

administration would not sign legislation with tough sanctions.

It is regrettable that the almighty dollar continues to rule American foreign policy, and has limited the strike and has limited the resistance to religious persecution that we have articulated around the world. It would have been better for human rights to have tougher sanctions; it would have been a better statement of American values on human rights and freedom of religion and better to stamp out religious persecution to have been quite a lot tougher.

But the reality is that we are about to the end of the 105th Congress, a week from today. Congressman WOLF and I have pressed this stronger, tougher legislation for a lengthy period of time, and if no action is taken by the end of the congressional session, then I think that is a signal for open season for those who practice religious persecution to keep it up.

What has been crafted here is a compromise. We haven't compromised the principle, but we have adhered to the principle of compromise in crafting the legislation. It takes a very significant first step with the declaration by the U.S. Government that religious persecution is not to be tolerated. We will monitor the results, and, if necessary, we will be back with further legislation. I think this is a significant step forward.

I compliment Congressman WOLF for his diligence over a long period of time. I compliment Senator NICKLES and Senator LIEBERMAN for their craftsmanship of working out this compromise bill, along with our distinguished colleague, Senator COATS, who commented at a press briefing a few moments ago that as a final act on a very, very distinguished career in both the House and the Senate, this bill is something to be recommended.

I urge my colleagues to take a look at the bill, to join as cosponsors, but to certainly pass it before we end the 105th Congress so that it becomes the law of the land and it will strike a real blow for religious freedom around the world.

I thank the Chair, and I yield the floor.

#### INTERNET TAX FREEDOM ACT

The Senate continued with the consideration of the bill.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Thank you, Mr. President.

AMENDMENT NO. 3677

Mr. President, Senator MCCAIN and I have 5 minutes to briefly respond to Senator BUMPERS' proposal. I will use a couple of those minutes of time.

First, let me say that Senator BUMPERS is such an extraordinary person and such a wonderful orator that anyone who comes to the floor to speak after him is sort of in the position of

being Tugboat Annie after the *Queen Mary* has sailed off.

I would like to try to briefly respond to Senator BUMPERS' proposal, and to urge my colleagues to strongly oppose it. First, let us be clear about what this legislation says with respect to those mayors and Governors about whom Senator BUMPERS is concerned.

This legislation says that if you are liable for a tax today, you are going to be liable if electronic commerce goes forward. You are going to be liable for a tax on an Internet sale just as if it was a traditional sale taking place today.

What the debate is all about is that some States believe that because they cannot collect on mail order today, they want to go out and collect taxes with respect to the Internet because they see the Internet as the cash cow.

Senator MCCAIN and I and others don't feel that the problem in our country is that mail-order sales aren't taxed enough. We think that what we ought to do as we look to the next century and the new economy—the digital economy—is to make sure that we have technological neutrality. This vote that we will be having in just a few moments on the Bumpers amendment is essentially the first substantive recorded vote that we will have had with respect to the Internet.

I urge my colleagues to oppose this. I will oppose it strongly, because I don't think the problem in our country is that mail-order sales aren't taxed enough. I think what we ought to do is go forward with this legislation as it stands now to ensure technological neutrality. I and others would be happy to work with Senator DORGAN and others to address this mail-order problem. But at the end of the day, let's not make the mistake with the Internet that was made with mail order years ago and create the same kind of fight and brawl.

Mr. President, I yield the floor.

Mr. MCCAIN. Mr. President, I will be very brief.

The proponents of this amendment say it is not a new tax but proper enforcement of an existing sales tax. This is not the case. With a few exceptions, States do not receive sales taxes from out-of-State mail-order businesses, nor can they expect one under current law since this is a tax that has never been collected in the past.

There is only one way to vote in favor of this amendment. Let's be clear. This amendment represents a very large tax increase on the public.

Mr. President, this amendment permits states to require out-of-state mail order businesses to collect their sales taxes on purchases made by their residents. The Senate Finance Committee, while reviewing the Internet Tax Freedom Act, determined by a bipartisan vote of 13-6 that the Internet Tax Freedom Act is not an appropriate vehicle for the Senate to act on this measure. I agree with the Finance Committee's assessment, and I know that were my

colleague and chairman of the Finance Committee, Senator ROTH, present, he would object to the consideration of this measure by the Senate without a full review of this issue in committee hearings.

Make no mistake, this is not simply the collection of a standardized interstate sales tax, as troubling as that would be. There exist thousands of taxing jurisdictions at the state, county, and local level in the U.S. Combined with the different nuances of each of these jurisdictions, mail order businesses will face an administrative nightmare fulfilling their obligations under this amendment. In fact, it is the large number and complexity of different tax codes which now require the Senate to consider a moratorium on taxation of electronic commerce. Certainly we cannot now say that mail-order businesses can or should have to attempt to deal with the same difficulties electronic commerce faces when it comes to sales taxes.

Mr. President, in addition to representing an administrative burden to industry, this amendment would also place unacceptable burdens on consumers. Mail-order businesses contribute greatly to the quality of life for many Americans. The disabled, the elderly and others rely on mail-order businesses for a variety of products. Should out-of-state mail-order firms be required to collect sales taxes, it is entirely possible that consumers will find themselves having to calculate the proper sales tax to be remitted to the mail-order company. Given the complexity of taxes, it is more than likely that no small number of consumers will find the delivery of their purchases delayed due to insufficient sales tax payments. Not only will this amendment decrease mail order business' ability to cater to these Americans, but it will reduce the convenience of the mail order industry which is at the heart of its success.

Proponents of this amendment have cited fairness for small businesses as support for passing this amendment. The underlying philosophy is that small businesses cannot compete with tax-free products offered by out-of-state mail-order businesses. Mr. President, small businesses have more to fear from retailers in their own communities, such as K-Mart, Target, and Wal-Mart, than from mail-order businesses, yet small business continues to thrive. Most Americans are not spending their time shopping around for good deals on sales taxes, but they will go to a store two blocks away as opposed to a store a block away if they can get a better price on a product.

Mr. President, this amendment is not necessary for states to collect sales taxes on out-of-state mail order purchases as some suggest. Many states have adopted use taxes to make up for supposed losses in sales tax revenue on goods purchased out-of-state, which require residents to send in sales taxes on these purchases on their own. Proponents of this amendment say that

the public is not aware of these use taxes, and therefore does not pay them. In reality, use taxes have not been effective because many of those states with use taxes are not actively enforcing them. Is this reason enough to place the burden of tax collection for Arkansas on Arizona businesses? Will Arizona businesses be able to take advantage of the sidewalks, roads, or public safety services in Arkansas? If taxing authorities are dissatisfied with their receipts from use taxes, they should work to devise alternative methods for informing the public about their existence.

Mr. President, the Congress has worked hard to balance the federal budget, and we now have a budget surplus. As a result, Congress is working on a tax cut package the American people have every right to expect. This is not the time to consider new taxes on an American public already being nickel and dimed. Proponents of this amendment say it is not a new tax, but merely the proper enforcement of existing sales taxes. This is not the case. With a few exceptions, states do not receive sales taxes from out-of-state mail-order businesses, nor can they expect to under current law. Since this is a tax that has never been collected in the past, there is only one way to view a vote in favor of this amendment. Let us be clear, this amendment represents a huge tax increase on the public.

I urge my colleagues to oppose this new tax.

Mr. President, I ask unanimous consent to have printed in the RECORD a Wall Street Journal article of December 23, 1992.

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

[From the Wall Street Journal, Dec. 23, 1992]  
MAIL-ORDER TAXES, GHOST OF CHRISTMAS  
FUTURE

(By Arthur P. Hall II)

If many states have their way, consumers could lose lots of shopping flexibility at Christmastime—and all year long. In their increasingly desperate attempts to collect money without upsetting voters, certain states want Congress to help them cash in on their residents' out-of-state mail-order and direct-marketing purchases. But the results would be disastrous—disappointing state treasuries, depriving consumers and ruining many people who depend on mail-order firms for their livelihood.

The entire direct-marketing industry exceeds \$200 billion annually, and includes charities and political fund-raising groups. States continue to explore the taxation of consumer services and advertising, but the tax assault is aimed primarily at mail-order catalogs, a strong and growing sector of the U.S. economy.

A study released in October by the Pennsylvania-based WEFA Group (formerly the Wharton economic consulting group) found that the catalog industry, with sales of \$48.8 billion, contributed \$39.9 billion (0.6%) to 1991's gross domestic product. (According to Virginia Daly of Daly Direct Marketing in Bethesda, Md., mail-order gifts account for 20% of all Christmas shopping.) In 1991, the catalog industry employed more than 250,000 people and generated a total employment of

1.17 million. The WEFA Group projects that these figures will grow substantially between 1991 and 1996, with total employment growing 16.6%

#### HOW TO STIFLE GROWTH

But taxes could stifle this growth if states persuade Congress to pass legislation enabling them to make out-of-state firms collect what is called a "use" tax. It is like a sales tax, but it applies to transactions in which a buyer and seller reside in different states. The U.S. Supreme Court, in a 1967 decision, frustrated state tax collectors by ruling that, without congressional approval, they could not require out-of-state firms to collect the use tax when the firm's only presence ("nexus") in a state was the shipment of catalogs by common carrier or U.S. mail. In sum, the court required a physical presence within the taxing state.

Ever since, tax collectors have tried to find a way around the ruling. These efforts increased in intensity about 1986, and included laws passed by 36 states to broaden the nexus interpretation from a physical to an economic presence. The Supreme Court rejected these efforts and upheld the 1967 precedent in its May 1992 decision on *Quill Corp. v. North Dakota*. But the court also said that "Congress is now free to decide whether, when, and to what extent the States may burden interstate mail-order concerns with a duty to collect use taxes."

Since 1986, most states—with Bill Clinton's Arkansas being among the first—have enacted use-tax statutes, enforcing them with varying degrees of intensity while awaiting clear direction from Congress. Rep. Jack Brooks (D., Texas) offered such legislation in May 1989. The Brooks bill never passed, but the 1983 political landscape offers promise for revenue-hungry states.

The problem with use taxes is that they are a compliance nightmare for everyone—direct marketers, consumers and states. That's why states want Congress to simplify their task by allowing them to force mail-order firms to collect the taxes. But politicians have a bad habit of ignoring the economic, consumer-choice and administrative costs associated with revenue-raising measures.

According to a 1986 study by Touche Ross, the accounting firm (now Deloitte Torche), forcing mail-order firms to collect state use taxes will raise their operating costs by 10% to 20%. And the costs get more onerous for smaller firms. That's why the Brooks bill exempted firms with annual revenues under \$12.5 million. But this threshold still leaves midsize firms (\$13 million to \$50 million) with huge and potentially crippling costs; it also erects a serious obstacle to growth. Firms surpassing the \$12.5 million threshold would have to buy the equipment and hire the staff to comply with 46 different state tax laws, and absorb or pass on the cost of collecting use taxes by mail. These costs would be six times greater than collecting sales taxes at the point of retail sale.

The fact that more than 50% of mail-order customers still pay by check means that catalog sellers would have to include consumers in the use-tax compliance process. Having to dedicate a page or more of a catalog to reciting state tax laws would of course be costly. But the problem doesn't stop there. Picture a dear grandmother who gleefully picks out Christmas sweaters for her grandchildren, scattered across several states, and then has to spend the afternoon calculating her tax bill. Ho-ho-ho.

Consumer choice and jobs, however, would suffer the most from a federal use-tax law. Midsize mail-order firms increasingly give greater choice and flexibility to rural and elderly consumers. And these firms often es-

tablish themselves in market niches, offering unique products that most local markets couldn't support.

Moreover, mail-order firms tend to proliferate in rural areas, providing a core economic base. For example, Lands' End employs 3,700 people in Dodgeville, Wis., more than the population of the entire town. L.I. Bean, in Freeport, Maine, employs around 4,000. At both firms, the numbers swell by 25% in the months leading up to Christmas. Orvis Co. (Roanoke, Va.) employs 400, the Collin Street Bakery (Corsicana, Texas) employs 700, and George W. Park Seed Co. (Greenwood, S.C.) employs 600. If federal use-tax legislation passes, says Leonard Park of George W. Park Seed, "our company is going to get creamed, and a lot of traditional American families will suffer."

#### A PITIFUL SUM

This suffering will occur for the purpose of "enhancing" state revenues—but only by a pittance. (With administrative costs included, some states would even lose money.) Total state revenues for 1991 equaled \$661.4 billion and revenue from general sales taxes equaled \$103.2 billion. The Advisory Commission on Intergovernmental Relations—a study group that monitors taxation on federal, state and local levels—estimated potential 1991 use-tax revenue at only \$2.08 billion. And even this estimate is too generous.

One should more rigorously adjust the potential tax base for lost jobs, lost mail-order sales, use-tax exemptions, firms that already pay sales taxes because of physical presence in a state, lost revenue from firms that service the catalog industry, services, and state administrative costs. When these adjustments are made, one discovers only about \$500 million in potential revenue, about 0.5% of general sales tax revenues. Even Scrooge wouldn't try to collect that pitiful sum.

Taxing the thriving mail-order industry is a thoroughly bad idea. Let's hope its time has not come.

Ms. SNOWE. Mr. President, I rise in opposition to the amendment offered by my distinguished colleague from Arkansas, Senator BUMPERS, because I believe it is unnecessary and could prove detrimental to mail order companies.

For these reasons, I urge that my colleagues reject this amendment, just as they rejected it at the start of the 104th Congress by an overwhelming bipartisan vote of 73 to 25.

Mr. President, I do not believe that the bill currently before us—the Internet Tax Freedom Bill—is the appropriate place for the Senate to consider the imposition of new taxes. This amendment contains major compliance and tax issues that should be properly considered and reported from the Finance Committee before being brought to a vote on the floor.

In addition, my strong opposition to this amendment stems from my belief that this measure will be detrimental to the mail-order industry nationally, as well as posing a stark threat to a company whose quality craftsmanship, durable outdoor products, and legendary commitment to excellence has made it the pride of my home state of Maine—L.L. Bean of Freeport.

L.L. Bean was established 86 years ago as a small, Maine-based store catering to the surrounding community and a limited number of mail-order customers. In 1912, who would have

guessed that someday L.L. Bean would rise to become one of the premier international manufacturers and marketers of outdoor gear and other goods? But by focusing on unquestioning customer satisfaction and unparalleled quality products, L.L. Bean succeeded in bringing to our state and the local community many jobs and much pride.

In Freeport alone, 4,000 people are employed by L.L. Bean full-time while over 11,000 are employed part-time during the Christmas holidays, making it the third largest employer in the State of Maine. At the same time, L.L. Bean's retail store brings to Freeport and its surrounding communities 4 million customers every year, and attracts an additional 4 million catalog customers annually—a powerful generator of tourism and business for the entire state.

Mr. President, the amendment offered by my colleague, Senator BUMPERS, would threaten the present and future job prospects of Freeport's residents needlessly, as well as any other community that employs individuals in the mail-order industry.

And even as this amendment would prove harmful in Maine and across the nation, the irony is that this amendment is not even necessary to accomplish the goal being sought by my friend from Arkansas.

Specifically, states already have the ability to collect sales taxes, just as Maine has demonstrated, and can easily collect these taxes through the voluntary income tax.

In Maine, taxpayers are given the option on their personal income tax form of either stating the actual amount of sales tax due for out-of-state purchases in a given year, or entering a flat tax amount based on a percentage of the taxpayer's income.

The bottom line is that states have the ability to collect these taxes—they do not need Federal legislation to do so.

Mr. President, the State of Maine has proven that the legislation being proposed by the Senator from Arkansas is not necessary. I urge my colleagues join me in opposing this proposal, just as they opposed it four years ago. Thank you, Mr. President. I yield the floor.

Mr. McCAIN. Mr. President, on January 19, 1995, this amendment was voted down by a vote of 73 to 25. I anticipate the same vote.

Mr. BUMPERS. Will the Senator yield the floor?

Mr. McCAIN. Mr. President, I yield the floor.

Mr. BUMPERS. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Arizona has 1 minute left; 2½ minutes remain for the Senator from Arkansas.

Mr. BUMPERS. Mr. President, I have lost this amendment several times.

As you have heard me say previously, this is the seventh or eighth year that I have offered this proposal. Every year

the specious, absolutely false arguments are made that people don't want any more taxes and that this is a new tax. This is nothing more than a continuation of the unfunded mandates bill we passed here in 1995.

All my amendment does is say to the States, as the Supreme Court in 1992 said, if Congress gives the States authority to tax sales by mail-order catalog houses, the States may take the opportunity to make them pay it.

You are talking about the Chamber of Commerce types who go to work at 8 o'clock in Little Rock, AR, in Allentown, PA, and Nashville, TN, and work all day long and collect sales taxes on every dime of every merchant on all the merchandise they sell; and some guy has a big warehouse across the State line and can ship that same merchandise into Tennessee, Arkansas and Pennsylvania without even collecting a sales tax. The Governors and the mayors and the municipalities, the council of shopping centers, the council of State governments, why do you think they are for this? Because we are saying, if you want to. If you don't want to, fine, don't do it. But we are saying you now have the right that the Supreme Court gave you to require these people who fill your landfills with catalogs to make them collect a tax just like Main Street merchants do.

Why do you think they are for it? Because they see their tax base disappearing with Internet sales and mail-order sales.

I ask every Member of this body before you cast your vote, ask yourself this question: What is going to happen to this country when the schools start closing because the tax base is gone? One of the biggest problems mayors have right now is with their police forces, their fire departments. Community schools are strapped. And all we are saying is if you want to collect a sales tax on out-of-State sales, you can. But this bill doesn't mandate it, doesn't require it. It simply gives you the right, and that is the reason all these organizations are for it. That is the reason the New York Times is for it.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I ask unanimous consent to speak for 1 minute.

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

Mr. DORGAN. I thank the Chair.

Mr. President, let me just add to the comments of the Senator from Arkansas. This is a toothless argument that doesn't even wear well with age—that this is a new tax. I have heard that for 8 years. There is simply no demonstration of truth to that argument. It is demonstrably untrue. This is not a new tax. The tax already exists on that form of commerce. It is not now being paid. The Senator from Arkansas does

not propose to change the fundamental question of whether that transaction is taxed or not taxed.

So when I hear comments from friends of mine saying that this is a new tax, I say they are wrong, dead wrong and the facts demonstrate that. So I hope Senators will support the Senator from Arkansas. I think he has offered a good amendment.

Mr. McCAIN. Mr. President, I move to table the Bumpers amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Missouri, (Mr. BOND) is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN), the Senator from South Carolina (Mr. Hollings), the Senator from Nebraska (Mr. KERREY), the Senator from Illinois (Ms. MOSELEY-BRAUN), are necessarily absent.

The PRESIDING OFFICER (Mr. GRAMS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 66, nays 29, as follows:

[Rollcall Vote No. 296 Leg.]

YEAS—66

Abraham	Feinstein	Mack
Allard	Frist	McCain
Ashcroft	Gramm	McConnell
Baucus	Grams	Murkowski
Biden	Grassley	Murray
Boxer	Gregg	Nickles
Brownback	Hagel	Reid
Burns	Hatch	Robb
Campbell	Helms	Roth
Chafee	Hutchinson	Santorum
Coats	Hutchison	Sessions
Collins	Inhofe	Shelby
Coverdell	Jeffords	Smith (NH)
Craig	Kempthorne	Smith (OR)
D'Amato	Kerry	Snowe
Daschle	Kohl	Stevens
DeWine	Kyl	Thomas
Dodd	Lautenberg	Thompson
Domenici	Leahy	Thurmond
Durbin	Lieberman	Torricelli
Faircloth	Lott	Warner
Feingold	Lugar	Wyden

NAYS—29

Akaka	Dorgan	Levin
Bennett	Enzi	Mikulski
Bingaman	Ford	Moynihan
Breaux	Gorton	Reed
Bryan	Graham	Roberts
Bumpers	Harkin	Rockefeller
Byrd	Inouye	Sarbanes
Cleland	Johnson	Specter
Cochran	Kennedy	Wellstone
Conrad	Landrieu	

NOT VOTING—5

Bond	Hollings	Moseley-Braun
Glenn	Kerrey	

The motion to lay on the table the amendment (No. 3677) was agreed to.