

year over contract periods ranging from three to five years. This data will allow the Air Force to balance the rate and commitment decision with our fundamental priorities: operational requirements, price, budget, and enabling competition.

The Air Force will not pursue any negotiations with ULA until they have submitted the cost and price data we need, and ULA's submissions will be audited as they would in any contracting process. The citations in the GAO report to Defense Contracting Audit Agency standards for sufficient cost and price information refer to prices associated with some subcontractor ULA orders that were placed in a commercial environment and thus did not require certified cost and pricing data. For the FY 2013–2017 proposal, the prime contractor will be required to certify the data submitted is current, accurate, and complete.

With the recently released New Entrant Certification Strategy, the Air Force, NASA, and the NRO are working to facilitate the certification of new entrants who want to compete for EELV-class missions. By examining a range of contract options and terms for EELV procurement, and by examining progress from new entrants in the coming months, the Air Force will be well-positioned to identify the best balance of these priorities and the best value for the taxpayer. Only at that point, with additional information in hand, will the Air Force move to negotiate a new contract.

Thank you again for your letter and your continued support of national security space. I look forward to continuing to work in partnership with you to maintain assured access to space for the Nation. A similar letter has been sent to the Chairman of your committee.

Sincerely,

MICHAEL B. DONLEY,
DoD Executive Agent for Space.

Mr. LEVIN. I thank my friend from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

HEALTH CARE

Mr. GRASSLEY. Mr. President, when the Congress passed the health care law, it imposed a mandate on individuals who lacked health insurance to purchase it. Since then, a number of courts have held that the individual mandate exceeds the power of Congress to regulate interstate commerce.

The Supreme Court will soon hear a case on this question.

The Supreme Court, which usually gives a case 1 hour of oral argument, is giving the various issues in this case 5½ hours. This is a modern record.

The Supreme Court should exercise its powers of judicial review carefully. One of its major principles of judicial restraint is that an act of Congress is presumed to be constitutional. But this is a presumption that can be rebutted. It derives from the respect that one branch of government gives when reviewing the actions of another.

If Congress has made a determination that a statute is constitutional, the Supreme Court should give that finding some level of deference.

But the presumption rests on a premise that Congress has made a considered judgment on the constitutionality of the laws it passes. In the

case of the health care bill, this did not happen. Republicans raised a constitutional challenge to the individual mandate that was brushed aside by Democrats who favored the bill as a policy matter, and were not going to let a serious constitutional issue get in the way of passing the law.

In fact, we know that there was no Congressional consideration of the constitutionality of this unprecedented restriction of the freedom of American citizens.

I mean unprecedented literally. Congress has never before discovered or exercised this power in more than 200 years of this country's history. And since Congress has never before imposed a requirement to purchase a product, no Supreme Court precedent has ever found that Congress may do so.

Instead, apart from the regulation of items such as navigable waterways or communication lines, the Supreme Court has always discussed the subjects that Congress may regulate under the Commerce Clause as "activities." The Court has never held that Congress can use its Commerce Clause power to regulate inactivity—or require people to engage in commerce. The Court has found that Congress cannot regulate intrastate economic activities that in combination do not affect commerce. And Congress cannot regulate non-economic activities, such as carrying a gun in a school zone.

So it should be clear that Congress cannot regulate inactivity—such as a thought or a decision not to purchase health insurance.

Congress has great power under the Commerce Clause to reduce individual freedom. In 1942, the Court ruled in *Wickard v. Filburn* that a farmer could be penalized for exceeding a quota on the amount of wheat he could produce, even when the excess went for providing food for his own farm and its livestock.

And that Commerce Clause decision has allowed Congress to pass many significant regulatory laws, such as environmental laws, drug laws, and the public accommodation provisions of the civil rights laws.

But in every such case, the regulated person retained the freedom to avoid being regulated. A person who did not want to comply with environmental laws could stop engaging in the activity that fell under the environmental laws. A person who did not want to be subject to the drug laws could avoid transporting drugs.

And a person who did not want to adhere to the public accommodation laws could leave the public accommodation business.

The individual mandate is different. The mandate requires action. And there is no escape. A person cannot opt out of the activity that triggers the regulation because the mandate applies even to inactivity. If the person is alive, then he or she has to buy health insurance. That is a serious and novel threat to individual freedom.

Congress has offered incentives to change people's behavior.

But it is hard to see why Congress would do that if it had the power it now claims to force people to buy particular goods and services. Under this logic, Congress could require people to buy new GM cars, so it would not have enacted Cash for Clunkers. Similarly, this supposed power would allow Congress to order people to pay money to third parties rather than raising taxes. And a decision upholding the mandate would permit Congress to keep beef prices high by requiring vegetarians to buy beef.

Members of Congress could use this supposed Commerce Clause power to entrench themselves in office. They could require people to buy houses or cars or other products in areas where their political party has its base of support.

Despite the arguments of the Obama Administration, the power it claims that Congress can use to compel people to buy goods and services is not unique to health care. The judges who are honest recognize that if Congress can force people to buy insurance, Congress can force the purchase of any product or service.

It can regulate inactivity because that can affect interstate commerce.

This conclusion is consistent with the opinion of the Congressional Budget Office. In a 1994 memo, CBO wrote that "a mandate-issuing government" could lead "in the extreme" "to a command econom[y] in which the President and the Congress dictated how much each individual and family spent on all goods and services."

In June of this year, the Supreme Court unanimously decided in the *Bond* case that an individual—not only a State—could challenge the constitutionality of a Federal statute as exceeding the power of Congress to enact under the 10th Amendment. The Court wrote, "By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power. When government acts in excess of its lawful powers, that liberty is at stake."

The case now before the Supreme Court raises first principles about our republic. The people are the sovereign in our country. The government serves the people, not the other way around. That is enforced through a Constitution that gives the Congress limited powers. In the *Federalist Papers*, James Madison wrote that the powers of the Federal Government are few and defined, and the powers of the States are many and undefined. Although there is much more interstate commerce in today's economy than there was in 1787, the power is still limited.

If Congress can require Americans to purchase goods and services that Congress chooses, without a limiting principle, then there is no limited Federal Government. There would be no issue that Congress could not address at the

Federal level. There would be no range of State powers that the Federal Government cannot usurp. The 10th Amendment would be a dead letter, as there would be no powers reserved to the States.

Congress exceeded its enumerated powers in passing the individual mandate.

It attempted to create an all-powerful Federal Government that posed a threat to liberty that the Supreme Court unanimously warned against in the *Bond* case. All the Supreme Court need do to strike down the mandate is to adhere to its position in *Bond*. If it departs from that view and upholds the mandate, then our hopes for liberty may depend on a new President charting the course contained in Judge Kavanaugh's dissenting opinion in the D.C. Circuit case. Judge Kavanaugh wrote that a President is not required to enforce a statute that regulates private individuals that the President believes is unconstitutional.

This is true even when a court has held the statute to be constitutional.

Mr. President, the upcoming Supreme Court decision on the constitutionality of the individual mandate is important not only for the fate of that provision, but for its effect on the powers of the Federal Government and the very survival of individual economic liberty.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BROWN of OHIO. Mr. President, I ask unanimous consent to speak as in morning business for up to 15 minutes.

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

AMERICA'S ECONOMY

Mr. BROWN of Ohio. Our economy, as the Presiding Officer and others know, demands two major priorities from Congress right now: to reduce spending and to foster job creation. Equally important, you cannot do one without the other. We cannot only cut our way to prosperity. They cannot be mutually exclusive goals. We can make sensible reforms that reduce the deficit while promoting job creation.

Here is what we should be talking about: first, closing tax loopholes for companies that ship jobs overseas and encourage American job creation. That saves \$19 billion over 10 years. It will mean companies choosing to manufacture in the United States instead of China, instead of Mexico, in many cases.

My State, Ohio, is the third leading manufacturing State in the country.

We produce more than any other State except California, three times our population, and Texas, twice our population.

Second, let's give faster access to generic drugs to treat breast cancer and MS and rheumatoid arthritis. That saves \$2.3 billion over 10 years. It saves for taxpayers. It saves for insurance companies, meaning insurance rates will go up at a much lower rate. It saves for individuals reaching into their pocket and paying copays.

Third, let's strengthen and streamline the farm safety net. That saves \$20 billion over 10 years. There is simply no reason that large farmers who have profitable years need to get direct payments, need to get farm subsidies. Establishing a safety net makes sense. If prices are particularly low for a couple of years, if yields are particularly low for a couple of years, farmers need that safety net because we do not want to lose more family farms. But do not continue to give farm subsidies to farmers who simply do not need them.

Fourth, let's ask the wealthiest Americans to go back to the same tax rate they paid during the Clinton years. That will raise \$800 billion over the next 10 years. During the Clinton years, 21 million private sector jobs—net increase—occurred, even with a higher tax rate on high-income people as we balanced the budget, and during the 8 Bush years, two major tax cuts mostly for the wealthy, which the Presiding Officer and I and others opposed, under the belief that trickle-down economics would work, there was only a 1 million private sector net increase in jobs in those 8 years. We started with a huge budget surplus and ended with a huge budget deficit. We know that kind of economics does not work.

Those four ways are just four of the many I can talk about at another time of reducing our deficit and making our economy stronger. Too many in Washington seek to undermine one of the programs that kept our country strong in good economic times and bad economic times; that is, Social Security.

I am now a grandfather. I turned 59 a couple of weeks ago. Our first grandson is 3 years old. I understand it becomes more personal. I understand how grandparents now get to spend more time with their grandchildren. Margaret Mead once said: Wisdom and knowledge are passed from grandparent to grandchild.

The Presiding Officer, who has enough gray hair, would understand that, understands that because Medicare and Social Security have helped Americans live longer and healthier lives, it does give us—that is why it is personal for me, it does give us more time with our grandkids, and passing on that knowledge and wisdom that only grandparents can then give to their grandchildren.

Yet too many seniors have worked hard, played by the rules, and require Social Security simply to live. More than half of Ohio's seniors get more

than half their income in their retirement years from Social Security. That is how important it is. Some seniors get almost all of their income from Social Security. That may be as little as \$1,000 or \$1,100 or \$1,200 a month. That is what they live on.

Yet as more and more seniors rely on Social Security, they went 2 years without a cost-of-living adjustment. Why? Because the cost-of-living adjustment under Federal law—this is not the fault of the President, although it may have been several Presidents ago; this is not the fault of the Congress, although it may have been when it was decided several Congresses ago—but the law simply says that the Social Security cost-of-living adjustment is the so-called Consumer Price Index, which is determined for a typical 40-year-old in the workplace, not a 70-year-old who is in retirement. The 40-year-old in the workplace has significantly lower health care costs, perhaps has higher transportation costs getting to or from work, while the senior who is 70 has significantly higher health care costs as a percentage of their income and significantly higher heating costs, just to keep warm in the winter, cool in the summer, because of their lifestyle.

This Consumer Price Index, which is the determination for whether you get a cost-of-living adjustment, is based on a working 40-year-old, not a retired 70-year-old. That is what we want to fix. That is why I have introduced my legislation to do CPI—instead of CPI-W, Consumer Price Index-Working Person, the way it is now, to change it to CPI-E, Consumer Price Index-Elderly, to base it on those who get the COLA.

America's seniors did not get a COLA the last 2 years because it did not reflect their cost as much as it reflected not very high inflation among 40-year-old working families. Belle, a senior community activist from Shaker Heights, recently shared with me her story that seniors across America can relate to, how difficult it is to meet their needs when Social Security benefits do not. Half of her income goes to health care costs not covered by Medicare—hearing aids, glasses, dental care, in addition to supplemental health insurance she pays. And as Belle will tell anyone, she, like millions of Americans, worked hard and contributed to Social Security. They do not see it as—the word we use around here—an “entitlement;” they see it as an investment that they made because every working person in Denver, in Colorado Springs, in Aurora, in Cleveland, Columbus, and Dayton paid into Social Security and Medicare every day of their work lives. They have invested. They have earned it. They were promised it.

But, presently, as I said, COLAs are based on the Consumer Price Index for workers, for wage earners, instead of the Consumer Price Index for the elderly. Those 65 and older tend to spend about twice as much on health care as the general population, twice as much out of a smaller income, than half as