association of Counties (NACo) and the nation's 3,068 counties, I applaud the introduction of the Marketplace Fairness Act. At a time when counties continue to make the tough decisions and provide services for our mutual constituents with fewer resources, we appreciate your legislative efforts to both assure a simpler system of taxation and help our members recover tax revenues due from purchases made by remote means.

Due to the changing nature of commerce and sales and use tax collection, your legislation responds appropriately by establishing a path to modernize the current system. According to a University of Tennessee study in 2009, e-commerce sales have grown from just over \$900 billion in 1999 to more than \$2 trillion in 2006. That same study estimated revenue loss for state and local government to the tune of \$10.1 billion to \$11.3 billion in sales taxes in 2011 alone. Although NACo has worked with other state and local government representatives to champion for collection of remote sales taxes for over a decade, there is no time better than now for this legislation to move forward. Local governments are facing declining revenues due in part to rising mortgage foreclosures, and a reduction in assistance from their states and the federal government.

While your legislation is important in moving us towards collection of remote sales tax, it also serves the purpose of creating equity for those businesses within our local communities. The increasing strength of electronic commerce creates exciting new marketplaces, but it has also put traditional retail outlets at an unfair disadvantage because of outdated and inequitable tax and regulatory environments.

NACo strongly supports your legislative efforts to require collection of taxes made on remote sales, and we appreciate that you recognize the longstanding Streamlined Sales Tax Agreement Project (SSTA). We are also pleased that you have excluded issues such as local telecommunications tax reform, which should be addressed separately from collection of remote sales and use taxes.

Thank you again for introducing this important legislation. We look forward to working with you and other supporters of the Act and the SSTA to see the collection of remote sales taxes enacted to federal law.

Sincerely,
LENNY ELIASON,
*Commissioner, Athens County, Ohio,
NACo 2011-2012 President.*

NOVEMBER 9, 2011.

Hon. RICHARD DURBIN,
Hon. MIKE ENZI,
Hon. TIM JOHNSON,
Hon. LAMAR ALEXANDER,
*U.S. Senate,
Washington, DC.*

DEAR SENATORS DURBIN, ENZI, JOHNSON AND ALEXANDER: As leaders of the local government associations listed above, we applaud the introduction of the Marketplace Fairness Act, which will both assure a simpler system

of taxation and help our members recover tax revenues that are due from purchases made by remote means.

Your legislation responds appropriately to the changing nature of commerce and sales and use tax collection. While the increasing strength of electronic commerce creates exciting new marketplaces, it has also put traditional retail outlets at an unfair disadvantage because of outdated and inequitable tax and regulatory environments.

Our organizations strongly support your legislative efforts to require collection of taxes made on remote sales, and we are pleased that in doing so that you recognize the longstanding Streamlined Sales Tax Agreement Project (SSTA). We are also pleased that you have excluded issues such as local telecommunications tax reform, which should be addressed separately from collection of remote sales and use taxes.

Although we have championed for collection of remote sales taxes for over a decade, there is no time better than now for this legislation to move forward, as local governments face the fifth straight year of declines in revenue with probable further declines in 2012.

Thank you again for introducing this important legislation. We look forward to working with you and other supporters of the Act and the SSTA to see the collection of remote sales taxes enacted into federal law.

Sincerely,

LARRY E. NAAKE,
*Executive Director,
National Association
of Counties.*

DONALD J. BORUT,
*Executive Director,
National League of
Cities.*

TOM COCHRAN,
*CEO and Executive
Director, United
States Conference of
Mayors.*

JEFFREY L. ESSER,
*Executive Director and
CEO, Government
Finance Officers As-
sociation.*

—
FEDERATION OF
TAX ADMINISTRATORS,
November 9, 2011.

SENATOR RICHARD J. DURBIN,
*Senate Hart Office Building,
Washington, DC.*

SENATOR MICHAEL B. ENZI,
*Russell Senate Office Building,
Washington, DC.*

SENATOR LAMAR ALEXANDER,
*Dirksen Senate Office Building,
Washington, DC.*

SENATOR TIM JOHNSON,
*Dirksen Senate Office Building,
Washington, DC.*

DEAR SENATORS DURBIN, ENZI, ALEXANDER AND JOHNSON: The Federation of Tax Administrators (FTA) thanks you for introducing the new version of the Main Street Fairness Act for which we are pleased to be able to announce our support. FTA is an association of the tax administration agencies in each of the 50 states, the District of Columbia, and New York City.

The Main Street Fairness Act offers a realistic framework for both large and small states to collect sales taxes that are already due and owing in a simplified administrative system. We regard the ability to collect sales taxes from remote sellers to be a matter of the highest importance. This Act will significantly improve tax compliance for both state and local governments while at the same time creating a level playing field for all

businesses. This is because the current system disadvantages in-state “bricks and mortar” stores to the advantage of out-of-state businesses and this Act will help improve business activities in our states and the employment these in-state businesses generate.

We look forward to working with you during the legislative process to enact final legislation into law.

Sincerely,

PATRICK T. CARTER,
President.

NATIONAL RETAIL FEDERATION,
Washington, DC, November 8, 2011.

Hon. MICHAEL B. ENZI,
Ranking Member, Committee on Health, Education, Labor & Pensions, U.S. Senate, Washington, DC.

Hon. RICHARD J. DURBIN,
Assistant Majority Leader, U.S. Senate, Washington, D.C.

Hon. LAMAR ALEXANDER,
Chairman, Republican Conference, U.S. Senate, Washington, DC.

Hon. TIM JOHNSON,
Chairman, Committee on Banking, Housing & Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR ENZI, SENATOR DURBIN, SENATOR ALEXANDER AND SENATOR JOHNSON: On behalf of the National Retail Federation (NRF), I am writing in support of the Marketplace Fairness Act, which levels the playing field between local and out-of-state merchants with respect to collection of sales taxes.

As the state of retailing evolves and internet sales become a more prominent portion of total retail sales, it is critical that the tax laws not discriminate between similar businesses based on how their products are distributed. The Marketplace Fairness Act will eliminate this discrimination by removing the constitutional limitation on your State's authority to collect sales and use taxes from remote sellers. Over a quarter trillion dollars will go uncollected in the next decade unless this legislation is enacted.

As the world's largest retail trade association and the voice of retail worldwide, NRF's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the United States and more than 45 countries abroad. In the U.S., NRF represents an industry that includes more than 3.6 million establishments and which directly and indirectly accounts for 42 million jobs—one in four U.S. jobs. The total U.S. GDP impact of retail is \$2.5 trillion annually, and retail is a daily barometer of the health of the nation's economy.

The Marketplace Fairness Act will bring fairness to large and small retailers alike and provide a business climate in which these retailers have a better opportunity to grow and create jobs. Our members look forward to working with you to help this legislation become law.

Sincerely,

DAVID FRENCH,
*Senior Vice President,
Government Relations.*

RETAIL INDUSTRY
LEADERS ASSOCIATION,
Arlington, VA, November 9, 2011.

Hon. MIKE ENZI,
*U.S. Senate,
Washington, DC.*

DEAR SENATOR ENZI: On behalf of the Retail Industry Leaders Associations (RILA), and the millions of Main Street retailers throughout the country, we would like to express our strong support for the Marketplace Fairness Act. This legislation levels the playing field for Main Street brick-and-mortar businesses by closing a loophole that

puts them at a competitive disadvantage to the online retail giants. RILA and our membership are grateful for your leadership on this important issue and we are committed to helping make this legislation law this Congress.

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Its members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Because of a decades-old loophole that pre-dates the Internet, online-only companies can achieve as much as a 10-percent price advantage over brick-and-mortar retailers by not collecting state sales taxes. This special treatment has the effect of the government picking winners and losers in the marketplace, and main street businesses simply cannot compete over the long term with online giants that enjoy a government-sanctioned competitive advantage.

This loophole is costing jobs on Main Street while shortchanging state budgets by an estimated \$23 billion in uncollected state sales taxes annually, a figure that will only increase as Internet commerce continues to grow. Few Americans know that their state requires them to pay the sales tax on purchases made online if the vendor does not collect it at the point of sale, leaving consumers vulnerable to penalties, interest and increased scrutiny from state auditors. If enacted, the Marketplace Fairness Act would remove this burden from your constituents and in the process empower states to address their budget deficits without having to raise taxes—all without any cost to the federal government.

In closing, we strongly support the Marketplace Fairness Act to eliminate this antiquated loophole and view it as critical to preserving Main Street businesses and the jobs they provide. Thank you again for your leadership on this important issue.

Sincerely,

KATHERINE LUGAR,
*Executive Vice President,
Public Affairs.*

INTERNATIONAL COUNCIL
OF SHOPPING CENTERS, INC.,
Washington, DC, November 7, 2011.

DEAR SENATORS ALEXANDER, DURBIN AND ENZI: On behalf of the more than 42,000 members of the International Council of Shopping Centers (ICSC), I would like to thank you for your leadership on the Marketplace Fairness Act. We strongly support this bipartisan legislation that will level the playing field for community-based retailers by offering long-overdue sales tax fairness.

ICSC was founded in 1957 and is the premier global trade association of the shopping center industry. Its members include shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, as well as academics and public officials.

Under the current system, not all retail sales are treated equally. While brick-and-mortar retailers must remit sales and use taxes, many remote sellers, such as catalog and online vendors, are exempt from such requirements. Our current sales tax policy unfairly impacts local retailers—many of whom have also been hit during the recession—and places an impractical legal burden on taxpayers and consumers, costing state and local governments billions in much-needed revenue.

The Marketplace Fairness Act would eliminate the present system's lopsided man-

ner of taxing community-based retailers, remove the liability currently being pushed onto consumers, and promote community investment. More importantly, it would provide support for local businesses and necessary revenue to states without adding to the federal deficit, establishing new taxes or increasing existing taxes. This bill is a true stimulus for our states and local communities.

It is time for the federal government to allow states to enforce their laws and promote sound policy that will allow community-based and internet retailers to thrive in the 21st Century marketplace.

Thank you again for the dedication and strong leadership that was required to create this important legislation.

Sincerely,

BETSY LAIRD,
*Senior Vice President,
Office of Global Public Policy.*

Mr. ENZI. Some of the groups include: One is from the National Conference of State Legislatures, one from the National Association of Counties, the National League of Cities, the Federation of Tax Administrators, The National Retail Federation, the Retail Industry Leaders Association, the International Council of Shopping Centers, and the Governing Board of the Streamlined Sales and Use Tax Agreement.

I want to read one from Amazon.com because they are one of the world's largest online sellers. In the past, they have opposed previous versions of the bill, but they think we have this one right.

The letter states:

Thank you very much for your legislation on interstate sales tax collection.

Amazon strongly supports enactment of your bill and will work with you, your colleagues in Congress, retailers, and the states to get this bipartisan legislation passed. It's a win-win resolution—and as analysts have noted, Amazon offers customers the best prices with or without sales tax.

If enacted, your bill will allow states to require out of state retailers to collect sales tax at the time of purchase and remit those taxes on behalf of customers, and it will facilitate collection on behalf of third party sellers. Thus, your bill will allow states to obtain additional revenue without new taxes or federal spending and will make it easy for consumers and small retailers to comply with state sales tax laws.

Amazon is grateful for your hard work on the issue, and we look forward to working with you and your colleagues in Congress to pass this legislation.

We have a number of other supporters in addition to the others I just mentioned. We are appreciative of their support and look forward to working with them to get this bill enacted.

The Marketplace Fairness Act is a bipartisan bill. The original cosponsors on it are five Republicans—Senators ALEXANDER, BOOZMAN, BLUNT, CORKER, and me and five Democrats—Senators DURBIN, TIM JOHNSON, REED, WHITEHOUSE, and PRYOR. A key person in this debate has been the Senator from Illinois, Mr. DURBIN, who introduced a previous version of the bill. We encourage our colleagues to take a look at Senator DURBIN's previously introduced

bill and the Marketplace Fairness Act to see the differences—I think our bipartisan bill is a very passable bill.

At this point, I would ask Senator DURBIN if he has any comments he would like to share as he has been an integral part of making the bill a strong bipartisan product and realizing the plight the retailers and the state and local governments are in.

Mr. DURBIN. I thank my colleague, Senator ENZI. I want to give fair warning to all who are witnessing the debate that bipartisanship is about to break out on the floor of the Senate, and you can witness it. We have a bipartisan effort led by Senator ENZI, who has really been dedicating his life in public service, as a former retailer, to being sensitive to the needs of Main Street and small business. For years, he worked with our former colleague, Senator Byron Dorgan of North Dakota, and they did their best to pass this legislation. When Senator Dorgan retired, I approached Senator ENZI and said: I would like to join you in this effort. I am honored to be on the floor with him and our mutual friend, Senator ALEXANDER, in this combined bipartisan effort to deal with an issue I think is essential to fairness in our economy and helping small businesses thrive, which is the key to economic revitalization.

If you ask the small businesses in my home State of Illinois what they want, it is not a big handout from Washington, nor any special attention. Frankly, they ask for a level playing field: Let them compete. What Senator ENZI has said is that many retailers in my State, his, and every State are finding it more difficult to compete because they have to rent a building or buy one. They have to pay the property taxes. They, of course, have to pay utility bills and local taxes that might be generated because of their sales either to the State or local government. In each instance, they are investing back into the community and State in which they live. That is part of the basic understanding we have in this country, that we are in this together and we need to cooperate. The businessman down the street who is selling something in a store is also at the same time supporting the local community to make sure it has traffic lights and make certain it has police protection and utilities and streets and curbs and gutters and everything that goes with it.

But there has been a new phenomena in the American marketplace over the last several decades, and now it is in full throat, and that is the Internet. Internet sales are an amazing entity—we can literally click a mouse and buy a product that will arrive several days later at our home or business place. It also has invited an inequity, an unfairness that we address in this bill.

We are not creating any new taxes in this bill. I say to my friends on both sides of the aisle, that is not our intention, nor does this bill do that. What it

does is it provides a mechanism to collect existing taxes that are owed under existing law, period. We do this in a fashion—which Senator ALEXANDER will describe in a moment—that capitalizes on the technology and software available today to make this a process that is not burdensome and does not slow down commerce in any way.

I recently went to Bloomington, IL, and a number of other communities in my State and sat down with local retailers and had them tell their stories—in many cases, depressing stories—about what they are going through. In one instance, this fellow sells camping gear, outdoor wear, some snorkeling equipment, and ski equipment, and it is not unusual for him and for others who are selling that type of sporting equipment to have local customers come in and look for the product they want, actually get a fitting to make sure they get the right size, and then leave to order it on the Internet so they can escape any sales tax liability. Well, that isn't fair to the local merchant, and it certainly wasn't the intention of Illinois or any other State to impose a sales tax just on those businesses that physically exist in our States.

This bill, the Marketplace Fairness Act, applies this sales tax across the board to sales across the United States, and it is voluntary. States have to decide they want to move into this field and use this opportunity. I think that is the way to approach it. Some 24 States, if I am not mistaken, have already signed up for this streamlined coalition which allows them to make this happen. Other States, by complying with this law and passing a local State law, can do the same. It is their option. We don't impose it or demand it. It is their option, if they choose it, to use existing sales tax and to take the initiative at the State level. As Senator ALEXANDER has reminded me many times, it is a States rights issue, as it should be, and that is what we are focusing on in this legislation.

I think it is an issue of fairness, and I think it goes beyond what we are facing today in terms of the disparity between Democrats and Republicans. We are coming together. We are coming together on behalf of tax fairness, coming together on behalf of States rights, coming together to make certain that small businesses across America have the resources they need to prosper, be profitable, and, we hope, to expand their workforce. We need to create more jobs, and I don't think it is unreasonable to expect that to happen as these local retailers become more competitive and more profitable.

I might also add that the States that decide to opt in to it will have a source of revenue that will be helpful to them in difficult times. Again, it is their decision.

I will not recount all of the groups that have endorsed this; Senator ENZI already has. It is a pretty impressive array. One of the most impressive sup-

porters he has read a letter from is Amazon—to think that one of the largest if not the largest online retailer in America endorses this bill. When I think back on all of the battles that have been fought in all of the States by Amazon when each State tried to address this, I believe it is telling that they have stepped forward and said: Here is a solution that can work. And if the largest online retailer in America—or one of the largest—feels that way, it should encourage many colleagues who don't want to destroy that part of our economy, and I certainly don't either.

This is a positive step in the right direction. I thank Senator TIM JOHNSON, Senator BOOZMAN, Senator JACK REED, Senator BLUNT, Senator WHITEHOUSE, and many others who are going to join Senator ENZI, Senator ALEXANDER, and myself in this effort to pass this bipartisan bill. Let's get this done. Let's work together on a bipartisan basis to solve a problem that has haunted us for over a decade and do it in a fair fashion that does not create any new taxes but gives to the States the right to collect those taxes that are already on the book.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee. The minority has 20 seconds left.

Mr. ALEXANDER. I ask consent to extend the colloquy into Democratic time.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. No objection.

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

Mr. ALEXANDER. I wish to congratulate Senator ENZI and Senator DURBIN and say how pleased I am to join as a cosponsor of their legislation. Here is what I want to congratulate them for. Senator ENZI said he came to this as a former mayor, as a former shoe shop owner, and as a former legislator. I come as a former Governor.

In our constitutional framework, I have always thought it was our business in Tennessee to decide what services we wanted to provide and what taxes we wanted to levy to pay for them. For example, we have a high sales tax, but we have no income tax. That is different from most States. We have a low overall tax burden. For me, this is, as Senator DURBIN and I have discussed, a matter of States rights.

I think the most important thing I could say today is that they have solved the problem with this legislation. This problem has been there for a long time. It has had the opposition of conservatives worried about taxes. It has had the opposition of Amazon and other online sellers.

Twenty years ago, when technology for businesses to compute and collect taxes was not nearly as innovative as it is today, the Supreme Court said that without congressional approval, states could not require out-of-state businesses to collect sales taxes because this created too much of a burden on interstate commerce. Senator

ENZI and Senator DURBIN, with this legislation, in my opinion, have solved the problem, and this is going to happen.

I am not presumptuous enough to predict what the Congress will do and what the President will sign, but I think I have been around long enough and I have watched Congress enough to say this is going to happen. And if I were Governor, if I were an online retailer, or if I were a catalog retailer, I would make my plans to conduct my business in this way. Why do I say that? Well, for one thing, times have changed.

This morning, I got up and looked up the weather in my hometown. So I went online and put in weather, 37886—that is my ZIP Code—and back came the information. Under the bill Senator DURBIN and Senator ENZI have proposed, the State would create a system for Amazon, let's say as an example, an online seller. All they would have to do, if I buy a \$300 or \$400 television set, is they put my name in, they put in my ZIP code, and the software the State has provided will tell them what the tax is and will even electronically transfer the tax money back to the State. In other words, Amazon will do the same thing the appliance store in Maryville, TN, will do, and that is what we intended to happen.

I mean, when we passed a sales tax in Tennessee—I wasn't around then, but I was around when it has been raised—we didn't intend to exempt some people over others. We didn't intend to subsidize some businesses over others. We made a general decision that when we buy things in Tennessee, all sellers would collect the sales tax. We have a local sales tax and we have a State sales tax, and that is our right to decide.

Some of the opposition in the past has come from conservative groups. It was important, just yesterday, to see the chairman of the American Conservative Union write a very strong article in support of a House version of this same bill. I talked with him yesterday, Mr. Al Cardenas, a businessman from Florida, and he is reviewing our bill.

Ten years ago, William F. Buckley wrote about this problem and said that it was a loophole that needed to be solved and when States decided to subsidize some taxpayers over others and some businesses over others, that was not good conservative philosophy.

So when you have Amazon supporting in a strong letter that Senator ENZI read, and when you have the chairman of the American Conservative Union on the same day announcing his support for the same principles, I think you have solved the problem.

As Amazon just said in their letter, they are in business to compete and they can sell their goods, they claim, cheaper online than they can buy them in Senator ENZI's store in Gillette, WY. Maybe they can, maybe they can't, but at least they will have a level playing field, and both the store in Gillette,

WY, and the online seller will do the very same thing. They will collect the sales tax that is already owed from the purchaser and they will send it directly to the State, which has been the way things have worked for a long time.

This is an issue about preserving the States' right to collect or not to collect their own sales tax. It is about closing a tax loophole. It is about stopping the subsidization of some businesses over others, of some taxpayers over others.

I will conclude my remarks in a moment, but first here is what William F. Buckley said about it:

The mattress maker in Connecticut . . . does not like it if out-of-State businesses are, in practical terms, subsidized; that's what the non-tax amounts to. Local concerns are complaining about traffic in mattresses and books and records and computer equipment which, ordered through the Internet, come in, so to speak, duty free.

Of course, Governors and legislators are up in arms as well. This loophole costs States \$23 billion. Tennessee could use this money to ward off a State income tax which we don't have and we don't want. Wyoming could use the revenue to reduce its property tax. Other States might reduce rising college tuitions, or they might reward outstanding teachers.

This has been a problem for the last 20 years, but Senator ENZI and Senator DURBIN, with their legislation, have solved the problem.

I will stop where I started. This is not a new tax, it is an existing tax. It is not a tax on the Internet; it is on all sales. Senator ENZI and Senator DURBIN, with their legislation, have solved the problem, and I predict that because of the voluntary agreements and the ease of out-of-State vendors doing the same thing Main Street vendors do, that very soon we will eliminate these subsidies and close this loophole. I congratulate them for their years of work in this area. I am happy to join 10 Senators—5 Republicans, 5 Democrats—in cosponsoring this legislation.

Mr. President, I ask unanimous consent to include for the RECORD the article by Al Cardenas, the head of the American Conservative Union; the essay by William F. Buckley; and a letter from Governor Bill Haslam of Tennessee, endorsing the Enzi-Durbin legislation.

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

[From National Review Online, Nov. 8, 2011]

THE CHIEF THREAT TO AMERICAN
COMPETITIVENESS: OUR TAX CODE
(By Al Cardenas)

More than three years after America's financial system hit a crisis point, the state of our economy remains in turmoil. As our nation's leaders grapple with immediate challenges through dueling jobs plans and the Joint Select Committee on Deficit Reduction tries to come to agreement on a trillion and a half in reductions, we must also consider long-term measures to strengthen our economic security. As it stands now, the number one threat to the future of American

competitiveness isn't other countries. It's our tax law.

The United States Tax Code is difficult to understand and even harder to navigate, for families and businesses alike. Title 26 has been patchworked, reformed, and tinkered with for decades, giving us an antiquated mess of laws rife with inequities. Our corporate tax rate is among the highest in the world. We refuse to shift to a Territorial Tax System that would stop punishing our companies for bringing earned overseas income back to the U.S. for reinvestment. Tax rates for small businesses remain high and inconsistent.

A robust free-market system requires a level playing field, where the government doesn't get to pick the winners and losers. We should require the same of our system of taxation. We need a simpler, fairer, flatter tax code that removes loopholes, subsidies, and credits, one that lowers rates across the board and expands the percentage of Americans paying their fair share of taxes.

When it comes to sales tax, it is time to address the area where prejudice is most egregious—our policy towards Internet sales. At issue is the federal government exempting some Internet transactions from sales taxes while requiring the remittance of sales taxes for identical sales made at brick and mortar locations. It is an outdated set of policies in today's super information age, when families every day make decisions to purchase goods and services online or in person. Moreover, it's unfair, punitive to some small businesses and corporations and a boon for others.

This is why the American Conservative Union applauds Rep. Steve Womack for his sponsorship of the Marketplace Equity Act of 2011, one of the first sincere attempts to modernize our tax policy for the 21st century.

As conservatives we know that governmental power can be used to destroy entrepreneurship, innovation and the free market. There is no more glaring example of misguided government power than when taxes or regulations affect two similar businesses completely differently.

Over time, the company that has to comply with a tax or a regulation will lose market share to its competitor who is carved out from this government interference. In these cases the winner is not the company who outcompetes, but the one who gets special privileges from the government.

At its inception, the Internet was everyone's darling, the latest example of American innovation and ingenuity. Internet sales represented a minuscule portion of the total retail market, and the novelty led to tax loopholes and unintended consequences. Now, according to Forrester Research, Internet sales account for nearly 10 percent of all sales of products and services in America, with an annual growth rate of about 9 percent.

If we do not confront this issue, state and local governments dependent on sales taxes will need to look for other sources of revenues as Internet sales continue to expand. Policy which allows for both online and brick and mortar retailers to be susceptible to the same taxes will—and should—allow for commensurate reductions in sales tax rates. For instance, if Internet sales tax revenues will add 10 percent in revenue to a governing body's coffers, then, at a minimum, a corresponding overall reduction in rates should apply.

The current system is also inconsistent with states' rights, and the Congress ought to carefully consider enacting revenue neutral tax reform policies consistent with the Tenth Amendment.

The free-market system can only operate effectively on a level playing field of free and

fair competition. Whether it's the Department of Energy's disastrous Solyndra project, or levying sales taxes, or a multitude of other policy decisions that impact the private sector, the government picking winners and losers is a perversion of the free market system. Lawmakers on Capitol Hill—especially conservatives—ought to at least acknowledge this when deliberating important reforms to the tax code. As we consider wholesale reform, exempting Internet sales can no longer be justified.

The Marketplace Equity Act of 2011 begins this conversation. It's not a perfect bill, but it's a critical beginning to this dialogue and should spark bipartisan support for revenue neutral reforms. Rest assured, we will not be party to or stand for Trojan Horse legislation that claims to strive for equity in the law merely to serve as a cloak for secret tax increases.

We have a great opportunity to drastically lower rates, especially corporate rates, and eliminate esoteric tax preferences to stave off the next massive financial crisis. A flatter, fairer, simpler tax code is the key to ensuring American competitiveness for generations to come. Our leaders in Congress are obligated to thoughtfully consider measures to achieve this.

[From National Review Online, Oct. 19, 2011]
GET THAT INTERNET TAX RIGHT
(By William F. Buckley Jr.)

Congress is up against it: what to do about Internet commerce?

To return to an example given earlier in this space, you have a mother living in Hartford, Connecticut, looking for a new mattress and spotting one on the website of a producer in Massachusetts. The feel of it is right, and so is the price, so the \$500 order is placed. The mattress crossing the border is not taxed, because writing the Constitution in Philadelphia in 1787, it was decided: no tariffs within the 13 states. Interstate commerce would be regulated only by Congress.

Which is all to the good, but Connecticut takes the position that the family living happily in Hartford has to pay its share of the cost of government, which entitles the treasury to a use tax. If the mother in Hartford who sent out for the mattress in Massachusetts were a perfect citizen, she would write a check for \$30 (6 percent) to the State of Connecticut and sleep at complete ease with her conscience. What she does do, is sleep at complete ease with her conscience without sending in the check for \$30. The reason for it is that taxes of that order are pretty well uncollectable. An uncollectable tax is one which would cost more to exact it would yield in profit. There is, in addition, the political question. People wouldn't like it when Big Brother stared into every out-of-state package, inquiring whether there is something in it for city hall.

So that one part of the pressure building on Congress is collectivist: to let states come in with a transfer tax. But a second pressure is from merchants who see themselves affected by untaxed transactions. The mattress maker in Connecticut is willing to compete with the company in Massachusetts, but does not like it if out-of-state businesses are, in practical terms, subsidized; that's what the non-tax amounts to. Local concerns are complaining about traffic in mattresses and books and records and computer equipment which, ordered through the Internet, come in, so to speak, duty free.

Three years ago, Congress voted to continue until 2001 the tax-free character of interstate commerce. This meant not only a prospective loss of tax to the affected states, it meant also something on the order of a benediction on a staggering development in

technology. The Internet is the happiest intellectual, journalistic, and educational development in history, and the thought of letting the weeds of prehensile government crawl about it struck some as on the order of enforced shutters on sunlight, or taps on waterfalls.

But, sigh, that was three years ago, which in the Internet business is three millennia ago. The estimated commerce done by the Internet in 1998 was \$9 billion. Last year it was \$26 billion. Which means we have to come to earth, and face homespun economic truths. If the advantage of tax-free Internet commerce marginally closes out local industry, reforms are required.

The mechanics of reforms call on holding not the buyer, but the seller, responsible. It still won't be possible to target the mother in Hartford directly when the mattress arrives, but the exporter of it in Massachusetts can be required to add \$30 to the cost of the mattress, and send the check off to Connecticut Internal Revenue. It is, finally, impossible for Congress to wrestle with the problem without yielding to legitimate demands of the states spending the money on education, police, and fire departments, and deprive them of revenue.

The question has not come up in the current welter of proposals, but we have to watch carefully to prevent the United States Postal Service from getting into the act. The most calamitous exposure of the postal service since the days of mail-train robberies is of course fax and the Internet. These are, for all intents and purposes, absolutely free transactions. One hundred messages can be sent out, or for that matter one thousand, for less than the cost of a first-class postage stamp. A rumor swept about the medium, a year or so back, that a proposal was making way that would charge five cents for every communication sent out on the Internet.

The very idea is heretical, like charging for Communion wafers. To tax the Internet for the benefit of the postal service is unsupportable reasoning. The postal service needs to survive from its own revenues. If there is a shortfall, the government can come up with it, as required, on the same principle as rural free delivery. But to attempt to relieve its problems by contaminating the Internet is something that any congressman who has taken an oath to right reason is bound to oppose.

NOVEMBER 8, 2011.

Senator LAMAR ALEXANDER,
U.S. Senate, Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR ALEXANDER: I am writing to thank you for your leadership in helping to advance a federal solution to a problem states need Congress to address: the preservation of their own right to enforce their own tax laws and returning fairness to the marketplace.

The Marketplace Fairness Act will bring much needed, and long overdue, relief to the State of Tennessee. Tennessee and other states are currently unable to compel out-of-state businesses to collect sales taxes the same way local businesses do. It is important for states to determine their own tax policy and have the ability to collect the revenues they are already owed. This is why your legislation is so important.

The Internet has changed the way we do business and provides small businesses the opportunity to grow, but we need our laws to adapt to this new marketplace. Our state relies on sales taxes for the majority of its revenue, and each year we are losing hundreds of millions of dollars that could be used to benefit Tennessee. What cannot happen is for Congress to do nothing, which will prevent states from enforcing their own laws.

Your legislation gives states the flexibility to determine what works best for them, and I am grateful that you are putting states' rights first and closing this online sales-tax loophole. The Marketplace Fairness Act strikes the right balance for Tennessee, and I fully support your efforts.

Warmest regards,

BILL HASLAM,
Governor, State of Tennessee.

Mr. DURBIN. Mr. President, would the Senator from Tennessee yield for a moment?

Mr. ALEXANDER. Oh, yes.

Mr. DURBIN. I wish to go on the record on behalf of myself and, I am sure Senator ENZI, in saying that Senator ALEXANDER doesn't give himself enough credit. He has been an integral part of putting together this bipartisan bill. We wouldn't be here without him. I want to thank him for facilitating the bipartisan effort to put this bill together. I share his feelings. I think we have finally found that sweet spot, and we can pass this bill.

Mr. ALEXANDER. I thank the Senator from Illinois.

Mr. ENZI. Mr. President, we yield the floor.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from Rhode Island.

Mr. REED. I ask unanimous consent to return to morning business.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. REED. Mr. President, let me also commend Senator ENZI and Senator DURBIN and Senator ALEXANDER because I too am a cosponsor of this legislation, and I think it does represent a remarkably thoughtful and bipartisan approach to the problem of providing resources to local States and communities so they can carry out the very challenging issues of local governments. I am not surprised that Senator ALEXANDER is a key element in this product. Both Senator ENZI and Senator DURBIN deserve to be complimented. I thank them for their leadership.

VOW TO HIRE HEROES ACT

Mr. REED. Mr. President, I rise specifically to speak in strong support of the VOW to Hire Heroes Act of 2011. This legislation incorporates key components of the American Jobs Act and other bipartisan proposals designed to help veterans find jobs, including the Hiring Heroes Act, of which I am a proud cosponsor. These are common-sense policies that Congress can and should pass immediately.

We are in the midst of an unemployment crisis that is obvious to every American, and it is a growing problem that is sapping not only our economic strength but indeed our sense of national purpose and our morale. The national unemployment rate has been hovering around 9 percent, and that means 14 million Americans are looking for work in one of the toughest economies since the Great Depression. But what is unfortunate—some might