

own military here in the United States? We address our national security issue, we create jobs here in the United States, and we help to address the carbon issue here causing global climate change.

These are the issues that we need to tackle as a country, and we can't be afraid to do it. We can't be afraid, Madam Speaker, to make the tough decisions, to push the tough policies, to make sure that 10, 20, 30 years from now when people look back and say, What did they do in 2010, 2009 in the United States Congress to try to address some of these problems, we can say we answered the call, we made the tough decisions, and the country was better off for it.

With that, I yield back the balance of my time.

UNCONSTITUTIONALITY OF HEALTH CARE LEGISLATION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from New Jersey (Mr. GARRETT) is recognized for 60 minutes as the designee of the minority leader.

Mr. GARRETT of New Jersey. I can tell by looking at the proverbial clock on the wall at 8:30 that an important election that was just held today with the voting booths now closed just one half hour ago and the ballots all being collected in their boxes and brought to the appropriate places for counting, and we will see—potentially during the course of the next 60 minutes—just how that election should turn out.

Just as an aside, for those who are with us here this evening taking part in this discussion on the constitutionality, or the lack thereof, the unconstitutionality of the health care legislation that's about to come before this House again, we will be interspersing some of the election results so we can keep everyone apprised of just how those elections are turning out.

I mentioned the fact that the election was held today, and I'm sure there will be pundits on the air tonight talking about exactly what do the election results mean up in the State of Massachusetts, not just for the State of Massachusetts, but for the country as a whole; and a number of them will be saying what I have said before, that it's not so much just looking at those two individual candidates, but what their respective parties stand for, and more specifically, what the President of the United States and this administration has stood for over these last 12 months and what his seminal program, his major issue, has been, and that of course is this health care, so-called "reform," the imposition of new mandates and taxes and totally changing the health care configuration and how the delivery of it is done in this country.

Some would make the case that what the election that just closed now 32 minutes ago in Massachusetts is about

is whether or not the American public agrees with what the Obama administration has put forth as their major proposal is changing the health care delivery system in the United States or not. We will see the results, if not in the next 60 minutes, at least sometime tonight.

More importantly, though, than what the outcome of that one election will be is what will Congress be doing with that legislation here in the House and in the Senate this week or next week or whenever they decide to bring back that issue for a vote, and we anticipate that they will.

The fundamental issue, though—this is the one that we'll be discussing in here—is not some of the minutia of that health care legislation, not some of the small language that is buried within—first in the thousand pages that came before this House that I would hazard a guess that probably just about no one on the other side of the aisle read thoroughly and had a complete comprehension of what they were voting on when they voted "yes," nor clearly in the 2,000 pages that came forth in the Senate variation and version of that health care bill.

It's not some of the minutia, not some of the small language, and not so much the details that should be the first question that any Member of Congress should be asking themselves when they're about to vote on that bill; but it's rather the fundamental issue of whether that piece of legislation is constitutional at all.

In my pocket here is my wallet, and in my wallet is my voting card—actually, I have it over here because we just finished voting a little while ago. And as you know, Madam Speaker, every time we vote, we put it in one of these little slots here before we vote red, green, or yellow.

I always suggest to my colleagues that before they vote on whatever the legislation is, they should be asking themselves one fundamental question: Is the bill that they're about to vote on constitutional or not? Does the Constitution of the United States give us, as Members of this body, the authority to pass that law that we're about to vote on?

We are all required, when we become new Congresspeople every 2-year terms, to raise our hands and to say that we support and defend the Constitution of the United States. As a matter of fact, I was just in New Jersey earlier today where now-Governor Chris Christie did the same thing, raised his hand and said that he is supporting and defending not only the Constitution of New Jersey, but also the Constitution of the United States as well. We, as Members of this body, of the House of Representatives, do that every 2 years when we have the honor and privilege of being elected by our constituents at home; we come to Washington and say we will support and defend the Constitution.

As an aside, there is one member of our delegation from Texas who has sug-

gested that it should be a requirement that every Member of Congress and their staffs should read the Constitution at least once each term. Well, I'm not going to say that we have to mandate that; I think it would not be a bad thing for each Member to do it each term. I go through the Constitution on a regular basis, and I hope that other Members would as well. But we have all held up our hands and said that we are going to uphold it, so that is why I suggest to each Member that before they vote on any bill, that they ask themselves is that bill constitutional.

Now, the health care bill that we're talking about here is far more sweeping than just about any other piece of legislation that I have ever dealt with in my short term here in Congress. And I think it is far more devastating and sweeping than any other legislation that we have seen in generations. It would impact upwards of one-sixth of our economic activity of this country. But far more important than that, it would impact our very fundamental liberties that our Founding Fathers intended that our Constitution was designed to protect.

And so that is what our discussion is going to be tonight. And we will eagerly await the outcome of the election in the State of Massachusetts to see what the voters of that State would like to have their voices come in on. But I think the voices of that State will say, whether they support the nature or some aspects of this health care bill or not, I think all of those citizens of Massachusetts, as with the citizens of the great State of New Jersey would also agree with me, that whatever we do on health care in this country should at the very least be constitutional.

Now, one of the primary aspects of this bill that I would suggest has a flaw in it with regard to the constitutionality of it is the health care mandate. And what is that? In the bill, for the first time ever, I would suggest, in the history of the United States, Congress is going to suggest that we are not going to try to be regulating activity, but we are going to try to regulate inactivity.

For a long time now—well, basically, you can go back to the 1930s and the New Deal courts and FDR and the like—Congress has grown in its authority and had the Federal Government grow in its size as far as its reach of regulation and taxation of economic activity in this country. And so now you can see just about every aspect of your life in one way, shape or form having a little bit of a reach of the Federal Government into it as the Federal Government tries to regulate in one way, shape or form.

But that is always in the area of activity. If you're in interstate commerce some how or other, if you're a trucking firm, the Federal Government is going to reach out and regulate your activity. If you're selling some sort of product either in your State or outside of

your State, the Federal Government is going to try to come in and regulate that form of activity. If you're in any other form of business, in State or out of State, the Federal Government is going to try and step in in some way, shape or form, I would suggest, and try to regulate that activity.

But never before since our Constitution was first created in 1787 has the Federal Government said we are now going to regulate inactivity. We are going to start regulating you even if you do absolutely nothing. Even if you just stay home, don't buy anything, don't do anything, we are now going to regulate your activity. And we're going to do that regulation in a more personal and profound nature than any other aspect that we've been talking about here on the floor in the last several months or years, and that is your health care and your health insurance.

So in this legislation that the administration has proposed that has passed out of this House, that has passed in the Senate, and now is in some area of compromise on the other side of the aisle, the Federal Government, this administration says, can regulate inactivity. They can step into your house and say, because you are not doing something that the Federal Government believes you should be doing—what is that? buying insurance—we're going to penalize you and we're going to do that with a tax. We have never seen this before. And I would suggest that that is an overreach, a far overreach of what the Founding Fathers ever intended for this government, this Federal Government to be able to do.

It is, therefore, a fundamental flaw, an unconstitutional flaw in this legislation. It is one of the main reasons why I voted against it when it came in this House, and it will be a continuing reason why I will vote against it if ever it comes back on the floor of this House again.

Now, I see I have been joined by some of my colleagues from the floor who have spoken on the difficulties or the problems or the demerits of the health care bill in the past. As I said in my opening comments, there are a number of those areas that we can talk about with regard to the taxation aspect or with regard to the fact that you're putting the government—and I'm looking at a doctor now—between you and your doctor and other problems with this bill as well. There are a whole host of reasons why this legislation is bad as it impacts upon us as individuals and our health quality in this country. But as I said at the beginning, the most profound aspect of it is that it's unconstitutional, and it's unconstitutional because of this mandate.

With that, I am pleased to be joined by Ms. FOXX, who would like to speak on this topic as well.

□ 2045

Ms. FOXX. Well, thank you, Mr. GARRETT. I appreciate your taking the lead in organizing this Special Order to-

night to give us an opportunity to talk about the health care bill that has been proposed by President Obama and Speaker PELOSI. It has certainly gotten a good bit of news in the last few months.

In the news that I watch on a regular basis, particularly in the last few days, we have heard a lot about the health care bill and, as you indicated, about the impact or the possible impact on the election that is being held in Massachusetts today to fill a vacant Senate seat. I think it is very important that we continue this debate, even though there may not be many people watching this, because generally people who are watching C-SPAN, I think, are very interested in what is going on politically in the country, and probably most people are watching what is happening with the outcome of the election in Massachusetts. It has been about 45 minutes now since the polls closed, and I know, when I was watching, just before I came to the floor, the comment was made that it probably won't take long to get the results of the election as Massachusetts is a rather small State, and they have good reporting mechanisms. So we will probably hear, and I think, for months, will continue to debate whether this very, very ill-advised bill that has been proposed has had an impact.

I speak often to groups, school groups, and I always like to talk about the Constitution because it is so important to our country and to why we are the country that we are. No other country in the world has had such an endearing and enduring Constitution as we have had. If you type out the Constitution on 8½-by-11 paper, double spaced, like you would a term paper, it only turns out to be about 18 pages long. It's rather short as constitutions go. Many countries have constitutions that are thousands and thousands of pages. I think one of the geniuses of our Founders was that they were able to write a very short Constitution that has stood us in good stead for over 200 years, and it continues to stand us in good stead.

One of the things I always point out to the students when I talk to them is the first three words of the Constitution. I wish I had a poster, but I don't. Even in the original document, these three words were written larger than the other words: "We the People." The Founders wanted the people of this country to be in charge of our government. They knew about the tyranny of a king, and they knew about the tyranny of a parliament. They never wanted those tyrannies to be visited upon the American people again, so they wrote a preamble that started that way: "We the People of the United States." That's what we need to focus on here in the Congress all the time.

I agree with my distinguished colleague from New Jersey (Mr. GARRETT), which is that, every time we vote, we should ask ourselves: Is my vote going to be a vote that supports the Constitu-

tion as I swore an oath to do? I think that is very, very important.

I also think that the 10th Amendment to the Constitution doesn't get nearly the kind of attention that it deserves. The First Amendment gets a tremendous amount of attention, as it should; but all of our amendments are extremely important, and I think it's worthy to point out that in the over 200 years since the Constitution was adopted that we have only had 27 amendments to the Constitution, and we haven't needed a lot of amendments to the Constitution. We've had opportunities to adopt other amendments, and we haven't done so. I want to point out the 10th Amendment and read it, because I think, again, it's so important to this discussion that we're having on why the proposed health care bill is unconstitutional.

The 10th Amendment says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Founders did enumerate certain things that the House should do, that the Senate should do, that the President should do, and those things that are not enumerated by the Constitution are left to the people and are left to the States. Nowhere in the Constitution do we read the words: The government shall provide for health care. Nowhere. In fact, the words "health care" are nowhere in the Constitution. In fact, the Constitution says in the preamble that the people are "to provide for the common defence, promote the general welfare." Well, the main job of the Federal Government is to provide for the common defense. Unfortunately, we have gotten far, far away from that notion.

Most of the things that have been done by the Federal Government which are unconstitutional, in my opinion, have been done for good reasons. They're not malevolent reasons, but they're wrong. We should not be funding education, for example, and some of us who are here tonight have talked about that in the past. We certainly, I don't think, should be mandating that individuals in this country purchase health insurance on penalty of being put in prison. It is ridiculous that we have people contemplating that in this country. It is a tremendous overreach of power.

I want to point out something that my good colleague has pointed out, which is the issue of our being penalized for the absence of something as opposed to actions. Not buying health insurance will get a citizen in trouble in this country. Never before has that happened.

I want to point out something that the President has said and that our colleagues on the other side of the aisle who are pushing this terrible bill have said.

They said, Oh, when the American people understand what's in this bill, then they will like it. Well, that in

itself, to me, is a condemnation of the bill. The bill that has been voted on in the Senate they didn't have a chance to read, and what's being negotiated now between the House and the Senate is being done behind closed doors by a very small group of people—all in secret. Well, if the bill were put out there now, the American people could decide: Do they like the bill or not like the bill? They're saying, from what they know and from what we know and from what had been proposed in the bills in the House, we know that the bills have bad elements in them, and that's what the American people are reacting to—the elements that we know which are bad.

The additional sad situation that we face is that there is a lot that has been agreed to by four or five or six people that nobody knows anything about. That is not the way to operate in a republic. That is not the way this Congress should be operating nor should our President be a part of that.

We have ample evidence from good constitutional scholars that this is not good.

[From the Wall Street Journal, Jan. 2, 2010]

WHY THE HEALTH-CARE BILLS ARE
UNCONSTITUTIONAL

IF THE GOVERNMENT CAN MANDATE THE
PURCHASE OF INSURANCE, IT CAN DO ANYTHING

(By Orrin G. Hatch, J. Kenneth Blackwell
and Kenneth A. Klukowski)

President Obama's health-care bill is now moving toward final passage. The policy issues may be coming to an end, but the legal issues are certain to continue because key provisions of this dangerous legislation are unconstitutional. Legally speaking, this legislation creates a target-rich environment. We will focus on three of its more glaring constitutional defects.

First, the Constitution does not give Congress the power to require that Americans purchase health insurance. Congress must be able to point to at least one of its powers listed in the Constitution as the basis of any legislation it passes. None of those powers justifies the individual insurance mandate. Congress's powers to tax and spend do not apply because the mandate neither taxes nor spends. The only other option is Congress's power to regulate interstate commerce.

Congress has many times stretched this power to the breaking point, exceeding even the expanded version of the commerce power established by the Supreme Court since the Great Depression. It is one thing, however, for Congress to regulate economic activity in which individuals choose to engage; it is another to require that individuals engage in such activity. That is not a difference in degree, but instead a difference in kind. It is a line that Congress has never crossed and the courts have never sanctioned.

In fact, the Supreme Court in *United States v. Lopez* (1995) rejected a version of the commerce power so expansive that it would leave virtually no activities by individuals that Congress could not regulate. By requiring Americans to use their own money to purchase a particular good or service, Congress would be doing exactly what the court said it could not do.

Some have argued that Congress may pass any legislation that it believes will serve the "general welfare." Those words appear in Article I of the Constitution, but they do not create a free-floating power for Congress simply to go forth and legislate well. Rather,

the general welfare clause identifies the purpose for which Congress may spend money. The individual mandate tells Americans how they must spend the money Congress has not taken from them and has nothing to do with congressional spending.

A second constitutional defect of the Reid bill passed in the Senate involves the deals he cut to secure the votes of individual senators. Some of those deals do involve spending programs because they waive certain states' obligation to contribute to the Medicaid program. This selective spending targeted at certain states runs afoul of the general welfare clause. The welfare it serves is instead very specific and has been dubbed "cash for cloture" because it secured the 60 votes the majority needed to end debate and pass this legislation.

A third constitutional defect in this ObamaCare legislation is its command that states establish such things as benefit exchanges, which will require state legislation and regulations. This is not a condition for receiving federal funds, which would still leave some kind of choice to the states. No, this legislation requires states to establish these exchanges or says that the Secretary of Health and Human Services will step in and do it for them. It renders states little more than subdivisions of the federal government.

This violates the letter, the spirit, and the interpretation of our federal-state form of government. Some may have come to consider federalism an archaic annoyance, perhaps an amusing topic for law-school seminars but certainly not a substantive rule for structuring government. But in *New York v. United States* (1992) and *Printz v. United States* (1997), the Supreme Court struck down two laws on the grounds that the Constitution forbids the federal government from commandeering any branch of state government to administer a federal program. That is, by drafting and by deliberate design, exactly what this legislation would do.

The federal government may exercise only the powers granted to it or denied to the states. The states may do everything else. This is why, for example, states may have authority to require individuals to purchase health insurance but the federal government does not. It is also the reason states may require that individuals purchase car insurance before choosing to drive a car, but the federal government may not require all individuals to purchase health insurance.

This hardly exhausts the list of constitutional problems with this legislation, which would take the federal government into uncharted political and legal territory. Analysts, scholars and litigators are just beginning to examine the issues we have raised and other issues that may well lead to future litigation.

America's founders intended the federal government to have limited powers and that the states have an independent sovereign place in our system of government. The Obama/Reid/Pelosi legislation to take control of the American health-care system is the most sweeping and intrusive federal program ever devised. If the federal government can do this, then it can do anything, and the limits on government power that our liberty requires will be more myth than reality.

With that, I would like to yield back to my colleague from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. I thank the gentlelady for joining us on the floor this evening and for her remarks for the last several minutes on this very most important issue. As the gentlelady who has come to the floor

on numerous occasions in the past to speak to this most profound and fundamental issue, the protecting of our constitutional rights, I once again thank her.

With that, I will now just turn to the gentleman from Georgia, who is familiar, I'm sure, with James Madison and "The Federalist Papers" where Mr. Madison said, "In the first place, it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated powers." Congress, in other words, was not set forth free by our Founding Fathers to have unlimited grants of authority but, rather, certain prescribed ones.

With that, perhaps you could help enumerate and share on that point on which Madison was so eloquently quoted 200 years ago. The gentleman from Georgia.

Mr. BROUN of Georgia. Thank you, Mr. GARRETT. I appreciate your yielding this evening.

In Hosea 4:6, God tells us, "My people are destroyed for a lack of knowledge." Unfortunately, people all over this country have a tremendous lack of knowledge about how much liberty and freedom we've lost in this country. Now, I differentiate between freedom and liberty. I talk more about liberty than freedom. A wild dog is free. Let me define for the American people what "liberty" is. "Liberty" is freedom bridled by morality.

We have things going on here in this Congress, and we've had things going on in Congress after Congress under both Democratic as well as Republican leadership. We've had things going on with the executive branch under both Republican and Democrat Presidents, and we even have things going on in the Federal court system, all the way up to the U.S. Supreme Court, where rulings are handed down where the American people are losing their liberty.

I am a strict original intent constitutionalist. In fact, I carry a copy of the Constitution in my pocket at all times, and it's in every one of my suits. On my desk, there is a tremendous document. It's called "The Federalist Papers in Modern Language," which is a transliteration of "The Federalist Papers," which are very difficult to read because they're in old-style English. This is in modern-type English. It's not an interpretation. It's just a transliteration. It goes from one form of English into another.

So I highly encourage the American people to get these documents. I give copies of the Constitution to anyone who walks into my office here in Washington, D.C., and I give my constituents copies of the Constitution out of our district offices. Every Congressman can do the same. The American people need to become knowledgeable about how much liberty we've lost.

One of the greatest attacks upon liberty is what's going on here in Congress today where the leadership in

this House, where the leadership in the Senate, and where the leadership down Pennsylvania Avenue, in the White House, want to take away your liberty to see your doctor and for that doctor and you to make the decisions that you need to have made so that you have the best quality health care.

Now, Ms. FOXX was talking about the 10th Amendment. I'll go back and read it just to help educate the people because you may have not listened to Ms. FOXX, but listen up, please, Madam Speaker, to what the 10th Amendment says.

It says, "The powers not delegated to the United States by the Constitution—" in other words, those powers specifically given to Congress, the President and the courts—"nor prohibited by it to the States." Those are such things as minting money and having armies and things like that. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

So we in Congress can only technically constitutionally pass laws that are specifically given to us by the powers of this document. Article I, section 8 actually lists the things that Congress can pass laws about.

Madam Speaker, this is just a little booklet which contains the Constitution, the Declaration of Independence, and every single amendment. It's just this little bitty booklet, not the thousands of pages that PelosiCare and ReidCare and ObamaCare entail. Madam Speaker, it starts right here, and it goes to right here. It's 1¾ pages in this little booklet. It's just 18 things. It says, "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States."

□ 2100

Now, Madison was very specific, and Mr. GARRETT was talking about that. If you read the Federalist papers, the general welfare, which one of the clauses that has been perverted by Democrats and Republicans, courts, Presidents, and Congress alike, means the general welfare. Not direct welfare, but the general welfare of the Nation.

So we have the ability to collect taxes and pay the debts.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations and among the several States and with the Indian tribes.

Now, Mr. GARRETT was just talking a few minutes ago about this commerce clause being utilized to make folks do something because the leadership here thinks that we have to mandate every person in this country to buy health care insurance whether you want to or not. That has never been done, and it is totally unconstitutional, as Mr. GARRETT was saying.

Actually, this commerce clause is one of the three that have been perverted, also. The original intent of that is that we don't lockbox trade within State borders. And we have done that on health insurance, which is unconstitutional in itself.

Republicans over and over again have suggested, and in fact in my comprehensive health care reform bill that I introduced, H.R. 3889, it would allow people in Georgia to buy health insurance in Alabama, which is cheaper, for the same Blue Cross-Blue Shield policy. Why shouldn't we be able to do that? This commerce clause under the original intent should allow us to do so. Republicans have proposed that. Democrats have fought against that.

Going on. To establish a uniformed rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States. So we should have naturalization and bankruptcy laws.

To coin money, to regulate the value thereof, and of foreign coin, and to fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States. In fact, this is one of the few constitutional criminal justice things that the Federal Government is supposed to be doing. Most of the criminal justice laws that the Federal Government has on its books are unconstitutional because we don't have the authority to do them.

To establish post offices and post roads. Post roads during the Founders' time were the highway system. So we do have constitutional authority for Federal roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. That means patent laws. So we have constitutional authority for patents.

To constitute tribunals inferior to the Supreme Court.

Folks, there is only one Federal court that is established in this document, and that is the U.S. Supreme Court. Every single Federal court, every single Federal judge serves at the pleasure of the Congress. We need to start putting checks on these dudes, and ladies, around this country who have actually broken their oath of office when they swear to uphold the Constitution. In fact, every one of us, when we are sworn in, every Congress swears to uphold the Constitution against enemies, both foreign and domestic. Madam Speaker, we have a lot of enemies that are domestic, enemies of the Constitution. This House is overrun by many domestic enemies of the Constitution, and the Senate is full of a bunch of them also. The courts are full of a bunch of them likewise.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. That is another one of the few criminal

defense laws of the Federal Government.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on lands and water.

To raise and support armies.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces. That is for the Army and the Navy, and the Marine Corps. I am a Marine, by the way—Semper Fi.

To provide and call forth the militia.

To provide for organizing, arming, and disciplining the militia.

To exercise exclusive legislation in all cases over the District of Columbia. So when the District of Columbia decides that they want to have homosexual marriage recognized in the District of Columbia, we in Congress are supposed to tell them no. In fact, I have got a House Resolution that says that.

To make all laws that should be necessary and proper for carrying into execution the foregoing powers.

That is it, folks. That is it. The 18 things that we have the authority here in Congress to pass laws about. There is absolutely nothing in this document that gives Congress the authority to take over the health care system in this country. None.

And when we see PelosiCare on this floor or when we see ReidCare, ObamaCare on this floor, there is absolutely zero constitutional authority.

Now, God says in his Word, with the multitude of counselors there is safety. And I make a challenge to the Democrats. One Democrat in this House. If one Democrat in this House or one Democrat in the U.S. Senate were to show me in this document where Congress has the authority to pass a bill that takes over the health care system in America and sets forth socialized medicine, as they are trying to do under ObamaCare, I will vote for it. If one person in this House or the Senate shows me where in this document that we have the constitutional authority to do that, I will vote for it.

I make a pledge to my Lord God, my Lord Jesus Christ up above, to the people of the United States, I pledge to vote for it if one, just one House member or Senate member will show me in this document where we have the authority to do so. I am not worried about that pledge, because there is none.

PelosiCare, ReidCare, ObamaCare, secret—well, they are all secret bills. They are all in secret, with no transparency we have been promised by the Speaker as well as by the President. There is nothing in this document to give the Federal Government the authority.

Mr. GARRETT was talking about that one mandate on individuals which in itself is unconstitutional. There are so many things in this thing—in fact, in the Senate bill, Mr. GARRETT, Madam Speaker, they say we, the next Congress, can't pass laws regarding that

bill to overturn it, to amend it, or to withdraw it, appeal it. That in itself is unconstitutional. We in this Congress can't make a law that subjugates the next Congress to what we pass. That is unconstitutional. It doesn't pass the smell test, either.

The American people, Madam Speaker, are being destroyed for a tremendous lack of knowledge of this document and how much liberty we are losing.

Madam Speaker, it is up to the American people to rise up and say no to Obamacare. To say no to whatever bill.

I understand that the Majority Leader, Mr. HOYER, today said that, "The Senate bill is better than nothing." So I am expecting with that comment that they are going to try to force down the throats of this House the Senate bill. I pray and hope to God, Lord Jesus Christ, please help us to not pass that bill. It is in the name of Jesus that I pray that. But I just hope and pray that we don't pass any bill that is being presented here.

I have challenged Democrats, many of them individually, to introduce a bill. I will give them the legislative language. And it is totally constitutional, Mr. GARRETT, Mr. Speaker—it has gone from Madam Speaker to Mr. Speaker. Welcome. We are glad to have you tonight—to do four things.

One is have cross-state purchasing of insurance for individuals and businesses, which is constitutional under the commerce clause. And we should be doing that under the commerce clause.

To have associations so that associations could be developed. I am a Rotarian. We could have a Rotary International pool. I am a graduate of the University of Georgia, Medical College of Georgia. We could have a University of Georgia system pool. We could have any kind of pool. We could have a construction pool. We could have a college graduate pool. We could have all these pools that anybody in the country could join and have multiple options to buy many different kinds of policies, and it would put a whole lot of market forces into the system to lower the cost.

The third thing is to stimulate the States to set up high-risk pools for those who can't buy insurance because of preexisting conditions.

And, fourth, to have 100 percent tax deductibility for every single person in this country for all health care expenses. There are a lot of people that are left out, and you can't deduct your health care expenses.

Four simple things, all constitutional. I've had many Democrats, Mr. Speaker, tell me they would love to introduce this bill. I will be the first co-sponsor, and we could pass that, I believe, in this House. That would put some market forces in the system and would literally lower the cost of health care.

Mr. Speaker, I am a medical doctor. In my medical practice as a family

practitioner I have seen how government intrusion in the health care system has markedly run up the cost of health care. A couple of quick examples. I don't want to hog the time, Mr. GARRETT, but let me just give this story right quick like.

I was in a solo practice down in rural southwest Georgia, and I had a small automated lab with quality controls to make sure that the results were correct for my patients. Most doctors, if not almost all doctors, want to have good lab results. Many doctors across the country had these small automated labs with quality control. Congress passed a bill called CLIA, the Clinical Laboratory Improvement Act. It was signed into law. It shut down my lab and every single doctor's lab in this country.

Prior to CLIA, if a patient came in with a sore throat, running a fever, I would do a CBC, a complete blood count, to see if they had a bacterial infection and thus needed antibiotics, or a viral infection that is not helped by antibiotics. They don't need to spend their money or even be exposed to antibiotics. I charged \$12 for that test. It took 5 minutes to do it. CLIA shut my lab down. I had to send patients across the way to the hospital. It took 2 to 3 hours, cost \$75 for one test.

Mr. Speaker, what do you think that did to the cost of health care across this country? What do you think that did to the cost of insurance across the country? It ran it up for everybody.

Congress a few years ago passed HIPAA. That has cost the health care industry billions, with a B, billions of dollars, and has not paid for the first aspirin to treat the headaches that it has created. It was totally unneeded.

It is government regulation in the health care system, Mr. Speaker, that has run the cost up so that it is just outrageous. The Federal Government has no business regulating what I do with my patients. It has no constitutional authority to do so.

We have to go back to the drawing boards and work on a constitutional basis and present in a step-by-step approach and a constitutional approach ways of getting the Federal Government out of regulating the health care system. Let the marketplace regulate it. Because I know without a question that the marketplace, unencumbered by taxes and regulations, is the best control of quality, quantity, and cost of all goods and services, including my services as a medical doctor.

But, again, I challenge one Democrat in this House or in the Senate to show me where it is constitutional for us to pass PelosiCare, ReidCare, ObamaCare, and I will vote for bill. They can't do it because it is unconstitutional. Thank you, Mr. GARRETT.

Mr. GARRETT of New Jersey. I thank the gentleman from Georgia for his passionate statements and litany of facts with regard to the unconstitutionality of this underlying bill. And within all that, there is the question

of: What does that mean to me? The unconstitutionality.

What it comes right down to is this: That the Founders were profound and wise in their thinking in establishing the Constitution, and to do so not for their generation but for posterity as well, so that our rights and our liberties would be protected. And I think that is the case you were making.

Mr. BROWN of Georgia. If the gentleman would yield for 30 seconds. And I thank you for doing so, because we have some other speakers, and I have taken a long time. I apologize to the other speakers for taking so long.

But you are right. What does it mean to the American citizen about this bill? Not only that it is unconstitutional, which it is. But if you have private insurance, the cost is going to go up.

We have been told by our President: If you like your health insurance, you can keep it. But it is going to be more expensive if this is passed than it is today, and it is going to go up a lot faster, higher. Your doctor and you can't make decisions. Some government bureaucrat in Washington is going to be making those decisions for you.

Medicare people are going to have the Medicare money cut, the pot that is available for Medicare to be cut markedly so there is going to be more rationing of care. There already is some, but it is going to be worse. I as a doctor am already regulated and told who I can put in the hospital and how long they can stay there. That is going to get a whole lot worse. So it is going to affect the quality of care.

The American people need to understand: The cost of your health insurance is going up. The quality of care that your doctor can give you is going down. Markedly going down. And you are going to be mandated to be—basically, it is a process of transferring everybody into a single-payer health care system. Socialized medicine. That is what our President said. That is their objective. And so it is going to be disastrous for everybody.

□ 2115

Mr. GARRETT of New Jersey. I thank the gentleman for laying it out so clearly to us. I will yield in just one moment to the gentleman from Utah. But before that, I think I'll be yielding to the gentleman from Texas, because at the beginning of this hour I promised we would bring periodic updates as to how this very important vote is occurring in the State of Massachusetts.

Mr. GOHMERT. Well, in hearing the discussion about what is constitutional and what isn't, the American people are not stupid. In Massachusetts, with over 68 percent of the precincts reporting, the Republican, Brown, has about a hundred thousand votes more—53, moving towards 54 percent, to 46. Massachusetts was not fooled. They looked at the candidates, they looked at what the candidates themselves were saying to the people in Massachusetts, and

Brown made clear he wasn't voting for the health care bill. And he is doing the unthinkable: he's running away with this at this point. It's not even close. It's not even close enough that legal action and all those types of things that have been tried in other places were going to help.

The people have made clear, and I couldn't help but think about a comment of one of our Democratic colleagues down the hall when he said, You know, the further we go, the more difficult it is to pass laws that the American people don't want passed. That is the way it's supposed to be. This body is not supposed to come in here and pass laws that the American people do not want passed. They are not supposed to. That is the way it was designed.

I love what Justice Scalia said not long ago when someone asked, Is the Bill of Rights really what has made this country the greatest country of liberty in history, and he said, No; the Soviet Union had a better Bill of Rights than we do. It was because the Founders did not trust government, and they wanted to make it as difficult as they could to pass a law to put upon the people. So they created not one body, but two bodies, and created it to where either body could cancel out the other body.

And that wasn't good enough. They said, We need an executive. But we don't want a prime minister that is elected by the legislature. Oh, no. We want an executive elected separately, and then he can veto what those bodies do. Even if they don't cancel out each other, he can cancel them out. And that's not good enough. We want a judicial branch that will make it even more difficult to create laws that are crammed down the throats of the American people. He said, That is what actually has done more to preserve the rights of Americans, because it was so difficult to get laws passed.

And what we have seen the last year in here is just a complete usurpation of all of those checks and balances that were provided by the Founders, the complete, actually, elimination of them, as we saw the White House have an auto task force in secret. Cram down laws that were in violation of what were passed here regarding bankruptcy. We had a bankruptcy judge willing to just sign an order that was given to him that was in clear violation of the laws that were passed, and then a Supreme Court that didn't do anything about it. To her credit, Ruth Bader Ginsburg put a 24-hour hold, but then that was withdrawn. And so the Constitution was turned upside down; the laws were turned upside down. And now the American people have had enough. And we are seeing it in Massachusetts.

Who would have thought that a Senator in California would have a close race, much less a Senator in Massachusetts have a close race. And now it's turned out it wasn't even close. You

have a Republican in Massachusetts that appears well on his way to being sworn in as the next Senator from Massachusetts. I know that those in power in Massachusetts would not be exceedingly hypocritical and delay swearing Senator Brown in. Surely they would not be that hypocritical. He ought to be sworn in just as quickly as the interim Senator was sworn in to avoid being labeled eternally as the hypocrites of the decade. So I'm sure they won't allow that to happen. They will swear in Senator Brown just as quickly as they can do that. This should spell the end, as we are told, of health care. But, here again, we have people in the House, people in the Senate, that say, Forget what the American people want, forget what the Constitution says.

It should be pointed out, as my friends have been talking about the Constitution, when you lay it out, I don't see how this could be held constitutional. And so we've tried to get a fast track in there to go straight to the Supreme Court. Here and in the Senate they don't want it in there because they know it'll be held unconstitutional.

I appreciate my friend for yielding. But it appears Massachusetts is speaking very loudly.

Mr. GARRETT of New Jersey. I appreciate the gentleman from Texas for the update, for your comments; and just as you're all hoping, as we are, that they will move quickly with the appointment, so too we hope that the rest of the Massachusetts congressional delegation will listen to the voters from the State of Massachusetts and do the right thing when the votes come here in the House.

With that, I am very pleased now to turn the floor over to the gentleman from Utah, a gentleman who is on the floor frequently speaking about constitutional issues, the gentleman who helped found the Constitutional Caucus here in the House, the gentleman from Utah.

Mr. BISHOP of Utah. I thank the gentleman from New Jersey for this. You know, we are talking about a potential health care bill which, whether it is the Senate or House version, is an enormous expansion of the government. Not only is it an enormous expansion of the government in the cost for it, but it's also an enormous expansion in the amount of power.

Now, both bills are based on the commerce clause of giving them their authority to implement this program. The commerce clause, as we know, over the last 70 years has been so expanded, its shape has basically been lost. But notwithstanding even when the courts have ruled on commerce clause issues, they have two thresholds that must be maintained before something has usually been declared constitutional for them.

One is the activity has to have a significant impact on interstate commerce. I think you can argue this bill

will. But the second is the willing participant threshold that must be met, which means the commerce clause has said Congress can do that which will stop an activity; but never, never have they said the commerce clause can be used to forbid inactivity or force individuals to pay a fine not only for doing nothing, but for doing the wrong kind of thing according to the Federal Government.

Now that is the problem this piece of legislation has, because if you can force people to go through this to have a certain kind of health insurance, they can force Americans to do anything at any given time. The Constitution simply says commercial activity in which people choose to engage, but cannot require that they engage in those commercial activities. So it's one of those simple concepts. Let me give an example.

We passed a Cash for Clunkers bill, which gave incentives for people to go and get a certain kind of car. We still allow people that choice and option. If you use that same program with the principles within this health care monstrosity, we don't have a Cash for Clunkers program; we simply have a clunker program, which will then have the government establish a bureaucracy, an organization not only to tell you what to buy, but when to buy it and give you the opportunity to pay for it yourself or be fined by the Federal Government.

Now that is not the way it's supposed to be. In *Mack v. The United States*, the Supreme Court said, The Constitution protects us against our better instincts because it divides power to help us so that we do not succumb to the temptation of concentrating power in one location as an expedient solution for crisis of the day. And that is indeed what this particular bill would do.

Mr. GARRETT of New Jersey. With that, I will just have an update from the Cloakroom that on the Massachusetts race that the Republican candidate Brown has won and the Democrat has conceded with 53 to 46 percent on the votes. Thank you.

Mr. BISHOP of Utah. That news, if I can get the time from the gentleman from New Jersey, is as amazing as the potential harm that this bill could do to all Americans that are there. We've spoken many times on the floor about the concept of the general welfare clause, which was not an expansion of opportunity for Congress. It was supposed to be a limitation. And I did at one time get a call—we spoke once on what was the interpretation of the general welfare clause—I got a call from a lady from Alabama after that, saying it was very eloquent, but these are all the things I like the government doing. And then she gave me a list of stuff.

I said, Ma'am, you basically missed our intent. It was not the government can do these things; it is which level of government should do these things. Not every issue has to rise to the importance that Congress needs to do it,

which would lead to another element of the Constitution that I think this Obama health care-Democrat-Reid-Pelosi, whatever you want to call it, is violating, which is Federalism.

But before I do that, I would yield back to the gentleman from New Jersey to allow him to at least give some comments upon this particular issue, and then if we want to go back into Federalism—you don't have a whole lot of time—I'd be more than happy to pick that up at some later date. But I'd like to yield back to the gentleman first and at least give you a shot at this thing.

Mr. GARRETT of New Jersey. My shot is just to be able to bring this issue to the floor and to the American public and to Members of Congress as well. As my opening comment was the importance of looking at the constitutionality of any legislation, or particularly this legislation—you probably recall this—I was not the first one to bring this issue up. Reporters were actually the ones who brought this up to our leadership here in the House and to the White House as well. I wasn't there when it happened. All I know is what I read in the paper.

But when the issue of the constitutionality, whether it was the mandate provision that we are talking about principally here or the other aspects as well, my understanding from what I read in the press is when the reporter asked Speaker PELOSI about, Did you consider the constitutionality of this legislation, she just laughed it off and said, Of course not. We are not looking at that.

My understanding is, likewise, when that question was posed to the administration, Did you consider the constitutionality of the health care bill, their answer was even more emphatic: no, we didn't look at that at all. That is so profound of an answer, to think that the administration would not look at the constitutionality of a piece of legislation that is going to impact upon personal choices of the health decisions of Americans and one-sixth of the economy as well.

The Founders understood this issue as far as protecting our freedoms and our liberties and that you need a document in order to do so. One of our first Chief Justices, Chief Justice Marshall, famously observed that the powers of the legislature, here in the Congress, are defined and limited, as the gentleman from Georgia just enumerated the 18 powers in it, and that those limits may not be mistaken or forgotten in the Constitution as written.

What he said was that the Constitution—I have a copy over here—was written because we want to put down the limitations on the power of the government to go and exercise authority over the public to a limited factor so the public still has some freedom and liberty at the end of the day. He continued on with that by saying, Should Congress, under the pretext of executing its powers, pass laws for the

accomplishments of objects not entrusted—perhaps some of those list of requirements or ideas that this lady who called you from Alabama, was it—that she would like somebody to take care of her for her—should Congress under the pretext of executing its powers pass laws via accomplishment of objects not entrusted to the national government—this is where I yield back to you on the Federalism issue—it would become the painful duty of this tribunal—that meaning the U.S. Supreme Court—should a case requiring such a decision come before it, to say that such an act was not the law of the land.

What does that mean? That means that Congress does not have the ability to say that something is constitutional just because we say it is. Congress does not have the ability of saying that something is necessary and proper just because we say it is. Congress does not have the ability to say something is providing the good and general welfare for the country and therefore is constitutional just because we say it is.

We have a Constitution that is a contract entered into by the people of this country with their government defining what the authority is on the various levels of government, and we here as Members of Congress must live within the terms of that contract. We cannot go outside of the terms of the contract any more than any one of us can go outside the terms of a contract that we entered into when we buy a house or buy a car or enter a contract with some store or what have you.

We are limited by what the Constitution does and says. That is what we are trying to ask that this administration keep in mind and what we are asking the Speaker to keep in mind as well when they bring forth a bill to the floor trying to do something that we all agree needs to be done, and that is to reform the health care delivery system in this country. But we would suggest that it be done in a way that is constitutional and protects the freedoms and liberties of the American people.

And with that, I yield to the gentleman whatever time remains.

□ 2130

Mr. BISHOP of Utah. I appreciate you yielding again on this.

Let me just say that there are several concepts that we have talked about here. One, does it meet the threshold of the commerce clause according to the courts? I do not think it does. You have also mentioned several other concepts, that just because Congress says this is a necessary and proper act doesn't necessarily mean it is a necessary and proper act.

It also bothers me that we forget the very essence of federalism upon which this country was founded, which means simply, it is not essential for the Federal Government to have to solve every problem. In fact, sometimes it is better if the Federal Government does not. I

have used that example many times before about records. When I was younger, if I wanted a song, I had to buy the entire record. Now there is an iPod that my kid can download the song that I want, too. If I want vanilla, Ben and Jerry's still has 34 flavors from which I can choose.

Every part of our lives is now based on the concept of choice and options for American people, except the government. The Federal Government is still the last bastion of one-size-fits-allism, where we tell people what they ought to be doing rather than allowing them to have choices and options. I say this because some people said, Well, if we don't do this, we have nothing. That is not true. States are moving forward. My State already has implemented a process that gives people 66 options based on the demographics of my State, and everything we are doing in Utah is stopped dead. If this Federal bill passes, they succeed, they now dictate everything that will happen.

States are different. Massachusetts has a program they seem to like. It would not work in Utah. The demographics of Utah would not allow our program to be successful in Massachusetts. But that is why there is the brilliance of federalism, so there can be 50 different innovative ideas and people have the chance to experiment and try and prove and find something that works for their particular area. In a nutshell, that is a very brief problem. This destroys the concept of federalism.

I will yield back to the gentleman from New Jersey.

Mr. GARRETT of New Jersey. I am trying to think of the quote. You can try to help me out here. "States were created as the—"

Mr. BISHOP of Utah. "Laboratory of democracy."

Mr. GARRETT of New Jersey. "—laboratory of democracy" so all of those experiments could go on. Instead, what we have are the States becoming the guinea pigs for the democracy because the States are being controlled by the Federal Government in a way that is not the way the American public would like to see it.

So I thank the gentleman from Utah for, once again, joining us on the floor in an eloquent and educational format, as you always do. I appreciate that in a commonsense way that we can all understand it as well.

YEAR IN REVIEW

The SPEAKER pro tempore (Mr. MURPHY of New York). Under the Speaker's announced policy of January 6, 2009, the gentleman from Iowa (Mr. KING) is recognized for 60 minutes.

Mr. KING of Iowa. Thank you, Mr. Speaker. I apologize for the delay in getting down here to answer the call of the gavel.

There are some distractions taking place around America as we speak. A lot of America has been transfixed by