

THE UNCONSTITUTIONALITY OF MANDATED HEALTH CARE

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

Mr. CARTER. I thank you for yielding, Madam Speaker, and I thank you for this night so that we can get together and talk about something that is still on the minds of almost everybody in the United States because, quite frankly, even though this bill has passed both Houses of Congress and even though it has been signed into law by the President, the overwhelming majority of the people in this country are waking up every day to find out there is something else that nobody knew was in this bill and are finding out about something else that is being imposed upon the States and on the people of this country that nobody knew was going to happen.

It's because it was a 2,400-page bill, or something like that, which nobody ever read, and it was voted on and passed when there were people who were responsible for its contents who couldn't tell you what was in it. In fact, I believe the Speaker of this House made a statement: We need to pass this bill so we can learn what's in it. That's kind of when the worrying started in this country. It was when people started hearing those kinds of things from our leadership.

So we are now at a point where there has been a lawsuit—and we talked about this. I believe it was last week or the week before last. We talked about the fact that a lawsuit has been filed by the attorneys general of multiple States in this country. Well, this is a growing process. When we last talked, there were 20 States that had joined in this lawsuit, and here we are on April 26, 2010, and we have 22 States. So two more States have joined in this process, and there is at least the possibility that we could add, maybe, another five or 10 States to this lawsuit.

So, right now, as it stands right now, it is my understanding—and I can be corrected. I do not claim to be a great historical scholar of the Supreme Court of the United States. I have read cases, which was required by my profession, and I have taken constitutional law in law school. I had great constitutional law debates among my law school colleagues when we were young, would-be lawyers. In my practice of law and as a judge, I've had some periphery of the constitutional requirements that are set out by the Supreme Court, but I don't claim to be an expert on it.

I am told that, since the Court started, this is probably the largest single group of States to have filed suit on behalf of their individual States and to have joined together on an issue. Now, I may be wrong about that, and I certainly will be corrected if somebody wants to correct me, but it's close.

We've got 50 States in this Union, and 22 of them are already in this lawsuit. So, if we pick up three more States, we'll have half the States in the Union involved in this lawsuit. Even 22 is really kind a mind-boggling number. It also represents 44.56 percent of the population of the United States.

So, within these red States that you see on this map here—those dark States as compared to the light States, if anybody is still watching in black and white—that represents almost half the population of this country who are asking the question, and the question is very simple:

Does the Constitution grant Congress the power to mandate the coverage that's set out in this bill?

Now, that is a big question, but it focuses down to a much narrower issue. There are more issues here, but the most narrow issue is if Congress has the authority to mandate that people who are living within the continental United States must buy certain products, namely, health insurance, from designated sellers of that product, which will mean some insurance company. The issue is that they have to, that they cannot have an option, that they cannot say "no," and that if they say "no" that they can be fined under the IRS Code and can be required to pay up to a \$2,000 fine for not purchasing health care. There are some ranges in that. The fine can be less, but if it's \$1, it's a fine punishing you for not buying a product.

Now, the great debate is broadly about the Ninth and 10th Amendments, but it is specifically about the commerce clause as set out in the Constitution of the United States. So every attorney general in every one of the States you see here—and this is a pretty nice cross-section. We've got the east coast, one on the west coast, a whole bunch of southern States, a whole bunch of western States, and a whole bunch of midwestern States which are in this fight, and they are asking a real simple question about the commerce clause.

□ 2000

But as I said, it's like we wake up every morning and we have new things to talk about, about this plan.

A recent Center for Medicine and Medicare Services has come up with some new findings on this bill. Let's examine these together. I'm glad to have my friend, Mr. BURTON here, who is going to join me and we will talk about some of this stuff.

Twenty million Americans who currently can't afford health insurance will buy a policy under duress from the threat of fine and IRS action. This is what they found: Four million Americans will still not be able to buy and will be fined \$33 billion a year and still not have health insurance. Fourteen million Americans will lose their employer-sponsored health insurance as a direct result of this new law. Twenty-three million Americans will still have

no health insurance coverage in 2019 after the bill is fully implemented. And 21 percent of the gross domestic product of the United States will be spent on health care after the law is implemented, which is higher than if Congress had done nothing. So if nothing would have happened, we spent 21 percent of the gross domestic product.

So we were sitting here, and the first thing we were told is the reason we need to pass health care is we need to get a cheaper product. I mean, we need to save money. We need to reduce the deficit, reduce the debt.

Well, we haven't reduced the spending because it's going to be 21 percent of the gross domestic product, which is larger than it is today, and it's estimated it's larger than it would have been if we hadn't done anything.

So these are facts that sort of jar you into reality that we have got a product that every American sitting around the coffee shop tomorrow morning ought to be talking about, that everybody in every office building, on every farm and ranch, and every small business in America ought to be asking questions about what has become the new law of the land.

I think the attorneys general of the multiple States in this country, they started asking these countries as the process was going through, and as they discovered nightmare after nightmare after nightmare as it pertains to the States, they started getting rattled and they started to say, This can't be. We can't be imposing this kind of will under the Commerce Clause.

So I think it's important that we look at the Ninth and the 10th Amendment and the Commerce Clause, and I'm going to start off, and then we're going to talk about some constitutional law here with my good friend DAN BURTON. We're going to see how we figure this.

I think everybody out there learned in school we have a Constitution and we have amendments to that Constitution, which are just part of the Constitution. They just came at a different time. And the amendments have a lot to do with individual rights to liberty in this country. And when our Founding Fathers were looking at this project and what they were doing, they were going from sovereign States. The people of Virginia considered themselves—Virginia was a sovereign State. That meant a sovereignty-laden State. And they were meeting in Philadelphia to see how much sovereignty they would surrender and what they would create in the form of a Federal republic.

And remember what Benjamin Franklin said when asked as he walked out the door what kind of a government they had created, and he said, A republic, if you can keep it, because it depends upon those who were given that gift to keep that republic, which means it has some basic concepts which our Founding Fathers were ingenious about creating, and one of them

was the balance of power, that there would be offsetting power between the three branches of government which would balance out the power so no overwhelming power would lie in any one branch of the government.

There are three branches: the executive, which is the President and all the various executive agencies of the government; and then the legislative, which is the House and Senate; and then the judiciary, which is the entire judicial system of the United States, capped off by the Supreme Court of the United States.

So when they wrote this, they wrote the Ninth and the 10th Amendments. And the Ninth Amendment says, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others," other rights, "retained by the people."

Because our Founding Fathers took the position which learned people of that time were debating and putting forth that the rights that are set out in our Bill of Rights and the other rights that are defined in our Constitution are, first and foremost, the rights of the people. Each individual person has those unalienable rights.

So when they sat down and they started to put this thing together, they said, now, any rights we didn't talk about still belong to the people. So just because they didn't write it down in the Constitution—freedom of speech, freedom of the press, freedom of assembly, and all the ones you learned in school—there are more rights than that because those rights lie with the people.

The 10th Amendment says, "The powers not delegated to the United States by the Constitution"—the Constitution defined the powers of the United States Government—"nor prohibited by it to the States," in other words, aren't specifically set out for the States, "are reserved to the States respectively, or to the people."

So what they were basically saying is there are powers out there that this Constitution doesn't cover.

Now, I think we all know that the Constitution has been an evolving process because the big job of the Supreme Court of the United States is to tell us what things mean when you start applying events to the Constitution. There is a clause in the United States Constitution which is called the Commerce Clause. And it says the U.S. Congress shall have the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

"Commerce" is the big word, and the question is, what is commerce? And I think if you went to a business school and talked about commerce, you would find out that they are basically talking about the buying and selling and trading and working with goods and services. It would be pretty much what you're talking about. The economic activity, buying and selling and so forth.

Now, a more liberal court started expanding the Commerce Clause slightly,

and the one that really kind of threw everybody off was a case where some folks during the Depression were growing wheat in their own backyard. They were grinding that wheat and making it into bread and they were eating the bread. And the question was, is that wheat in commerce? And the court said because it was competing with other wheat that was being ground into flour and made into bread, it was being sold, and therefore it at some point had an effect upon the commerce involving bread and wheat.

Even though it was only consumed by the family, they expanded it to say that was commerce. And from that the idea came up, and it was cropped up and was challenged and failed several times in the Supreme Court to be carried that far, was that the Commerce Clause, if you take it that far, it will cover everything. And really this bill that we're talking about, this one right here that we just got the report on, this bill is going to be the ultimate decision of whether the Commerce Clause means "commerce" covers everything or not because in this bill, the only thing you have to do to be required to buy health insurance by the government is be alive.

If you are a human being and breathing, you have to buy health insurance. If you have it and you get to keep it, then you've got health insurance, but if you don't have it, now it's no option. You have to buy it.

Now, the first thing you will hear people say is, yes, but you've got to have insurance to drive an automobile and you have to have it. That's true, but that is insurance that is protecting other people from your negligence or your mistakes as you drive your automobile, and it's an issue for the State in protecting the State because it makes sure that people are able to protect those that they might injure when they use a dangerous weapon. And, by the way, it's kind of interesting that the courts have ruled that an automobile can be used to enhance punishment in a criminal case because it is a deadly weapon. So basically they are insuring against the misuse of the deadly weapon called the automobile.

That's not what we're talking about here. We're talking about you have got to have health insurance whether you're sick or whether you're well. You have got to have it. And if you don't, you have got to pay a fine, and that fine is going to be in the nature of an excess tax.

So there's a good place for me to yield to Mr. BURTON to talk about how he sees this and what thoughts come to his mind as we look at this really challenging constitutional issue.

Mr. BURTON of Indiana. I thank the gentlewoman for yielding. And I want to tell her how much I appreciate her coming down and taking the time to give this Special Order. It took a lot of preparation to explain this to our colleagues and anybody that might be paying attention to this.

There is no question in my mind that the 10th Amendment of the Constitution is being violated by the bill that we passed, and that's why we have 22 States that have joined in this suit. And I'm glad that they are doing that.

As a matter of fact, on March 29, the Attorney General of Indiana, Greg Zoeller, expressed his intent of having Indiana join in filing the suit against the Patient Protection and Affordable Care Act, which is the Obama care we're talking about. And here is what he had to say, our Attorney General:

He said, "There are significant constitutional questions regarding the Federal Government's authority raised by the legislation passed. I believe it's necessary that these ultimately be brought before the United States Supreme Court, and as the Attorney General of Indiana, I will join in the most appropriate legal actions available to represent the significant interests of our State, the State of Indiana, in this matter." And he prepared a 55-page report on this that he gave to our legislators in Indiana regarding the Patient Protection and Affordability Act. And he believes, as the other attorneys general do, that this is unconstitutional.

Now, my colleague just talked about the automobile business and how people have to have car insurance. Well, they don't have to drive a car. And if they don't drive a car, they don't have to have car insurance.

This is the first time that I can remember in my life that the Federal Government is telling people they have to buy something. I have never heard of this and I have never read anything that would lead me to believe that the Federal Government has the authority to tell people that they have to buy something.

Now, there have been times in the past when the Federal Government tried to take over the entire commerce of the United States. Back in the 1930s during the Roosevelt administration, they passed a law called the National Recovery Act, and the National Recovery Act gave the Federal Government control over the entire economy of the United States regarding commerce. And there was one case that came to mind that I read in a book called "The Forgotten Man." I don't know if my colleagues read it or not. But it involved two itinerant people from the Middle East that came to the United States and they started selling chickens.

Back in those days, they didn't have frozen chickens in the supermarket. So when people would come to them to buy chickens, they had them in crates, and they would let the people that came to buy the chickens reach in and pick the chickens they wanted. Well, the National Recovery Act, which was controlling the commerce of the United States, had individuals, like the IRS is going to have under this bill, that would come out and tell the people what they could and couldn't do. And the National Recovery Act representative came out and told these

two gentlemen that they could not let the people pick the chickens that they wanted.

I know this sounds crazy. They said because the people that came in and bought the chickens first would pick the fatter ones and they would get the benefit of being there first. And the fellows that owned this company said, Well, this is the way we've always done it. We let the people pick the chickens they want. So they didn't change. They continued to conduct their business that way, and they were indicted under the National Recovery Act and they were convicted, and the case went all the way to the United States Supreme Court.

□ 2015

Justice Brandeis wrote the opinion, which was 9-0, against the National Recovery Act, which went out the window. Justice Brandeis sent a message back to the President saying, Don't send us any more legislation like this, because if you do, we'll find it unconstitutional as well.

That was the first time that I know where the Federal Government starting taking over the entire area of the commerce of the United States. Even then, even then, I don't believe there was a time when they said somebody had to buy something, which would violate the 10th Amendment of the Constitution. Now the National Recovery Act was found unconstitutional, but the 10th Amendment, as far as I can remember, never said you have to buy something. And that is what this bill does and that is why the attorneys general from 22 States are saying, You don't have that power.

As you said, Mr. CARTER, very clearly, the power is not delegated to the United States by the Constitution. The power is not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively. And so what's happening here is the Federal Government is overstepping its bounds and violating the 10th Amendment and taking away from the States their right to regulate this industry or to deal with whether or not people should or should not have to buy these things. And the attorneys general are saying very clearly this is a State's right and we don't think the Federal Government has the right to do this under the commerce clause.

So I would just like to add a couple of other things that go along with this, Mr. CARTER, and that is the cost that it's going to be to the American people. The estimated deficit that is going to be created by this, as far as the health care bill is concerned, is about \$385 billion or \$395 billion over the next 10 years.

But the fact of the matter is, it's going to cost a lot more than that. The estimated costs, according to CBO, based upon the information that was sent to them, was that it was going to cost about \$850 billion or \$860 billion

over 10 years, and the amount that was going to be as far as the deficit was concerned was about \$300-some billion.

But the fact of the matter is they only have 6 years of coverages, but they have 10 years of taxes. So when you take 10 years of coverage and 10 years of taxes and you look at what it's going to cost the American people, it's going to run up over \$2 trillion—money we don't have. And the deficit already is out of control. The budget we passed this year was \$3.85 trillion—or last year. And this year they won't even send us a budget because they know it's going to be more than that.

The shortfall in spending that increased the debt, our debt to our kids and grandkids, was \$1.4 trillion last year. It's going to be \$1.6 trillion or more this year, and it's going to get worse as the years go by over the next decade or two. And so in addition to violating the Constitution, as I believe this does, and in addition to having 22 States file suit against the Government of the United States because of this bill, this is going to cost an arm and a leg that we don't have. We don't have this money. And who's going to pay for it?

Well, we borrowed money from China. We owe them about \$800 billion. We borrowed \$600 billion from Japan. If you add it all up, we are probably into the trillions and trillions of dollars that we owe the rest of the world. If they ever cash in on what we owe them, I don't know how we are going to pay for it.

The fact of the matter is, right now, because of the cost of this legislation and the other programs and the deficits that are taking place right now, I really believe that the Federal Government is going to have to print a lot of money. And when they print money, they inflate the money supply and we have what is called inflation. What they try to do is try to figure out a way to stop that inflation by raising interest rates or increasing taxes.

Now the administration is talking about a value-added tax like they have in Europe. And the value-added tax in Europe is running about 20 percent in many countries. And if you buy a car for \$10,000, for instance, and you add the value-added tax to it, you're up to \$12,000. Another 20 percent. The American people can't afford it. We can't afford the inflation, we can't afford the taxes, and what it will do to the economy and jobs is unbelievable, not to mention that it violates the Constitution of the United States.

So if I were talking to the American people tonight, Mr. CARTER—and we can't talk to the American people; we can only talk to each other and the Members of the Congress—I would say there's a lot more to this than just the violation of the Constitution. There's no question in my mind that there is that violation, but the cost to us and our kids and our posterity is going to be unbelievable. This country can't afford to spend the money the way we

are doing it. We can't afford to raise taxes like they are talking about. We can't afford a value-added tax and we can't afford to see jobs slip away from America and go offshore to other countries. That is what I think this is leading to.

This administration believes in a European-style socialistic approach to government, and we have to stop that. I want to pat the attorneys general on the back from those 22 States for leading the charge in dealing with this constitutional abuse of power, and I wish them the very best and I hope that every State in the Union, Mr. CARTER, I hope every State in the Union will join in this fight because the Federal Government should not usurp the rights of the people of this country and the several States. And our Forefathers never planned for that. And that is why they gave the States the ultimate power instead of leaving it with the Federal Government. They said that those powers not delegated to the United States by the Constitution are reserved for the States. And that is the way it ought to be.

I want to thank you once again for taking this Special Order. You're one of my heroes.

Mr. CARTER. I thank my friend, regaining my time. Let me point out something that I think is interesting. In all of the flak we sometimes raise, we disagree with some of the rulings of the United States Supreme Court rulings—and I and others that I know have done that throughout my entire lifetime and had great constitutional issues that are banged around everywhere, and some of us said, What kind of craziness is that? But it's kind of interesting that Justice Brandeis, in that opinion, 9-0—that means everybody thought it was right—pointed out that by the very nature of our Constitution and the very nature of what we created in the way of a Republic, this concept of a centralist-controlled economy, a central-controlled economy, doesn't fit what was founded in this country.

We started down that path in the 1930s. And Brandeis and the Court slammed on the brakes and put a stop to it. It was very ridiculous, some of the things they did. There's the famous kosher meat case that went on and a bunch of other cases. Just ridiculous. Can you imagine the Federal Government going into your local butcher shop and telling your local butcher how he can do things? Is that the world we want? That is a centrist-controlled economy.

Now, at the same time, the world was experiencing this in other places. In fact, we in our lifetime have seen the rise and collapse of central-planned economies. The National Socialist Party of Germany in the Second World War, besides losing a war, proved that a centrally controlled economy was an ineffective way of doing the economy without letting the markets work. The Soviet Union collapsed, continuing to try to keep a central-controlled economy run by the one Big Government

entities that had fingers in everybody's world. It didn't work. It didn't work. The Chinese had the same thing. Even though they still claim communism, they are rapidly rushing towards capitalism because they are getting rich and prosperous for all levels in their country under the capitalist system, which they never could do with their centrally controlled economy.

Why we would even think to go in that direction is beyond me. I think my colleagues think that is the solution to our problems. I do not think so. I think our Founding Fathers intended for us to have things both at the local, at the city, the State, the national level. I think they had a concept of the small family all the way up to the big government. They specifically wrote these little-used provisions, by the way, into the Constitution, to make it clear that there were certain things that didn't belong in the Federal Government.

I'm very hopeful that that is the way that this Court at this time, in the 21st century, with all the history that has passed and all the court cases have passed, will look at this and say, If we can tell them they've got to buy what kind of health insurance, then what's next? How far will we expand this? Can the next administration, whoever it may be, say you have to buy General Motors cars because we own around 50 percent of the stock, the American people, or can it just say, you know, we've got a fledgling industry over here. You can only buy that computer or that pair of socks. But you can't buy those socks. Not until you've got five pairs of those socks. And you want the Federal Government doing that?

I don't think anybody in their right mind in this country wants that to happen. But the start, the crack in the dam, the slow drip is going to be what they have proposed, which is going to be a slow drip that is going to create massive costs to this country. By the way, my friend, Mr. BURTON, wasn't even talking about the cost to the States. Those are Federal costs. They imposed upon the States costs the States didn't have any say in whatsoever.

Mr. BURTON of Indiana. Would the gentleman yield on that point real quickly? Our Governor, who I think is one of the best Governors in the country, Mitch Daniels, he said that passing this would put 500,000 people more on Medicaid in the State of Indiana. I just wanted to validate the point that you just made. This is going to be a tremendous burden on States all across this country because they are going to shift an awful lot of the burden that is on the Federal health care system to the States. In Indiana, we are going to be spending billions of dollars more over the long haul because they are going to put 500,000 people more on Medicaid. I don't know that that is the exception. I think every State in the Union is going to suffer like that. Those are costs we are not even talking about.

Mr. CARTER. It is. Reclaiming my time, we are joined by my good friend and colleague, classmate, a fellow Texan, Dr. BURGESS, who has spent most of his life on these issues, and certainly his time in Congress. Since the day I met him, he has had the best ideas I have heard on health care, but he's been a voice crying in the wilderness. He does know what we're talking about. I'll be glad to yield to Dr. BURGESS to educate us on what he sees these issues are and where this thing is going.

Mr. BURGESS. I thank the gentleman for yielding. I must say, it's humbling for a simple country doctor as I to come down here and talk constitutional issues with the great constitutional scholars of our time.

Mr. CARTER. Right.

Mr. BURGESS. Judge, you mentioned something that is so important. So many people are concerned about what they see happening. And I see by one of the posters that you have there that almost 45 percent of the United States population, or State attorneys general representing almost 45 percent of the population, now are suing over the constitutionality of these health care mandates. Remember, all of that has happened within a 4-week time span of us passing this very flawed piece of legislation. There's no way to know what the next 4 weeks will bring; but certainly as more and more people evaluate this, as more and more people dissect through that very flawed product that was passed by the Senate on Christmas Eve, and then we just, for whatever reason, picked up and agreed to it over here in the House the end of March.

As more and more people look at that and see the drafting errors and see the inconsistencies that are contained within that legislation, I believe that that number will in fact become much higher by the time we get to Memorial Day. It will grow in numbers through the month of June. By the time we get to Independence Day, I've got to believe that that number, there is going to be a startling percentage of the United States population that is now against this bill.

The problem with this bill is it never enjoyed popular support. People want to criticize Republicans for being obstructionists in this process but, honestly, they did not need a single Republican vote. They have a 40-majority vote on the Democratic side. This was all an internal argument on the Democratic side with getting this darned thing passed. As a consequence of not having popular support, they had to coerce, cajole, threaten, and malign Members on their own side in order to get the votes necessary to pass this.

Now, right after it passed, Judge CARTER and I were part of a press conference, and our attorney general, Greg Abbott, was one of the first attorneys general to step forward and say, Under the commerce clause, I don't think you can do this. He wrote a very powerful

letter to our two Senators earlier in the year. And I just wanted to quote a couple of paragraphs from this thoughtful and lengthy letter that Greg Abbott wrote to our Senators.

□ 2030

He writes, "The individual mandate is constitutionally suspect because it does not fall within any of these categories. The mandate provision of H.R. 3590 attempts to regulate a non-activity."

Let me just stop for a second. "Attempts to regulate a nonactivity." Are there any other nonactivities we do during the course of the day that we're willing to give over the regulation of those nonactivities to the Federal Government? I think the judge and the minority made the point. Of course there are not.

Continuing to quote from the letter, "The legislation actually imposes a financial penalty upon Americans who choose not to engage in interstate commerce—because they choose not to enter into a contract for health insurance." Quoting further, "In other words, the proposed mandate would compel nearly every American to engage in commerce by forcing them to purchase insurance, and then use that coerced transaction as a basis for claiming authority under the commerce clause."

Continuing to quote from Greg Abbott's letter, "Congress' own independent, nonpartisan research agency, the Congressional Research Service, expressed doubts about the commerce clause's applicability in a report that was issued last July: 'Despite the breadth of powers that have been exercised under the commerce clause, it is unclear whether the clause would provide a solid constitutional foundation for legislation containing a requirement to have health insurance. It may be argued that the mandate goes beyond the bounds of the commerce clause.'"

And then finally just to conclude from Greg Abbott's letter, "If there are to be any limitations on the Federal Government"—let me just underscore that "any" one more time. "If there are to be any limitations on the Federal Government, then 'commerce' cannot be construed to cover every possible human activity under the sun—including mere human existence. The act of doing absolutely nothing does not constitute an act of 'commerce' that Congress is authorized to regulate."

A very powerful letter by the attorney general, issued last January to our two Senators as the Senate was working through this health care bill.

You know, I've been so concerned about this bill that we passed that I wake up in the middle of the night almost every night wondering what the future holds. And Judge, you're so right. In some ways, you kind of get this mental image of this omniscient central planner—albeit a benign and

kind and eloquent central planner—moving data points around on a big spreadsheet somewhere. That's what the administration of health care has become in this country. Look at the job that we have turned over to the Department of Health and Human Services and the Centers for Medicare & Medicaid Services, another small Federal agency called the Office of Personnel Management, and yes, for crying out loud, the IRS involved in regulating health care. These Federal agencies are now tasked with writing the rules and regulations out of this 2,700-page behemoth that, again, passed the Senate on Christmas Eve as a vehicle to allow the Senators to get out of town ahead of a snowstorm.

No one read that darn thing. No one knew that what was in that darn thing. They just passed it so they could get out of town. They always intended to come back and make it better in conference or some other secret coordinated meeting with the White House where they would come up with an amalgamated product, but they didn't do it. They didn't follow through. They just picked up this Senate bill. A lot of people don't understand. The Senate bill actually has a House number. It's H.R. 3590.

Now, why would a bill passed by the Senate dealing with health care have a House number? Well, because it began as a House bill. It began over here at the end of last summer as a bill to regulate housing. CHARLIE RANGEL introduced it from the Committee on Ways and Means. It passed the House. I voted against it, for the record, when it was a housing bill. It went over to the Senate and lay fallow for a period of time until the majority leader of the other body decided that they needed a vehicle for this health care reform. They decided not to affix a Senate number to it. The House had passed a bill. They chose not to pick up our House bill that dealt with health care. They picked up our housing bill and amended it. And one of the first amendments was to take the language out of it.

So now they have an empty bill, a number, and literally nothing else. They stuck in all of these little special deals that they had to strike. And the question wasn't, What is the best possible health care policy that we could come up with? In fact, if that question had been asked, maybe they would have used Governor Daniel's use of consumer-directed health plans in his State and how he's held down cost. But they didn't do that. They said, What will it take to get your vote? And whatever that answer was was the piece that was inserted in that bill. That's why you've got an amalgam of so many disconnected pieces in this 2,700-page monstrosity that is now H.R. 3590.

Once that thing passed to get them out of town on Christmas Eve—and it was literally a Christmas tree that night when they passed it. But once they passed that bill, they all expected

to come back to a conference committee or some other vehicle to amend and improve this bill. But when the Senator from Massachusetts was elected as a Republican, it threw a big kink in their plans. They decided the only way to get—and remember, the goal here was not to fix problems that are besetting the American people in our health care system. The goal was to get a bill to sign. The goal was a signing ceremony in the East Wing of the White House. The goal was for the President to sign a bill during his first term.

It's almost like they didn't care what was in it. They didn't care what the health care policy was. It can be as bad as you can possibly imagine. The drafting errors can be rampant throughout the entire bill. But we got a signing ceremony, by golly, and no other President of the United States has ever had that achievement before. And now the rest of us are left with this travesty that's called a health care bill. Doctors, nurses, and hospitals and, indeed, even insurance companies, and of course regular American patients are going to have to deal with this for the next several generations.

We have to rip this thing out root and branch. One of the ways to do that is for the attorneys general to proceed with their lawsuit and be successful in their lawsuit, which is why I so appreciate the gentleman coming to the floor of the House, making the American people aware of what is going on, why the attorneys general are pursuing this, and maybe, maybe we will get some relief for the American people, and then we can go back and do the things they were asking us to do in the first place—fix the problems, not destroy the system.

I will yield back to the gentleman from Texas.

Mr. CARTER. I thank the gentleman for a great description of one of the reasons, when they say, you don't want to watch people make sausage or legislation is because there's no telling what goes in it. And that description of the House bill being gutted of language and changed to a health care bill, I think that's going to be a real eye-opener to the civics classes around the country as to how that thing functioned. And, you know, that's part of the nervousness that we're seeing in the American people, and they're concerned about what's going on up here. That kind of overwhelming power play is just—it's contrary to the old fair play that's deep down inside what makes Americans great. So I appreciate you describing it.

I see Mr. BURTON's risen again. I will yield to him.

Mr. BURTON of Indiana. I thank my colleague from Texas for yielding.

I just want to follow up on what my other colleague from Texas just said. He was quoting the attorney general of Texas, Mr. Greg Abbott, and there was one clause in his letter that I thought bears repeating. He said, "If there are

to be any limitations on the Federal Government, then 'commerce' cannot be construed to cover every possible human activity under the sun—including mere human existence. The act of doing absolutely nothing does not constitute an act of 'commerce' that Congress is authorized to regulate."

And this parallels what we were talking about earlier with the National Recovery Act, because it was designed to cover everything back in the 1930s. We talked about a couple of examples. And this attorney general is quoting pretty much what Justice Brandeis was talking about when he wrote the opinion, the 9-0 opinion that destroyed the National Recovery Act, saying that the Federal Government didn't have the right to run everything. And I think that's exactly what your attorney general is talking about.

I thank the gentleman for yielding.

Mr. CARTER. As he was reading from Attorney General Abbott's very well-written letter and he mentioned that particular thought, my thought was, You can let your imagination run wild if we are opening the commerce clause to existing. If existing puts you in commerce, then I think the sky is the limit. And more so, the sky is the horror, because ultimately it can be such an abusive power. And I am not pointing a finger at any administration, but there could be an administration down the road that imposes where you can live. Or one that is really interesting, because there are actually countries in this world that do this, and as we were talking about it, it popped into my head—in some European countries, Western European countries.

You know, there's a misconception—I think my colleagues know this, but if not, I want to at least put my two cents worth in—a misconception that everybody has the same freedoms we've got. Wrong. Just because they've got TV shows that we like or something like that doesn't mean they've got the same kind of free society we have.

The British system has the right of habeas corpus, but there are plenty of countries that don't have the right of habeas corpus. There are plenty of other rights. It's kind of interesting. In European countries, after the war, they wanted people to vote, so they made it mandatory. The government made it mandatory to vote. And if you don't vote—it's just like our health care bill—you get fined.

Now, they don't have a constitution like the United States that limits the power of their government. I'm not saying it's all bad. But to me, if I was a guy who didn't want to vote, they say, Okay. Pay \$50 or you've got to vote. And then what's the next step, Pay \$50 or you have to vote for my party or for my leader. And where does it stop?

Things that are done in good conscience when you open up the power of the Federal Government like this interpretation of the commerce clause, you can use your imagination and your

knowledge of history to see how it could become, at some future time, more and more and more depriving of the liberties that we enjoy. So this is about a whole lot of stuff, and it's a whole lot of stuff that upsets you.

On the issue of Medicare, I think Texas is \$8 billion—isn't that right?

Mr. BURGESS. If the gentleman will yield, several of the State senators have written to me, and, in fact, I believe I'm quoting Governor Perry correctly in that it would be a \$23 billion cost over the 10 years. We do our budget for a 2-year time period, so for the next five budgets.

Now, as the gentleman knows, Texas has not been hit quite as hard as some other States by the recession, but it's still been hit. In the next election, the people who are elected for the next State legislature, for the next State senate are going to have to deal with a budgetary environment that is going to be a great deal tighter than any since probably 2002 or 2003. As a consequence, Governor Perry has tasked all of the various interim Senate committees and House committees to look for 5 percent of savings across the board in the State budget. So they are serious about getting their budget into balance. Of course, by law, they have to do this, and they are looking for every State agency to cut its budget by 5 percent. That's significant when, at the same time, the Federal Government is now saying, because of the increase in Medicare enrollment that you're going to be required to take, the budgetary expansion brought about by this health care bill will be \$23 billion over the next 10 years at a time when every other State agency is being constricted.

So are we saying that federally mandated health insurance is more important than education of Texas children? Apparently we are. Are we saying that the federally mandated health care entitlement is now more important than State transportation issues or State security issues? Apparently we are.

But I know this is a serious problem that is being faced by the State legislators and the State senators, and I have heard from several of them over these past several weeks and the weeks leading up to the passage of this bill. And I know, of course, the Governor has been quite outspoken about the fact that they are going to have to cut their budget at the State level, and I believe every State agency has been asked to come up with 5 percent, a nickel in savings out of every dollar that is spent at the State level.

And it's actually not a bad idea for us. If we were to actually do a budget this year—which I'm not sure we are. For whatever reason, the Democratic leadership does not seem to think that's important, even though this country is in financial crisis, to squeeze 5 cents of savings out of every dollar. It's certainly something most Americans understand in running their own business. During times when I ran

my medical practice, I would be faced with budgetary shortfalls, and I understood the concept of saving a penny or two or three or four or five out of every dollar you spent. And the Governor has wisely asked his State agencies to do that. We don't seem to be quite so knowledgeable here at the Federal level sometimes.

I will yield back to the gentleman.

Mr. CARTER. I thank the gentleman for yielding back.

Let me say this. I think it's very interesting because Governor Perry's saying that we've got to cut 5 percent. I say hooray for that. I think that's the right way to go about it. But this bill tells us, we've got to set up—somebody in our State has to help administer this bill. And ultimately, we've got to come up with these pools, regional pools. We are pressuring our States to make this thing work, and our States say, We don't want that thing. And we certainly don't want the expense of doing it at the expense of our taxpayers' dollars because we're trying to tighten our budget.

You're right, we are lucky in Texas, fortunate that the economy hasn't hit us as hard. In fact, in my district in recent times, probably the hardest hit we received from this Chamber right here and the one across the way, when the President signed the nationalization of student loans and wiped out 500 jobs in Killeen, Texas. In Killeen, Texas, 500 jobs is a lot of jobs, and 500 jobs in central Texas is a lot of jobs, and that's just the tip of the iceberg of what ill-conceived ideas can do.

This one here is a constitutional challenge to our Federal Government and our Supreme Court. I have great confidence that they will accept that challenge, and I am hopeful that they will say, You can't expand the commerce clause to breathing. It just can't go that far. You don't need commerce because you exist.

□ 2045

If it is, then I would argue that there are no controls on the Federal Government's ability to do things to impose burdens upon your life. I think that is the real underlying issue here, and it is of great importance.

But even more so than that is when we came up with the concept of Medicaid, and Congressman BURGESS, he worked under Medicaid as a doctor. He knows what it is. But Medicaid is a contract between the individual States and the Federal Government to come up with a solution for poor people's health care. It was designed for the poor, the underprivileged. And it was designed that the States and the Federal Government, the Federal Government would have the ability to work with the States to put together a contract and the State would provide so much resources and administer the program, and the Federal Government would provide so much resources.

This bill, without any input whatsoever not only from the Republicans, no

input from the Republicans in the House of Representatives, but no input from the States. They got their contract renegotiated by the Federal Government without their say. Now they have this huge financial and bureaucratic burden that is being placed upon the States by the fact that part of the way they were able to get the solution, all of the people not covered by health care, was to take a big chunk of people and just stick them in Medicaid, and say oh, by the way, States, we decided this is what you're going to do, and you're going to do it. We'll pay our share, maybe, but you've got to pay yours. And you've got to administer the program.

I think that some of the States, and I know in the Florida case, they are raising that issue. They are saying: Can you impose this upon the States at this level? I don't know.

The main issue is the commerce clause. That is the imposition of burdens not anticipated when the deal was struck. I think that is an important part of everything that we are talking about here.

You know, there are people who say oh, that CARTER and that bunch, they are a bunch of right wing nuts down there on the floor. They are all upset about this and they call them Socialists. Well, yeah, but did you look at this map? Have you looked at this map? I wouldn't call several areas of this country that is marked in red as bastions of conservatism by any stretch of the imagination, not that they don't have the right to be the State that they are. I am not criticizing them for their beliefs, but this is not some right wing conspiracy out of central Texas, okay; this is a cross-section of the country. The West Coast, represented by Washington State, certainly a progressive State, proud to be a progressive State; we have Pennsylvania over here on the east, and Michigan in the Midwest. This area up here is the heart and soul of the declining auto industry with all of their terrible problems. Everybody at night ought to say a prayer for the people in Michigan right now because they are having the hardest time of anyone in this Union right now. And we need to correct that as best we can.

More than that, I would at least submit that The Washington Post is certainly not something that Rush Limbaugh and the boys read and consider their newspaper, but let's see what The Washington Post said on March 21: The individual mandates extends the commerce clause's power beyond economic activity to economic inactivity. That is unprecedented. Congress has used its taxing power to fund Social Security and Medicare. Never before has it used its commerce power to mandate an individual person engaged in an economic transaction with a private company. Regulating the automobile industry by paying cash for clunkers is one thing, making everybody buy a Chevy is quite another.

That was in The Washington Post. I would argue and I think they would argue with me it is a liberal newspaper. But this is not a liberal or conservative fight. This is about freedom and liberty and our Constitution.

I yield to Congressman BURGESS.

Mr. BURGESS. I was going to agree with the gentleman that The Washington Post is not likely to be found in the Rush Limbaugh stack of stuff that he uses on his radio program everyday.

But the freedom argument is one that is so important. Under the Medicaid provisions, as I understand and read the bill that was passed by this House, individuals who earn at or below 133 percent of the Federal poverty level, if they are not covered by any other insurance, since they are going to be required to have insurance, will, in fact, be required to have Medicaid. They will not be allowed to purchase insurance in the exchange, as other Americans will. They will simply be placed into the Medicaid program.

That, too, is unprecedented. In any of the social entitlements that we have had in the past, never had we required someone by virtue of their income level to be within a certain Federal aid program.

The implications of that are startling and may well go far beyond the boundaries of where they exist today with the passage of this law. It may be a much more startling recession or receding of freedom than we have seen in this country. Really, it would be unprecedented the loss of freedom that will accompany this bill.

I will yield back to the gentleman because I know time is short, but that is an extremely important point that the gentleman just made.

Mr. CARTER. Reclaiming my time, 23 million Americans will still have no health coverage in 2019 after this bill is fully implemented. So with all of the big imposition on the privacy of American citizens, and the big imposition on our government of mandating them that they have to buy a product, and if they do everything that they are supposed to do and if the States can find the money to run the Medicaid problem, and if they can get the various agencies up and functioning and somewhere find the money to pay the salaries to run them, and if we create this bureaucracy, we will still have 23 million Americans that won't have health care coverage. Hmm.

If your goal was to cover everybody, you failed. I don't think it is really the goal to cover everybody. I think the goal is to put control of another part of the American economy and Americans' lives in the hands of the Federal Government. That's what I think this is about. And that is what I think it has always been about since we started this discussion.

That is why the American people were telling us what we want to talk about is cost. This stuff costs too much. What can you do to get the cost down? There is no cost savings in any of this; there is only cost imposition.

So the one thing that I think we have a great shortage of in this town with present company excepted is common sense. But I have great confidence in the average American, whether he be the Wall Street fat cat or the guy working in the grocery store in Round Rock, Texas, they have common sense to know what is good form and what is not good form. I think that is why we are seeing people getting up off the couch and making their voices heard because this doesn't make common sense. This is not the kind of world we signed on to. It is not the kind of world we fought wars for.

We have an issue that it seems to grow in intensity as the weeks go by. It is almost the gift that keeps on giving in that there is just more to talk about every week. I, too, like Congressman BURGESS, lie awake in the middle of the night and can't get back to sleep thinking about what is coming down the road and what we have to do.

Many of my colleagues don't believe this, but I understand we are about to have a report come out on this, just as an aside, all of the Members of Congress and all of their office staffs were, on page 157 of this bill, taken out of their health care program and put under the pools. It is a very interesting challenge.

HONORING TWO TRAILBLAZERS

The SPEAKER pro tempore (Ms. CHU). Under the Speaker's announced policy of January 6, 2009, the gentleman from the Virgin Islands (Mrs. CHRISTENSEN) is recognized for 60 minutes as the designee of the majority leader.

Mrs. CHRISTENSEN. Madam Speaker, now that our colleagues on the other side of the aisle have completed their hour of speaking of how that long-needed, hard-fought for health insurance and preventive services for those who have had little or no access to health care ought to be taken away, praising the AGs, as they were, who are challenging the law through which we Democrats provided the opportunity to every American for health and wellness, we are now going to turn to remembering two individuals who all of their lives worked to ensure that access to health, education, and economic opportunity was available for all.

Some of my colleagues spoke of the life and legacy of Dr. Dorothy Irene Height last week when Congresswoman FUDGE's resolution was on the floor, but the Congressional Black Caucus wanted to use this time this evening to continue that tribute and also pay tribute to Dr. Benjamin Hooks. I consider it a great honor and pleasure to anchor this hour of tribute to two of our Nation's trailblazers, two drum majors for justice, to incomparable human beings whom we mourn because they are no longer physically with us, but who will forever be with us in spirit and through the rich legacy that they both have left.

Individually, as communities of color and as a Nation, we are far better because they passed this way and touched our lives during their earthly journeys. The people I am speaking of are Dr. Benjamin Hooks and Dr. Dorothy I. Height.

On Dr. Hooks, although I had the honor of meeting him, I didn't get to know Dr. Benjamin Hooks personally. But everyone knows or ought to know of the little old country creature that he referred to himself as, but which surely grossly understated the measure of this luminary of civil rights and champion for a better America.

A native Tennessean, civil rights leader, Baptist minister, attorney and judge, in fact, the first black judge to serve in that position in Tennessee and in all of the South after reconstruction, he, like Dr. Height, has made an immeasurable contribution to this country that will continue to reverberate for generations to come.

His life experiences in high school, and particularly in World War II, and his conquering of them all, I think is what served to fuel his passion and his determination to ensure equality and justice for everyone in this country regardless of race, color, religion, creed or nationality.

In a different and less strident partisan time, he was appointed to the FCC, the first African American commissioner, by President Richard Nixon, as was my father to the Federal district court in the Virgin Islands.

That Congressmen RUSH, BUTTERFIELD, and I must continue to raise the same issues today that he championed: the need for more minority ownership of radio and TV stations, for more diversity in employees in the industry, as well as for more positive image of African Americans in the media, is not at all reflective of the cogency of his argument or the determination of his effort, but more of the depth and intransigence of the institutional racism that continues to exist in this country.

An unrelenting supporter and advocate for self-help, he revived the NAACP during his legendary tenure of 20 years, while furthering and strengthening its missions, goals and ideals. He, like Dr. Dorothy Height, is the recipient of both the President's Medal of Freedom and the Congressional Gold Medal.

It is not enough that the University of Memphis works to carry on his league see through the Benjamin Hooks Institute for Social Change, it is up to those of us on whose behalf he served to live his life and these words of his: "If anyone thinks we are going to stop agitating, they better think again. If anyone thinks we are going to stop litigating, they had better close up the courts. If anyone thinks we are not going to demonstrate and protest, they had better roll up the sidewalks."

The Congressional Black Caucus, through our positions, our advocacy, and our legislative efforts here in Congress, live those words every day and