

May 13, 2013

Mr. Grover Norquist
Americans for Tax Reform
722 12th St. NW, Suite 400
Washington D.C. 20005

Dear Mr. Norquist:

As a coalition representing thousands of American businesses – large and small, as well as both brick-and-mortar and online – we’ve observed with interest your repeated misrepresentations regarding S.743, the *Marketplace Fairness Act*.

As you know, the U.S. Senate passed this legislation overwhelmingly last week with the strong support of conservatives, moderates and liberals alike, including a number of Senators who have also signed ATR’s pledge against tax increases.

In fact, on the same day the Senate passed this legislation, two of these Republican Senators – Mike Enzi and Lamar Alexander – sent you a point-by-point response that they submitted into the *Congressional Record* and which directly addressed every concern you raised with them in your own letter days earlier. For example, they wrote:

- *The Marketplace Fairness Act (MFA) includes many significant benefits for remote sellers, including limits on audits, critical liability protection, and tax and administrative simplification. It is also important to remember that the sales tax is imposed on the consumer by the state where they reside, so that is the ultimate check against excessive taxation. Because the tax is imposed on the consumer, there is no danger of taxation without representation.*

Nonetheless, you have continued to disseminate hyperbolic and misleading statements – which are inevitably accompanied by fundraising requests for ATR -- including a May 6th email in which you compared the complexity of this legislation to ObamaCare. While we suspect many of the Republicans supporting this legislation would take issue with your comparison, it’s worth noting that the Democrats’ health care bill is roughly 1,000 pages long, while *Marketplace Fairness Act* is just 11 pages. We will leave it to others to judge the seriousness of your argument.

In this same email you also claimed that this legislation “*could put a halt to business development, increases taxes, and further regulates our last free market.*”

To your last point, if you’re against government regulation and interference in the free marketplace than you should be supporting, and not opposing, the *Marketplace Fairness Act*. Under our current tax system, the federal government is unfairly picking winners and losers by extending tax benefits to one sector of the retail market, and not the other. Leveling the playing field so that all retailers play by the same rules is the very

definition of a free marketplace, so your position is confusing to say the least.

It's also worth noting that a number of conservative leaders and economists similarly do not agree with your view that this legislation would harm business development. To the contrary, no less an economic authority than Arthur Laffer, the father of supply-side economics, penned an op-ed in the *Wall Street Journal* recently writing:

- *“The principle of levying the lowest possible tax rate on the broadest possible tax base is the way to improve the incentives to work, save and produce—which are necessary to reinvigorate the American economy and cope with the nation's fiscal problems. Properly addressing the problem of e-fairness on the state level is a small, but important, step toward achieving this goal.”*
(<http://online.wsj.com/article/SB10001424127887324685104578388952256763678.html>)

We would like to address your stated position that this legislation constitutes a new tax increase. This was echoed by ATR's federal affairs manager, Katie McAuliffe, who said at a *Politico* forum on April 25th that a vote for this bill would constitute a violation of ATR's no-tax pledge.

Notably, neither you nor your surrogates have been able to explain how exactly this legislation violates ATR's pledge. Why is that?

Perhaps because the reality – as you surely know – is that nothing in this legislation constitutes a tax increase. Existing tax rates remain completely untouched by the *Marketplace Fairness Act*.

As Senator Enzi said on the Senate floor Monday:

- *“This bill is about fairness. It is about leveling the playing field between the brick and mortar and online companies and it is about collecting a tax that is already due. It is not about raising taxes, taxing the Internet, or taxing Internet access.”*

This was confirmed by the Congressional Budget Office (CBO) in April:

- *S. 743 would have no impact on the federal budget. Because the bill would not affect direct spending or revenues, pay-as-you-go procedures do not apply. S. 743 would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. (<http://www.cbo.gov/publication/44111>)*

It's also worth noting the words of conservative leaders Al Cardenas and Colin Hannas, who represent the *American Conservative Union* and *Let Freedom Ring*, respectively, in a letter they sent to Capitol Hill earlier this week. It reads in part:

- *No one is in favor of piling new tax burdens on hard-working Americans, least of all the two of us, and this bill does not impose any new taxes. As conservatives, we must a) ensure that all businesses and entrepreneurs are able to compete under the same rules on a level playing field, b) that the rule of law is upheld and c) affirm the principle of federalism.*

Finally, in your many misleading statements on this issue, you have notably failed to acknowledge the critical small seller exemption of \$1 million in remote sales that is included in the bill. To put this figure into perspective, it would mean that over 99 percent of all online sellers are exempt from this legislation. We can only assume that you do not address this fact because it directly undercuts your claims of economic and regulatory hardship for America's small online businesses.

Fortunately, a strong majority of Senators representing both parties have now rejected your misleading assertions and voted to pass this bill on Monday. Moving forward, we welcome a full review of the *Marketplace Fairness Act* by the House of Representatives and we are confident that this effort to level the playing field and restore fairness to the marketplace will be addressed in this Congress.

As this legislation moves forward, please let us know if you have any more questions or concerns regarding the *Marketplace Fairness Act*. We would be happy to be of assistance.

Sincerely,

The Marketplace Fairness Coalition