Specter	Sununu	Voinovich
Stevens	Talent	Warner

NAYS—32

Akaka	Dodd	Leahy
Bayh	Dorgan	Levin
Biden	Durbin	McCain
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Murray
Byrd	Graham (FL)	Reed
Cantwell	Harkin	Reid
Clinton	Jeffords	Schumer
Conrad	Kennedy	Stabenow
Corzine	Kohl	Wyden
Dayton	Lautenberg	

NOT VOTING—7

Bunning	Lieberman	Thomas
Edwards	McConnell	
Kerry	Nelson (FL)	

The motion was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I would like to take a few moments to thank some of the staff who did outstanding work on the Banking Committee—Kathy Casey, chief of staff of the Banking Committee; Doug Nappi, our general counsel; Mark Oesterle, one of our counsel.

I also thank some of the Democratic staff who worked with us on this: Steve Harris, who is Democratic chief of staff; Marty Gruenberg; Lynsey Graham Rea, and Dean Shahinian. They have all worked together in a bipartisan fashion. I believe that is why this legislation was brought out of the committee unanimously and we will be able to pass it, because we had a lot of input from Members and committee staff on both sides of the aisle. It makes a difference.

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

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I echo the chairman in expressing my deep appreciation to the staff people he enumerated: Kathy Casey, Doug Nappi, and Mark Oesterle on the Republican side, and Steve Harris, Lynsey Graham, Dean Shahinian, and Marty Gruenberg on the Democratic side.

We are fortunate in the Banking Committee that we have a very committed, able, dedicated staff on both sides of the aisle. Furthermore, they have been able to work with one another in a very productive and cooperative fashion. The chairman and I are keenly aware of the fact of how much we rely upon them, and we want them to know how much we appreciate their terrific effort, which was reflected in this legislation and in many other matters with which the committee deals.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, I ask unanimous consent that the vote occur on passage of the bill on Wednesday—tomorrow—with no intervening action or debate, at a time determined by the majority leader, after consultation with the Democratic leader. Further, I ask unanimous consent that following that vote, the Senate insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate, with a ratio of 4 to 3. I also ask unanimous consent that S. 1753 then be returned to the calendar.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—H.R. 2673

Mr. STEVENS. Mr. President, I ask unanimous consent that following morning business on Wednesday, the Senate proceed to the consideration of H.R. 2673, the Agriculture appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, there is no objection. The persuasiveness of the chairman of the committee allays any fears Senator DASCHLE and I had of proceeding to this appropriations bill. We look forward to having as few amendments as possible. We hope to find out how many amendments we have even tonight. It would be good to get them to the cloakroom. We will be on this probably around 10:30 tomorrow morning.

Mr. STEVENS. Mr. President, I echo what the assistant minority leader said in making that request. We know of some amendments that are out there. We believe we can finish the bill tomorrow if we apply ourselves to the task.

I yield the floor.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

INTERNET TAX NONDISCRIMINATION ACT OF 2003

Mr. ALEXANDER. Mr. President, the distinguished occupant of the chair and I are new Members of the Senate. There are a great many privileges to being here, and one is the congeniality to new Members of the Senate. One is the seriousness of the issues with which we deal these days. One is the great traditions in the Senate. But there is a very special privilege of being here, and being here tonight, which I realize, and that is this: Every single one of us as Americans someday, sometime, while sitting at home or on our job, may suddenly realize something about our Government that really stirs us up and we wish we could say something and do something that somebody would hear. We are angry about it, we are upset about it, we want to say something about it. I have a privilege as a Member of the Senate of being able to do just that tonight.

Nothing used to make me more upset as the Governor of Tennessee for the 8 years I was Governor than when Members of this distinguished body and the other distinguished body—Members of Congress—would get together and come up with some great idea and pass a law and tell us to do it, and then send us the bill requiring us to pay for it, even though they were printing money up here and we were balancing budgets at home.

The distinguished occupant of the Chair was mayor of a great city for 8 years, I believe, the same amount of time as I was Governor. I know he must have felt the same way.

It might have been the case in terms of storm water runoff. Somebody in Washington, like the EPA, the Environmental Protection Agency, in that case may have said sometimes when it really rains hard, the water gets mixed up with the sewage and it runs into the river, so we need to fix that situation.

Great idea, but who is going to pay the bill? I tell you who pays the bill. In Minneapolis, you have to raise the property tax, or in Nashville, you have to raise the sales tax. Or in Maryville, TN, you have to fire some teachers so you have enough money to do the storm water runoff.

I remember back in the mid-1970s, about the time I was getting into politics, the Members of Congress decided we needed to help children with disabilities. We are all for that. That is a wonderful idea. But at the time, the Federal Government was paying, as it is today, about 7 percent of all the costs of elementary and secondary education in America. Most of that is paid for by Minnesota and Tennessee taxpayers through income taxes, and sales taxes, and property taxes that are raised at home.

The Congress said, ''Help the children with disabilities,'' but they didn't pay the bill. So what happens. I meet with the Shelby County School Board in Memphis. What do they say to me? We have this huge, terrific cost and these orders from Washington and regulations about what to do, and then we have to take money we raise, that we would otherwise be spending for other purposes, and deal with the good idea from Washington, DC.

I have heard many Members of this body talk a little bit about No Child

Left Behind and the new provisions in that bill, wondering whether those are unfunded Federal mandates, a Washington word that if you boil it down to plain English means: We will do it up here in Washington; we will claim credit for it, but you pay the bill.

On Thursday, thanks to the generosity of the majority leader in a very busy week, the Senate has agreed to consider whether we will impose yet one more unfunded Federal mandate on State and local governments, and I refer specifically to the proposal to extend the ban on State and local authority to tax access to the Internet.

In advance of that vote, which will occur in the next few days, I want to discuss three basic considerations with my colleagues.

No. 1, some of my colleagues have seemed surprised when I suggested the proposed ban on State and local Internet taxation is an unfunded Federal mandate. Let me say exactly in these remarks why the proposed ban on State and local ability to tax Internet access is an unfunded mandate plainly in violation of the Unfunded Mandates Reform Act of 1995 which was passed by this body with 91 votes, and 63 Senators who voted to ban unfunded Federal mandates in 1995 are still Members of this body. In 1994, over 300 Republican candidates stood on the steps of the U.S. Capitol and said in the Contract With America: We will stop passing unfunded Federal mandates, and if we break this contract, throw us out. That is why, when this legislation is offered later this week, I plan to offer a point of order against its consideration because the Unfunded Mandates Reform Act of 1995 says that it is out of order for this Senate to pass an unfunded Federal mandate. The first thing I want to describe why this proposed ban on Internet taxation is an unfunded Federal mandate.

No. 2, I want to discuss a strange case of amnesia that seems to have enveloped this distinguished body, a strange disease that has caused many Members to forget, as I mentioned a few moments ago, that in 1995, at the beginning of the 104th Congress, the new Senate majority leader, Bob Dole, went down to Williamsburg, VA, and promised Republican Governors that ''The first bill in the Senate, S. 1, is going to be unfunded mandates.''

This is especially surprising because Senator DOLE was good to his word and, in fact, the second plank of the Contract With America that was enacted in this Congress was the ban on unfunded mandates. It was at the heart of the Contract With America. It was at the heart of the Republican revolution in 1994.

At that time, I was campaigning across this country in 1994. Nothing I found made local officials and citizens madder than Washington politicians who pass unfunded mandates, claiming credit without facing the costs, whether it was the legislation I described involving children with disabilities, storm water runoff, or highly qualified teachers. As a result, 91 Senators voted for the Unfunded Mandates Reform Act of 1995, and 63 of those Senators are still here today.

No. 3, I would like to discuss an amendment I will be proposing. I am filing tonight an amendment I call the Unfunded Federal Mandate Reimbursement Act. If a majority of the Senate should decide that banning State and local taxation of the Internet is important enough to create an unfunded Federal mandate—that is, claim the credit up here, but make it be done down there—then my amendment would provide a way for Congress to pay the bill for that by authorizing our Department of the Treasury to reimburse Tennessee and Minneapolis and other State and local governments each year for the cost of this new mandate.

Let me say briefly what we are talking about and what we are not talking about. We are not talking about the issue of whether to authorize States to require out-of-State companies, such as L. L. Bean, that sell by catalog or Internet, to collect the same Tennessee sales tax that Friedman's Army Surplus Store would collect when it sells me a red-and-black plaid shirt. That is an entirely different piece of legislation. The Senator from Wyoming and others have sponsored that legislation. The Senator from North Dakota is a part of that. We are not talking about making it easier to collect sales tax from Internet and catalog companies.

What we are talking about is whether Tennessee and other States can collect a sales tax from an Internet service provider when it connects my computer to the Internet, just as it collects sales tax from the telephone company when it connects my telephone or from the cable TV company when it connects my TV. Tennessee has been collecting this tax since 1996. Nine other States and the District of Columbia also collect a tax on Internet access.

The Knoxville News Sentinel had an excellent article on Sunday putting this into perspective. I ask unanimous consent that the article be printed in the RECORD.

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

[From the Knoxville, News Sentinel]

INTERNET'S TAXING ISSUE

STATE, SERVICE PROVIDERS WAGE FIGHT OVER SALES TAX ON WEB ACCESS

(By Larisa Brass)

Pull out your monthly Internet bill and take a look at the bottom line.

See a sales tax charge? Maybe, maybe not.

Nearly a decade after the Internet's debut, the argument still rages in Tennessee over whether online connections should be taxed like your telephone bill or your cable service.

The State says wording of its tax code implicitly includes Internet access as a telecommunications service subject to sales tax. A number of Internet service providers disagree, however, saying that Internet access amounts to an information, not communications, service and is not subject to tax.

The argument has landed the Department of Revenue and six Internet Service Providers, or ISPs, in court.

Five cases—two involving AOL and three against CompuServe, Earthlink and AT&T—are now in litigation in Davidson County Chancery Court. One case involving Prodigy is awaiting review by the Tennessee Supreme Court.

A number of disputes between the Department of Revenue and other service providers have not yet reached the courts, although the department won't say how many or which companies are involved.

Tennessee officials say they should be getting $18 million in revenue on Internet access sales taxes each year. In reality, the State's Department of Revenue reports collections of half that amount.

For a State in dire financial straits, that isn't pocket change. Add it up over the past seven years—the State began pursuing collections in 1996—and you get about $60 million.

That's enough to fund the Department of Revenue for a year or pay 1,600 teachers' salaries. In the next five years, the state estimates it could lose $109 million in uncollected revenues.

On one side, the Department of Revenue argues that Internet access should be charged as a telecommunications service because it falls under the state's definition of ''telecommunications.''

That definition is: ''communications by electric or electronic transmission of impulses, including transmission by or through any media, such as wires, cables, microwaves, radio waves, light waves or any combination of those or similar media.''

But Internet services providers argue that the term ''telecommunications'' doesn't apply to them at all.

When the State began to actively collect sales tax on Internet access ''the department simply didn't understand how ISPs work and that ISPs have never been considered telephone companies,'' said Henry Walker, a Nashville lawyer whose firm represents AOL and Planet Connect, a Kingsport-based Internet service whose dispute with the Department of Revenue has not yet reached the courts.

''(ISPs) don't sell telecommunications services,'' Walker said. ''They sell access to the Internet, and that's different.''

Internet providers simply sell access to information, he explained, not a communications service. He compared it to dialing a 1-900 number, saying that users already pay tax on the phone service and aren't charged separately for using that service to access information at the other end.

STATE VS. ISP

In the Prodigy case, the trial court and ultimately the Tennessee Court of Appeals agreed.

The court found that the intent of state lawmakers, when drafting the telecommunications tax code and the definition of telecommunications used by the Federal Communications Commission, supported Prodigy's claim that it should not have to collect sales tax on its service.

In addition, the court said that because telecommunications was not the ''true aim'' of Prodigy's service and because customers must supply their own, taxed telephone service to connect to Prodigy's servers, that the Internet connection should not be taxed as a telecommunications service.

Last month, the Department of Revenue appealed the ruling to the Tennessee Supreme Court.

''We think the court was wrong,'' said Loren Chumley, commissioner of the Tennessee Department of Revenue.

In a brief filed by the Tennessee attorney general on Oct. 9, the state argues Prodigy's services do ''fall squarely within the definition'' of telecommunications, according to Tennessee law, by providing access to ''the Internet, chat rooms, e-mail and information services.''

The state argued that Internet service should be taxed even though it was not explicitly included in the law.

''With all due respect to the Court of Appeals, the plain language of this statute should not be read narrowly to include only those technologies that existed when the statute was enacted,'' the filing stated, ''but should be read to incorporate new technologies, including Internet access and e-mail services such as those provided by Prodigy.

''. . . Only by giving statutes their full effect can the law keep up with technological advances.''

In addition, the state argued that the Court of Appeals should not rely on the FCC's definition of telecommunications and that to do so is to contradict another state appeals court decision holding ''that federal regulatory statutes should not affect the interpretation of state taxation statutes.''

The Department of Revenue is awaiting the state Supreme Court's decision on whether it will take the case.

Walker admits the issue isn't black and white. He agrees that many people use the Internet for communication, such as placing online orders or using Internet chat rooms or instant messaging.

And, he said, there may be a place for taxing some types of Internet communications, such as voice over Internet protocol, which allows a customer to set up home phone service via the Internet.

But ''at this point in time, the FCC has said, 'No, that's not telecommunications, that's information services,'" Walker said. ''I thought (state officials) were on shaky ground from the get-go, and I think the court shut the door pretty hard.''

TO TAX OR NOT TO TAX

In any case, the days of taxing Internet access appear to be numbered.

Tennessee is one of 10 states that, along with the District of Columbia, now collect sales tax on Internet access charges. They can do so because they were grandfathered into a law passed by Congress in 1998 known as the Internet Tax Moratorium.

The legislation forbade the collection of state Internet access taxes unless a state was collecting the taxes before the federal moratorium was passed.

Two bills now in Congress would end the state's ability to collect those taxes. One bill now stalled in the Senate would allow states to phase out the taxes within three years. The House version, already passed, would end the tax immediately.

Right now, states like Tennessee are more worried about provisions of the bill they say would end taxes on a broad array of telecommunications services and cost Tennessee $360 million in annual sales tax collections.

But Chumley said Tennessee stands to lose out, at least in the short-run, if the tax is abolished. The state is moving toward a streamlined sales tax system that would allow it to collect more taxes on the sale of goods via Internet companies, many of which are not now collecting state sales tax on purchases.

Chumley said that increased collections on Internet retail sales, however, won't immediately make up for projected losses due to repeal of the Internet access tax.

''I am concerned we could count on some revenue loss immediately,'' she said

If the tax is repealed, that won't affect state cases over tax collection of the past, Chumley said.

''It's not retroactive,'' she said. ''Again, we're left back in our case with, well, what is the court going to do?'' can do so because they were grandfathered into a law passed by Congress in 1998 known as the Internet Tax Moratorium.

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If the tax is repealed, that won't affect state cases over tax collection of the past, Chumley said.

''It's not retroactive,'' she said, ''Again, we're left back in our case with, well, what is the court going to do?''

TAX NOT SO TAXING

Not all ISP's agree they shouldn't have to collect sales tax on the services they sell.

Ed Bryson, owner of Knoxville ISP Esper Systems, said he's been collecting sales tax since he started his business about eight years ago.

''I would actually support (Internet service) being taxed,'' he said. ''This state needs revenue. Do we pay sales tax on telephone bills? Do we pay sales tax on cable? (Internet access is) a commodity service.''

Bryson said it's not that he's such a big fan of taxes. He estimates that collecting and remitting the sales tax on his services cost about $500 per month. He says the company collects about $100,000 in sales taxes per year.

And Bryson figures he's lost a few customers to larger providers that don't charge sales tax.

But, he said, he doesn't believe that the Internet needs to be tax free for the country to go online.

''Do you really think the Internet needs any fertilizer right now? Do you really think that Tennessee needs to not tax the Internet to make jobs?'' he said.

''I don't like taxes anymore than anybody else,'' Bryson added. ''My philosophy is, just tell me what the rules are and I'll work within them. More than anything I'd like to see this (be) fair across the board.''

INTERNET TAX

Internet access sales tax: local and state sales tax charged on Internet service. The State considers Internet access a telecommunications service under Tennessee tax law.

Tax implemented: 1966

Tax rate: 7 percent state; 2.5 percent local.

Revenues collected per year: $9 million

Estimated revenues uncollected per year: $9 million

Estimated total revenue loss: $63 million

Tennessee court cases involving Internet service sales tax collection: 6

Companies involved: AOL (two cases), AT&T, CompuServe, EarthLink and Prodigy.

Other States that tax Internet access: Connecticut, Iowa, New Mexico, North Dakota, Ohio, South Carolina, South Dakota, Texas, Wisconsin as well as the District of Columbia

THE BASICS

With multiple tax codes, legislation and initiatives, thing can get a bit confusing when it comes to sales tax and the Internet.

1. Sales tax on Internet access. This is a state sales tax levied on the monthly subscription fees paid by customers to an Internet service provider.

Some providers don't charge the tax to Tennessee customers, saying the state legally can't require collection.

The issue has pitted five Internet service providers against the Tennessee Department of Revenue in court. This tax does not apply to the sale of goods over the Internet. (See item No. 3 below.)

2. Internet Tax Moratorium. This law was passed by Congress in 1998 and prohibited states from charging sales tax on Internet access.

Tennessee, which already was collecting tax on Internet service, was one of 10 states, along with the District of Columbia, allowed to continue collecting the tax.

The moratorium expired Saturday, and the House and Senate are hashing out a new Internet sales tax law. Both versions, so far, would end the collection of Internet access sales tax for the 10 grandfathered states, although the House's bill would postpone its expiration for another three years. The Senate bill has been stalled by Tennessee Sen. Lamar Alexander because of controversial provisions that states say would hinder collection of sales tax on a broad array of telecommunications services.

3. Tax on sales via Internet. This is sales tax charged on items bought over the Internet.

This issue has been in the news recently because Congress is contemplating a bill, separate from the tax moratorium, that would mandate collection of state and local sales tax on goods sold via the Internet to customers in States that comply with the Streamlined Tax Initiative.

This currently voluntary initiative includes a simplified tax structure that allows companies to more easily collect state and local sales tax on goods sold online. Tennessee has passed legislation changing its tax code to comply with the streamlined tax guidelines.

Mr. ALEXANDER. I thank the Chair.

Let me go to my first point, why this proposed legislation is an unfunded mandate.

The proposed legislation is an unfunded mandate because it would make it illegal for these States to continue to collect State and local Internet access taxes. The Congressional Budget Office estimates that these losses would amount to $80 billion to $120 billion a year.

That is not all. The language of the legislation enacted by the House of Representatives, and every version of that language we have seen thus far in this Chamber, broadens the ban on taxation on Internet access and increases the size of the Federal unfunded mandates, extending to some degree to other telecommunications services, which is why I suppose we have begun to see the halls filled with lobbyists from the telecommunications industry as they anticipate the possibility that

this Congress might be exempting them from some or maybe all of the taxes that State and local governments put on telecommunications.

Now, there are many estimates about how much this would cost State and local governments. I have a study prepared in November of 2001 by Ernst & Young for the telecommunications State and local tax coalition. This study by Ernst & Young says that telecommunications providers and consumers of telecommunications services paid a total of $18.1 billion in State and local taxes in 1999.

I am not suggesting this ban on Internet taxation would eliminate all of the $18 billion of State and local taxation on telecommunications, but virtually everyone agrees that it would eliminate some. Every time we, in our wisdom, tell a State or a city that it cannot use this tax, all we are doing is increasing the chance that Minneapolis or Tennessee will increase some other tax, or fire some teachers or lay off some employees or close some parks. We have to balance budgets where we come from. If we knock out a substantial part of the ability to State and local governments to tax the Internet and some part of the telecommunications industry, we are only increasing the possibility in Tennessee of raising the property tax, of raising the sales tax, of raising the tax on medicine, of raising the tax on food or, in our State, making it more likely that we will have sooner or later an income tax. That is just one estimate.

Another estimate by the Multistate Tax Commission reported on September 24, 2003: The Internet tax moratorium passed by the U.S. House of Representatives on September 17 would end up reducing State and local revenue collections by at least $4 billion, and as much as $8.75 billion by 2006, rather than the $500 million estimated cost under the legislation's narrow original focus.

The sponsors of the Internet tax ban in the Senate, Senators ALLEN, WYDEN and others, have been working with State and local officials and with other Senators to try to reduce the amount of loss to State and local governments. The House bill, which is also before the Senate, would cost Philadelphia, Nashville, Minneapolis, and our States up to $4 billion according to this study. So which taxes are they going to raise to replace it? Which teachers are they going to fire, from which school? Which park are they going to close? We are substituting our judgment for theirs.

There are other more specific estimates. We have been hearing from States. The Governor of Tennessee called me. He is a Democrat. I am a Republican. That does not matter so much because I respect the office. I had lunch with another former Governor of Tennessee, one of my predecessors. He is a Democrat as well. He agrees with us, too.

The Tennessee Department of Revenues says the managers' amendment will cost us $358 million a year. That is what the improved version of the House bill will cost one State, according to our State revenue department.

Then other States have been writing me, and writing their Senators. They say the Allen-Wyden amendment will cost Kentucky $40 million to $50 million, maybe $200 million. The new Governor of Kentucky is being elected, I guess as we speak. He will have a surprise on his hands perhaps when he finds out that he has some taxes to raise or some services to cut because we, in our wisdom, wanted to dictate that. Iowa, $45 million to $50 million; Maine, $35 million; New Jersey, $600 million; Ohio, $55.7 million; South Dakota, $34 billion; Tennessee, $358 million, as I said; Washington State, $33 million.

These are what the State governments are telling us the new and improved Senate version of the Internet tax ban would cost State and local governments. Those are some of the estimates we have heard about.

Now, to my second point, why is this so important? Why should we just not let it go on through?

Well, maybe one of the advantages of having been around a little while is I have seen and heard some things that I remember, such as 1994, I remember the Contract with America. I see my distinguished colleague from Pennsylvania. He remembers the Contract with America. He was a candidate, I believe, in that same year.

While I do not believe he was there, surely we all remember the 300 Republicans who stood on the steps of the Capitol. This was in September of 1994. This was just before something that was to happen that had not happened in half a century. It was a resurgence in the country that elected a Republican Congress.

What fueled all of that? What fueled that, according to the Heritage Foundation, in a candidate's briefing book that they did in 1996, looking back at 1994, chapter 14: With frustrated Americans focusing their anger increasingly on Washington and gridlock, many political candidates in 1994 successfully ran against Washington, appealing to voters to throw the bums out, replace them with individuals more honest and devoted to the public welfare.

Then they began to list the items of the Contract with America, one of which was to stop unfunded mandates.

I can remember that in 1994, the Republican Governors assembled in Williamsburg. They typically do this after an election every 2 years. There were 30 of them there. Governor ALLEN, now Senator, was the host, and Bob Dole, the new majority leader, came down. This is what he promised the Republican Governors, that S. 1, the first bill of the Senate, was going to be unfunded mandates. That was what Senator Dole promised the Republican Governors.

At about the same time, the Heritage Foundation was making a list of the unfunded mandates in this country that had given rise to all of this anger and frustration among the American people. I will not read them all but it reports, for example, that the National Conference on State Legislatures had identified 192 unfunded mandates on the States, including Medicaid, regulations governing the use of underground storage tanks, the Clean Water Act, the Clean Air Act, the Resource Conservation Recovery Act, the Safe Drinking Water Act, the Endangered Species Act, the Americans with Disabilities Act, the Fair Labor Standards Act, only to name a few. Those are all wonderful acts, but what was happening was they were claiming credit up here and those of us who were down there were having to pay some of the bill. The U.S. Conference on Mayors and Price Waterhouse estimated that the 1994 to 1998 cost of these mandates, excluding Medicaid, on 314 cities was $54 billion, or 11.7 percent of all local taxes. The EPA estimates that environmental mandates cost State and local governments $30 billion to $40 billion annually. State and local governments spend $137 billion to ensure safe drinking water.

These are good laws. I would like to have voted for them. I wish I had proposed many of them.

But the reason we had to come in here this year and pass legislation sending $20 billion back to the States and to local governments was not just because of the recession. It was because, consistently over the last 20 years, we have undercut the ability of State and local officials to make decisions for themselves about what services to provide and how to pay the bills.

One of my most vivid memories is of the distinguished former majority leader of the Senate, Bob Dole, who was elected in 1995 with that new Congress. He had a little copy of the United States Constitution, and he pulled it out when he met with the Governors in 1994 in Williamsburg, when they made the ''Williamsburg Resolve'' to stop these unfunded mandates. Senator Dole said he wanted to read to them the tenth amendment of the United States Constitution:

> The powers not delegated to the United States by the Constitution, nor prohibited by it by State, are reserved to the States respectively, or to the people.

Senator Dole went across this country during 1995, reading this amendment to Republican audiences and to audiences in general. I know because I was there at many of the same meetings; and I know because I was there, that this is the heart and the soul of the Contract With America and the Republican revolution in 1994.

I am surprised that this case of amnesia has come over so many of my colleagues and that we have forgotten about the importance of this. This is a body that is very respectful of one another. It would not be appropriate, I do not think, for me to mention a Senator's name. I suppose I could do it

within the rules of the Senate and then mention what he said about unfunded mandates in 1995 and apply it to the vote that we will be taking later this week. But let me read to you just a handful of examples of the kind of things that Members of this body said on this floor in 1995 when the Senate, by 91 to 9, passed the unfunded mandates bill. One Senator said:

> In my own State, I repeat to the Senate, local officials, whether it be the Secretary of the State or Labor implementing motor vehicle registrations, or the mayor of the little town where I come from, attempted to meet the needs of the small city. I have heard their appeals and they clearly are tired of the Federal Government telling them precisely how to do things by regulation when they could do it just as well in different ways at less cost to their people.

A Democrat from the South:

> I believe there is a tendency, particularly during a time of constrained Federal resources, to look to the imposition of obligations on State and local government as a means of accomplishing national objectives which we at the national Government are either unwilling or unable to pay for.

Another southern Senator, this one a Republican:

> We worry about how we attract good people into office. It is things like unfunded mandates that drives them out.

Another Senator from the West:

> I served in the legislature and a good deal of our budget was committed before we ever arrived by Federal unfunded mandates.

This goes on and on.

The one other matter that I would like to specifically mention before I conclude is I want to remind, if I may, my colleagues of why this is an unfunded mandate. Several have come up to me and said: This doesn't sound like an unfunded mandate to me. I thought an unfunded mandate was only when you pass a law to do a program, like help children with disabilities, and then only pay half the bill, which is what we do.

That is one kind of unfunded mandate. But another kind of unfunded mandate that is specifically defined by the Budget Act that was amended in 1995 by this Congress is a direct cost that

> . . . would be required to be spent or prohibited from raising in revenues, in order to comply with the Federal intergovernmental mandate.

In other words, the term ''unfunded mandates'' just requires the requirements that we impose when we don't pay the bill. Whether we are requiring a new program or whether we are telling the State it cannot do this tax or that tax, it is a requirement we are imposing without paying the bill. In other words, we are claiming credit and asking others to pay the cost.

The Uniform Unfunded Mandates Reform Act of 1995 created a very specific procedure for this. This isn't guesswork. It said that when there appears to be an unfunded mandate, that here is how we enforce that. First, the Senate committee of relevant jurisdiction—in this case it would be the Commerce Committee—under section 423 of the Budget Act, submits a request for an assessment, identification, and description of any unfunded Federal mandate.

That was done. The Commerce Committee asked the Congressional Budget Office: Is this ban on Internet access taxation an unfunded Federal mandate?

And the Congressional Budget Office said: Yes.

I ask unanimous consent that a report by the Congressional Research Service be printed in the RECORD.

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

(CRS Report for Congress—Received Through the CRS Web)

UNFUNDED MANDATES REFORM ACT SUMMARIZED

(By Keith Bea and Richard S. Beth, Specialist, American National Government, Government Division)

SUMMARY

This summary of the Unfunded Mandates Reform Act (UMRA) of 1995 will assist Members of Congress and staff seeking succinct information on the statute. The term ''unfunded mandates'' generally refers to requirements that a unit of government imposes without providing funds to pay for costs of compliance. UMRA establishes mechanisms to limit federal imposition of unfunded mandates on other levels of government (intergovernmental mandates) and on the private sector. The act establishes points of order against proposed legislation containing an unfunded intergovernmental mandates, requires executive agencies to seek comment on regulations that would constitute a mandate, and establishes a means for judicial enforcement. This report will be updated during the 106th Congress if the act is amended.

OVERVIEW OF UMRA

History of the Act. Enactment of the Unfunded Mandates Reform Act of 1995 (UMRA) culminated years of effort by nonfederal government officials and their advocates to control, if not eliminate, the federal imposition of unfunded mandates. Supporters contend that the statute is needed to forestall federal legislation and regulations that impose questionable or unnecessary burdens and have resulted in high costs and inefficiencies. Opponents argue that mandates may be necessary to achieve results in areas in which voluntary action may be insufficient or state actions have not achieved intended goals.

Since the mid-1980s, Congress debated legislation to slow or prohibit the enactment of unfunded federal manages. The inclusion of the issue in the Contract with America, the blueprint of legislation action developed by the House Republican leadership when it gained the majority practically guaranteed that action would be taken. UMRA was signed into law early in the 104th Congress, on March 22, 1995.

Coverage of the Act. Under UMRA, Federal mandates include provisions of law or regulation that impose enforceable duties, including taxes. They also include provisions that reduce or eliminate Federal financial assistance available for carrying out an existing duty. UMRA distinguishes between ''intergovernmental mandates,'' imposed on state, local, or tribal governments, and ''private sector mandates.'' Intergovernmental mandates include legislation or regulations that would: (1) reduce certain Federal services to State, local, and tribal governments (such as border control or reimbursement for services to illegal aliens); and (2) tighten conditions of assistance or reduce federal funding for existing intergovernmental assistance programs with entitlement authority of $550 million or more. Exclusions and exemptions outside the reach of the statute are discussed later in this report.

Under UMRA, an intergovernmental mandate is considered unfunded unless the legislation authorizing the mandate meets its costs by either (1) providing new budget authority (direct spending authority or entitlement authority) or (2) authorizing appropriations. If appropriations are authorized, the mandate is considered unfunded unless the legislation ensures that in any fiscal year: (1) the actual costs of the mandate will not exceed the appropriations actually provided; (2) the terms of the mandate will be revised so that it can be carried out with the funds appropriated; (3) the mandate will be abolished; or (4) Congress will enact new legislation to continue the mandate as an unfunded mandate.

Contents of the Act. The act consists of five prefatory sections and four titles. The prefatory sections address matters such as the purpose, short title, and exclusions from coverage of the act. Title I amends the Congressional Budget and Impoundment Control Act, as amended, to permit Congress to (1) identify legislation proposing mandates, and (2) decline to consider legislation proposing unfunded intergovernmental mandates. Title I also sets forth thresholds for action, authorizations, and definitions. Title II requires that Federal agencies assess the financial impact of proposed rules on nonfederal entities, determine whether federal resources exist to pay those costs, solicit and consider input from affected entities, and generally select the least costly or burdensome regulatory option.Title III called for a review of Federal mandates to be completed within 18 months of enactment. This statutory requirement was not completed. UMRA assigned the study to the Advisory Commission on Intergovernmental Relations (ACIR), which no longer exists. The ACIR completed a preliminary report in January, 1996, but the final report was not released. Title IV authorizes judicial review of federal agency compliance with Title II provisions.The remainder of this report summarizes the requirements set forth in Titles I, II, and IV of the act.

REVIEW OF PROPOSED LEGISLATION (TITLE I)

Referred to as ''Legislative Accountability and Reform,'' Title I establishes requirements for committees and the Congressional Budget Office (CBO) to study and report on the magnitude and impact of mandates in proposed legislation. Title I also creates point-of-order procedures through which these requirements can be enforced and the consideration of measures containing unfunded intergovernmental mandates can be blocked.

Information Requirements. Under UMRA, congressional committees have the initial responsibility to identify Federal mandates in measures under consideration. Committees may have CBO study whether proposed legislation could have a significant budgetary impact on nonfederal governments, or a financial or employment impact on the private sector. Also, committee chairs and ranking minority members may have CBO study any legislation containing a Federal mandate.

When an authorizing committee orders reported a public bill or joint resolution containing a Federal mandate, it must provide the measure to CBO. CBO must report an estimate of mandate costs to the committee. The office must prepare full quantitative estimates if costs are estimated to exceed $50

million (for intergovernmental mandates) or $100 million (for private sector mandates), adjusted for inflation, in any of the first five fiscal years the legislation would be in effect. Below these thresholds, CBO must prepare brief statements of cost estimates. For each reported measure with costs over the thresholds, CBO is to submit to the committee an estimate of:

The direct costs of Federal mandates contained in it, or in any necessary implementing regulations; and

The amount of new or existing Federal funding the legislation authorizes to pay these costs.

If reported legislation authorizes appropriations to meet the estimated costs of an intergovernmental mandate, the CBO report must include a statement on the new budget authority needed, for up to 10 year, to meet these costs. For a measure that reauthorizes or amends an existing statute, the direct costs of any mandate it contains are to be measured by the projected increase over those costs required by existing law. The calculation of increased costs must include any projected decrease in existing Federal aid that provides assistance to nonfederal entities.

The committee is to include the CBO estimate in its report or publish it in the CONGRESSIONAL RECORD. The committee's report on the measure must also:

Identify the direct costs to the entities that must carry out the mandate;

Assess likely costs and benefits;

Describe how the mandate affects the ''competitive balance'' between the public and private sectors; and

State the extent to which the legislation would preempt state, local, or tribal law, and explain the effect of any preemption.

These requirements apply to all proposed mandates, both intergovernmental and private sector. For intergovernmental mandates alone, the committee is to describe in its report the extent to which the legislation authorizes federal funding for the direct costs, and details on whether and how funding is to be provided.

Points of Order for Initial Consideration. UMRA establishes that when any measure is taken up for consideration in either house, a point of order may be raised that the measure contains unfunded intergovernmental mandates exceeding the $50 million threshold. This point of order applies to the measure as reported, including, for example, a committee amendment in the nature of a substitute. For any measure reported from committee, a point of order against consideration may also be raised for either intergovernmental or private sector mandates, if the committee has not published a CBO estimate, or if CBO reported that no reasonable estimate was feasible.

In the Senate, if either point of order is sustained, the measure may not be considered. Otherwise, in ruling on the point of order, the chair is to consult with the Committee on Governmental Affairs on whether the measure contains intergovernmental mandates. Also, the unfunded costs of the mandate are to be determined based on estimates by the Committee on the Budget (which may draw for this purpose on the CBO estimate).

In the House, the chair does not rule on these points of order. Instead, under UMRA, the House votes on whether to consider the measure despite the point of order. To prevent dilatory use of the point of order, the chair need not put the question of consideration to a vote unless the point of order identifies specific language containing the unfunded mandate. Also, if several points of order could be raised against the same measure, House practices under UMRA afford means for all to be consolidated in a single vote. If the Committee on Rules proposes a special rule for considering the measure that waives the point of order, UMRA subjects the special rule itself to a point of order, which is disposed of by the same mechanism.

These procedures are intended to insure that the House, like the Senate, will always have an opportunity to determine, by vote, whether to consider a measure that may contain an unfunded mandate. Also, if the House votes to consider a measure in spite of the point of order, UMRA protects the ability of Members to offer amendments in the Committee of the Whole to strike out unfunded intergovernmental mandates, unless the special rule specifically prohibits such amendments.

Additional Enforcement Mechanisms. A point of order under the UMRA mechanism may be raised not only against initial consideration of a bill or resolution, but also against consideration of an amendment, conference report, or motion (e.g., a motion to recommit with instructions or a motion to concur in an amendment of the other house with an amendment) that would cause the unfunded costs of intergovernmental mandates in a measure to exceed the specified threshold. UMRA does not require amendments or motions to be accompanied by CBO mandate cost estimates, but a Senator may request CBO to estimate the costs of mandates in an amendment he or she prepares. If an amended bill or resolution or a conference report contains a new mandate or other new increases in mandate costs, the conferees are to request a supplemental estimate, which CBO is to attempt to provide. UMRA requires no publication of these supplemental estimates.

The UMRA points of order are not applicable against consideration of appropriations bills. However, if an appropriation bill contains legislative provisions that would create unfunded intergovernmental mandates in excess of the threshold, the UMRA point of order may be raised against the provisions themselves. In the Senate, if this point of order is sustained, the provisions are stricken from the bill.

Exclusions and Exemptions. Legislation pertinent to the following subject matters remains exempt from the UMRA point-of-order procedures: individual constitutional rights, discrimination prohibitions, auditing compliance, emergency assistance requested by nonfederal government officials, national security or treaty obligations, emergencies as designated by the President and the Congress, and Social Security. The provisions of Title I pertinent to Federal agencies (for example, the requirement that agencies determine whether sufficient appropriations exist to provide for proposed costs) do not apply to federal regulatory agencies. Also, provisions establishing conditions of Federal assistance or duties stemming from participation in voluntary Federal programs are not mandates.

ASSESSMENT OF MANDATES IN REGULATIONS (TITLE II)

Title II requires that Federal agencies prepare written statements that identify costs and benefits of a Federal mandate to be imposed through the rulemaking process. The requirement applies to regulatory actions determined to result in costs of $100 million or more in any one year. The written assessments to be prepared by Federal agencies must identify the law authorizing the rule, anticipated costs and benefits, the share of costs to be borne by the Federal Government, and the disproportionate costs on individual regions or components of the private sector. Assessments must also include estimates of the effect on the national economy, descriptions of consultations with nonfederal government officials, and a summary of the evaluation of comments and concerns obtained throughout the promulgation process. Impacts of ''any regulatory requirements'' on small governments must be identified; notice must be given to those governments; and technical assistance must be provided. Also, UMRA requires that Federal agencies consider ''a reasonable number'' of policy options and select the most cost-effective or least burdensome alternative.

JUDICIAL REVIEW (TITLE IV)

The requirements in Title II pertaining to the preparation of a mandate assessment statement and notification of impact on small governments remain subject to judicial review. A Federal court may compel a Federal agency to comply with these requirements, but such a court order cannot be used to stay or invalidate the rule.

Mr. ALEXANDER. Then there are some other steps that have to be taken. Not only is it defined as an unfunded intergovernmental mandate, there has to be a certain threshold of spending, $50 million adjusted by inflation, which today would be $64 million.

So the Congressional Budget Office has given its opinion on that, and they have said yes; it is an unfunded Federal mandate. So what the legislation provides, and what I plan to do when this comes up on Thursday, is as the law says. That it is not in order for this body to pass an unfunded Federal intergovernmental mandate, and that a point of order may be raised against its consideration. I plan to raise such a point of order.

The point of order may be waived by this body by 51 votes, which I hope it does not do because this body told the world in 1995 that it was through with this business of unfunded mandates. But we will see. We will see.

I will agree that it sounds good to say we are not going to tax Internet access. I will agree that there may be a Federal interest in not taxing Internet access. I agreed when the issue first came up in the 1990s that while the Internet was still an infant, maybe for the first 3 years a moratorium would be in order.

But if we think it is so important, then we should pay the bill. We should pay the bill. We should not fall into this bad habit that existed before the Republican revolution of 1994 of assuming that just because we were elected to come to Washington, suddenly we are all wise and that the Governors and mayors and legislators are not quite as wise and that we, therefore, ought to tell them what to do and that we ought to restrict their ability to do it or not do it based upon what their tax base is. Let them do their job and we can do ours.

I want to end where I began. It is a privilege to be in this body. One of the greatest privileges is to stand up here and say, on the floor of the Senate, something I used to think about as Governor time after time: Why are those Senators and those Congressmen assuming I can't do my job here? Why are they passing rules and then telling me to pay the bill, especially when they are printing money and we are balancing budgets?

I think we should draw the line. If we really believe that a ban on Internet access in a segment of the telecommunications interest is so overwhelmingly in the Federal interest, then let's pass an unfunded Federal

mandate reimbursement bill and send a check to the States, to Minneapolis, Nashville, Tennessee, every year, for whatever the cost of that is.

I remind my colleagues, and I intend to do so as long as I am here, that they were right in 1994 about the Contract With America. They were right when they stood on the steps of the Capitol and promised: No more unfunded mandates. If we break our contract, throw us out. And they were right when they passed by 91 to 9 in 1995 the ban against unfunded Federal mandates.

I hope the 64 of my colleagues who are still here remember that vote.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, to comment on the legislation the Senator from Tennessee was discussing, I have some concerns about the Internet and taxation of the Internet. I listened with great interest to the arguments the Senator from Tennessee has made. I think they are very good arguments.

I have another argument that causes pause for me and that is that, while, yes, everybody is talking about all the commerce that occurs on the Internet, there is a lot more depravity that occurs on the Internet than commerce.

The top Web sites visited on the Internet are Web sites having to do with pornography. As the father of six young kids, I have to tell you that continuing in the sense of subsidies by not allowing taxation concerns me. It seems to me these Internet IFCs and others who are so concerned in coming up here saying don't tax us and don't hold back the potential of the Internet seem to be a heck of a lot less concerned about the impact of culture debasement that is going on as a result of the exposure of pornography and violence and what I would consider antisocial activities that occur with frequency and that are even more harmfully imposed on young kids in popup ads, through e-mail and spam and through other vehicles that these lecherous members of the international community—it is not just in this country—use to try to sell their wares on the Internet.

I am speaking not as a Senator but as a father who is very disturbed about people coming here and crying, Don't tax us, at the same time they are doing very little to stop what I think is one of the scourges that attacks the decency of our society.

As someone who has been a supporter of the moratorium, as someone who has never seen a tax cut I didn't like and never saw a tax I did like, I don't like what I see going on on the Internet. This whole comment about it is commerce, if you look at where the commerce is, it is not the kind of commerce I think we want to be supporting.

THE CARE ACT

Mr. SANTORUM. Mr. President, I will not take any more time than necessary because I know the Senator from Nevada, who has spent countless hours here on the floor, would like to leave, like so many others here, but I raise again the issue of H.R. 7.

H.R. 7 is the charitable giving act, the CARE Act, that passed both the House and the Senate. I want to state again for the RECORD this is a bipartisan bill. This is a bill that was worked out in the Senate by Senator LIEBERMAN and myself. I worked with Senators DURBIN and REED of Rhode Island and others when they brought up concerns about this bill. We wanted to have a balanced bill, a bipartisan bill, one that could pass here with the kind of support for a bill which encourages charitable giving and individual development accounts for low-income individuals and social services block grants to help those organizations that meet the needs of people who are hurting in our communities. It should pass on a bipartisan basis. We were able to work that out. I even worked out something I wasn't sure I could work out, which is a commitment to try to work with the House to make sure they didn't include language which Senator REED of Rhode Island requested and Senator DURBIN requested; that it not include language having to do with faith-based organizations and expanding charitable choice.

Charitable choice is a provision in the law that was passed here three times and signed by the President three times to allow faith-based organizations to participate in social service funding programs the Federal Government implements. I said I would do my best to make sure that it was not in the House bill, and lo and behold, I was successful and it is not in the House bill. It is not a conferenceable issue. The biggest concern by about government and faith being mixed together is not in this bill. It is not a conferenceable item. There is no poison pill that can come back in this bill because it is not a conferenceable item. I kept the commitment on a bipartisan basis to keep this bill clean.

There are controversies between the House and Senate bills. The Senate bill is paid for. We have offsets in the bill. The House bill is not paid for. The social services block grant, which is a very important component of this mix, is in the Senate bill and is not in the House bill. There are a variety of different tax provisions that are treated differently in the House and Senate.

This isn't going to necessarily be an easy conference. There will have to be a lot of give and take, as in most conferences, when we are dealing with taxes and spending.

I think it is important that we sit down with the House and have a conference. I will tell you that I fully anticipate needing and wanting support from my colleagues here in the Senate on both sides of the aisle to get this bill done. We are going to need that kind of leverage to go to the House and be able to work out this compromise. I will need their support because I want to pass this bill. It is a bill that is on the President's agenda. This is one of the bills he really wants to accomplish.

I fully anticipate that if this bill comes back in the form that is not acceptable to the minority, there is probably very little chance they are going to give us the votes to be able to pass it.

To be crass about it, we have to work together. But to be honest about it, I want to work together. I think I have shown throughout the entire legislative history of this act that I have done so, and I have done so honestly and straightforwardly. We have produced a bill that has gotten overwhelming support. Actually a higher percentage of Democrats voted for this bill than Republicans.

I am concerned. I understand the minority has said and the Senator from Nevada has said with frequency they are not being treated fairly in conference. I understand that, and I don't necessarily want to get into that issue. They may have points, and they can take them up with the committee chairman and with the leader. I am talking about this bill. This is the first bill on which this charge has been leveled. We are not going to conference on this bill because of those reasons. I think it is not the best bill to pass. There may be other bills that have not been worked on on a bipartisan basis. But the prospect of having a bipartisan compromise is less likely than with this bill. This is a bill that helps poor kids. This is a bill that is going to provide social services funding to make sure people do not go homeless or hungry. This is a bill that we need to finish before the holiday season.

It makes no sense for us to use this vehicle as sort of the line in the sand that the minority is going to draw to say we are not happy with the way we are being treated. Fine. You are not happy with the way you are being treated, I understand that. But you certainly haven't been treated poorly on this bill. On this bill, you have been treated, I hope, as good as on any bill that has been passed through this Chamber. I anticipate that continuing. I anticipate—in fact, solicit and expect—full participation from Senator BAUCUS, with whom I have talked on this issue, and Senator GRASSLEY, with whom I have talked. Senator GRASSLEY came to the floor yesterday and said he anticipates, as he does with most if not all of the conferences he has been involved with, working on a bipartisan basis as is the custom in the Finance Committee.

I say in conclusion, before I enter into the unanimous consent request, to please look at what this bill has the potential of doing—2 billion pounds of food and more will be donated as a result of this bill passing over the next few years, 2 billion pounds of food that will be donated so people in America who are hungry and people who will be homeless will no longer be hungry and homeless; people who want quality education will have a better opportunity