

I yield back the balance of my time.

#### APPOINTMENT AS MEMBER TO UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

The SPEAKER pro tempore. The Chair announces the Speaker's appointment, pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (22 U.S.C. 7002), as amended, and the order of the House of January 5, 2011, of the following member on the part of the House to the United States-China Economic and Security Review Commission for a term to expire December 31, 2014:

Mr. Peter Brookes, Springfield, Virginia

#### SUPREME COURT HEALTH CARE DECISION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 5, 2011, the gentleman from Georgia (Mr. GRAVES) is recognized for 60 minutes as the designee of the majority leader.

Mr. GRAVES of Georgia. Mr. Speaker, I rise today with a group of colleagues of mine to speak in contrast to what we just heard. It is shocking to me, not only the news of today and the continuation of the overreach of the Federal Government, but to hear colleagues on the other side of the aisle who are advocating for the Progressive Caucus, the progressive movement in this Nation celebrating, truly celebrating the Supreme Court ruling of today which allows the Federal Government to continue reaching into the homes of American families all across this country in a way that has never been done before, and granted so much more taxing power that has never been granted before, and yet they celebrate.

And they used a lot of different terms, like "charting the new course." That was a phrase that was used by the Progressive Caucus here just a moment ago—charting the new course. One has to wonder: What is this new course? It has been a course that the progressive movement has been on now for nearly a century; and today they are celebrating that course continuing to be charted, and that is a course of more government and less liberty. And that is what this decision was all about today. It was about empowering government and not empowering the American people. It is about creating more government and less liberty. That's what the decision reflected today.

I am joined today by many good friends here in the House of Representatives who are on the side of liberty. They're on the side of the American taxpayers, and they're on the side of the private sector. They believe in free markets and capitalism and profits and success and dreaming, and they don't think that the Federal Government has to get in the way of any of that.

Mr. Speaker, I would like to first yield to the gentleman from New Jersey (Mr. GARRETT) to get his insights on today's decisions.

Mr. GARRETT. Mr. Speaker, I thank Mr. GRAVES for leading the floor tonight on this very important matter. He joins me, I'm sure, in saying that we're all extremely disappointed that we have to come to the floor tonight and that the Supreme Court ruled today that the Commerce Clause does not support the individual mandate, but it may be upheld within Congress's power to lay and collect taxes.

So what we have found today is that Congress cannot use the Commerce Clause to compel you to do something. But, instead, Congress can tax you into submission. It should have been crystal clear that the Commerce Clause, which grants power to Congress to enforce free trade pacts amongst the States, could not use that clause to regulate it.

If Congress can force you to purchase a product, then there is nothing government cannot force you to do. This would have been a violation of your individual liberties as well as the constitutional doctrine of enumerated powers in which Congress is only given few and specific powers.

As the Supreme Court's syllabus of this case states:

The Framers knew the difference between doing something and doing nothing. They gave Congress the power to regulate commerce, not to compel it. Ignoring that distinction would undermine the principle that the Federal Government is a government of limited and enumerated powers.

But the Supreme Court instead told us that Congress has the power to tax and tax and tax until you submit to it.

Is this at all consistent with the founding principles of this country? Did those brave patriots who fought in the Revolutionary War and faced estrangement from their families, who endured British cannon fire and musket fire, weathered freezing winters and blazing summers, marched without shoes, slept without blankets, and suffered perpetual starvation all so that Congress could tax the people to form their behavior in Congress's image?

Did the Founders, who objected to the Stamp Act, the Sugar Act, and the Declaratory Act, which led our great Nation to revolt, risk the charge of treason and put their lives, fortunes, and sacred honor at risk, all so that they could replace one King who demanded more taxation, and now replace it with a President who demands more taxation? No.

We are Americans, citizens of a constitutional Republic where individual liberty is our birthright, won by our Founding generation's sacrifices. We are not and shall never be mere subjects of a government that can tax its way to tyranny. And disturbing as it is, there are many problems with this majority Court's rationale.

You see, the Obama administration has been confused as to whether or not

the monetary penalty for failure to pay is in fact a tax or not. But even if we accept the penalty as a tax, as the Court has rewritten the law to be, such a tax is still unconstitutional for many reasons.

First, the Constitution lays out three types of permissible taxes. This tax is not assessed on income, so it is unconstitutional in that regard. This tax is not assessed uniformly and is triggered by economic inactivity so it is unconstitutional in that regard. And the tax is not apportioned among the States by population, so it is unconstitutional in that regard.

Even more importantly, the Constitution does not grant Congress an independent power to tax for any purpose that it wants. Taxing to provide for the general welfare does not mean there is limitless power of Congress to tax. Rather, it means that a tax must be for a national purpose to achieve the ends that are outlined within the enumerated powers.

Now, this is not only my view; this was the view of James Madison, who ought to know a little bit about the Constitution since he is the man most responsible for it.

There is nothing about the individual mandate defined as a tax that is sanctioned by the Constitution.

But we have strayed far from the Constitution of the Founders. No longer is the ability to tax constrained by the limits imposed by that great document. The growth and power of this government would render it not only unrecognizable, but also repulsive to the Founders.

Madison and his fellow revolutionaries worried about the growth of government and the yielding of liberty. The writings they left for posterity are full of warnings about the fragility of limited government. Madison believed Republican governments would perpetually be on the defensive against the encroachments of aspiring tyrants. John Adams agreed when he said, "Democracy never lasts long."

And perhaps the most famous quote of all was Ben Franklin at the Constitutional Convention when he said we have produced "a republic, if you can keep it."

And now, 225 years later, we have arrived at this moment.

We should strive to restore the free society of our Founding Fathers that they fought for. If liberty is our goal, the Supreme Court has failed the American people. And so although we come here tonight extremely disappointed that the Supreme Court did not rise to the defense of the Constitution, I can take solace with the knowledge that the people of this country will.

□ 1830

See, the Americans of this country revere the Constitution, and they will not let it be trampled upon. They long cherish their liberties. They will not surrender them without a fight.

Since the enactment of ObamaCare, I have seen the tireless efforts of patriots, both in my district, in the State, and across the country, trying to repeal ObamaCare. I am inspired by their passion, by their determination to defend the Constitution. This generation of Americans will not allow history to say that we presided over the demise of the American experiment in limited government.

Now, it is true that the struggle against ObamaCare has been long and difficult and sometimes met, as today, with disappointing results. But for those of us who still believe in our founding principles, I offer some advice from Thomas Jefferson, who said, "The ground of liberty is to be gained by inches."

So we stand here tonight all together, pledging to work alongside the people of this great Nation who will fight inch by inch in defense of the Constitution, and we will repeal ObamaCare. Mr. Speaker, ObamaCare must be repealed entirely, because if it is not, the constitutional Republic and the safeguards of our natural rights through limited government will be lost.

Mr. GRAVES of Georgia. I thank the gentleman from New Jersey for your inspirational remarks reflecting back on the history of this country and the great leaders and the Founders and the principles which this Nation was based upon. While the erosion continues—and we've seen more of it even today with the ruling—the resolve is even stronger.

So to those that may be listening or watching, you can know that there is a group of Members in the House of Representatives that are not going to let up, that are going to be fully resolved to repealing ObamaCare in its entirety, pulling it out, each and every root of this legislation, and empowering the people and not empowering government. Because, why? Because this is not a government of the Court, by the Court, or for the Court. This is a government of the people, by the people, and for the people, and I am convinced that the people will have their voice heard in the next few months.

So as we heard from the progressives earlier in their continued march down this new chartered course of more government and less liberty, we are thankfully joined tonight by a great friend of liberty and a great advocate of liberty, and that is Louis Gohmert from Texas.

I'd like to yield to the gentleman from Texas.

Mr. GOHMERT. I sure do appreciate my friend from Georgia. He is an absolute patriot, standing for truth, justice, and what used to be the American way. It is, according to the Supreme Court, not so much anymore. And I appreciate the gentleman for yielding.

I've been going through this decision, and having been an attorney—and I've been a prosecutor and a judge and a chief justice. It was a small, three-judge court, but you learn things—you

go to judicial conferences—about how to write opinions and things, never to the level of the United States Supreme Court. But as a certified member of the United States Supreme Court Bar, you follow the holdings of the courts.

So it's been with great interest, after I got my wind back from having found that Chief Justice Roberts wrote the opinion for the five-person majority, okay, so we start going through the opinion. Let's see how in the world he came to this conclusion.

Well, I'll be very brief in jumping through, even though it's a very long opinion, including the dissents. But the first thing that the Court had to consider is the Anti-Injunction Act that was passed by Congress years ago that makes very clear that the Supreme Court cannot take up any issue regarding a tax unless the tax has actually been levied and someone required to pay the tax, and then someone against whom the tax has been levied—required to pay that tax—files suit, that person then has standing. Well, under ObamaCare, if the mandate is a tax, the penalty is a tax, then the Anti-Injunction Act would kick in and no one would be allowed to have standing before the Federal district court, court of appeals, and certainly not the U.S. Supreme Court.

So the first thing the Supreme Court had to get past was the issue of: Is this penalty a tax? Because if it's a tax, then the Supreme Court must throw this case out, announce that the plaintiffs in these cases have no standing—and will not until around 2014—until such time as the tax is levied.

So the Court goes through, and if anybody prints out the decision, you can look at pages 11 through 15 specifically where they discuss the Anti-Injunction Act. They point out just, in essence, what I have hopefully clarified: If it's a penalty, then the Court can take it up. If the penalty that you must pay for not buying the insurance is a tax, then this case goes out, no Supreme Court decision for at least 2 to 4 years.

So Chief Justice Roberts—brilliant man, there's no question he's a very brilliant intellectual—he indicates this and says:

Congress's decision to label this exacting a penalty rather than a tax is significant because the Affordable Care Act describes many other exactions it creates that are taxes.

And he says this:

Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally.

So he goes on and he says:

The Anti-Injunction Act and the Affordable Care Act are creatures of Congress' own creation. How they relate to each other is up to Congress, and the best evidence—the Supreme Court's words, Justice Roberts' words—the best evidence of Congress' intent is the statutory language, the statutory text.

So he goes on to conclude that since Congress says in ObamaCare, the Affordable Care Act—boy, is that a misnomer, the Affordable Care Act—since Congress calls it a penalty, then Justice Roberts and the majority say it's not a tax; it is a penalty.

So around page 15 or so, 15, 16, they come around and say—I guess, 15, okay:

Congress made clear that the penalty is what it is—not a tax. Therefore, the Anti-Injunction Act does not apply, so our Court has jurisdiction. As he says, the Anti-Injunction Act, therefore, does not apply to this suit since it's a penalty and not a tax. Therefore, as he says, we may proceed to the merits.

Okay. So he clears it's a penalty; it's not a tax. Because if it's a tax, they can't do anything; they've got to throw it out. Okay. So it's a penalty, not a tax.

So then he goes on, after page 16, he goes on in the majority opinion to discuss this issue of whether or not it violates the Commerce Clause, this penalty. He comes to the proper conclusion that if Congress can mandate a penalty for not buying a product, there's nothing to stop Congress from intruding in every area of individual Americans' lives.

It's mentioned in this opinion that the main purpose—one of the two main purposes is to bring down the cost of health care. The Supreme Court thinks that's a legitimate reason to pass an act, bring down the cost of health care. But Justice Roberts and the majority decide it would violate the Commerce Clause, because if you can force individual Americans to buy a particular product in order to bring down the cost of health care, you can order anything. You and I can be ordered to join a gym and to start exercising X number of hours a week.

We're told that the Federal Government does not monitor debit card and credit card purchases—although, supposedly it could. Well, if it has a duty to bring down health care costs and it has the ability to watch your purchases, and, under ObamaCare, the Federal Government, through their relationship with General Electric—sweetheart deal they did with GE—they're going to hold everybody's medical records. So if they're holding everybody's medical records, then I don't know why they wouldn't go ahead and monitor everybody's cholesterol rate, blood pressure, things like that.

□ 1840

And so it could conceivably get to the point where, gee, you get a letter from the government that says, we notice your cholesterol rate's up to 250 or so and we notice you bought bacon this weekend. What were you thinking? You know, you've got to take that back. You can't keep bacon.

Anyway, there's no limit to what Congress can do to intrude in people's lives. And I'd point out to my friend from Georgia, liberals are constantly

on the protection of bedroom privacy rights. I really thought that once they fully examined the potential effect of ObamaCare, they would be standing down here with you and me and my other friends hear, Louisiana, Georgia, they'd be out here saying, wait a minute. If the government has the right to order us to do or not do acts or buy or not buy products for the sole purpose of bringing down the costs of health care, there are studies that say some certain relational activities create more risk for health care problems than others, so if this is true, the Federal Government would have the right not only to invade the kitchen and the bathroom, but head straight to the bedroom and dictate people's rights.

I didn't want to go there, and I felt like once we found out that Chief Justice Roberts makes clear, this is a penalty, not a tax, it violates the Commerce Clause to force people to buy a product like this, you would think that would be the end of it.

But then Chief Justice Roberts goes on, and it doesn't make sense because then he begins to say, well, it violates the Commerce Clause, but does it violate the Tax-and-Spend Clause?

And then he goes through and makes a case for saying, it's not a penalty, it's a tax. And he's already told us that the best way to tell what it is is to look what Congress called it. And I think, in this case, not only look what Congress called it, look at what the President called it.

I just happen to have a partial excerpt or an excerpt from the transcript of a show the President did with his friend, George Stephanopolous. And Stephanopolous is asking him about it and said, you know, under this mandate, the government's forcing people to spend money, fining you if you don't. How is that not a tax?

Well, President Obama goes on and he lays out all this weak gibberish, and eventually gets—Stephanopolous interrupts him and says, okay, that may be, but it's still a tax increase. And the President said, that's not true, George. For us to say that you've got to take responsibility to get health insurance is absolutely not a tax increase.

The President also says, nobody considers that a tax increase.

He's not done making clear the will of the Congress and of the President, who pushed this bill to make it his shining bill that he had passed through Congress. Stephanopolous goes on and says, I want to check for myself, but your critics say it's a tax increase. President Obama says, my critics say everything is a tax increase.

Stephanopolous: But you reject that it's a tax increase.

President Obama says, I absolutely reject that notion. Not a tax increase.

So you would think that if Chief Justice Roberts and the majority, the other four, are going to uphold the President's prize bill, he might accept what the President said he's done in this bill. But oh, no.

After finding that it's not a tax, it's a penalty, then Chief Justice Roberts comes over to page 39 and he says, the joint dissenters argue that we cannot uphold section 5000(a) as a tax because Congress did not "frame it" as such.

And then he goes on and he says, labels should not control here.

What? He just said before, Congress' own expressed written intent is the best evidence of what their intent is. And yet, now he comes over here, page 39 and says, wait, wait, wait. We have to look at what the intent is, but labels should not control.

So then he goes through and makes this ridiculous argument that it is a tax. And he says over here, page 44, the Affordable Care Act's requirement that certain individuals pay a financial penalty for not obtaining health insurance may be reasonably considered as a tax because the Constitution permits such tax. It's not our role to forbid it or to pass upon its wisdom or fairness.

But then, one of the big mysteries in this brilliant man's opinion for the majority uses the first person pronoun, I. Now, you know, anybody that's been a judge, normally you go to judicial conferences, you have seminars, you have training in writing style. If it's an individual judge, sole court opinion, then you'll write it one way. If it's a multiple justice opinion you write it another way.

You see first person pronoun I in dissents, even though it's really not the best grammar to use pronouns in dissents. But you don't see them in well-written majority opinions. And Chief Justice Roberts is one of the best linguists we've had on the Court.

And he takes Justice Ginsberg to task a few different places in the majority opinion, and yet, she is one of his voting justices to support the majority. That doesn't make sense.

You don't normally see one justice writing the majority opinion take off and criticize someone who's voting with him. That doesn't make sense. But here at page 44 he says, Justice Ginsberg questions the necessity of rejecting the government's commerce power argument, given that section 5000(a) can be upheld under the taxing power.

He says, Chief Justice Roberts, majority opinion, but the statute reads more naturally as a command to buy insurance than as a tax. So now he's back to what he originally said before he says it is a tax.

And then he says this: And I, Chief Justice Roberts, would uphold it, talking basically of future perfect tense. I would uphold it as a command if the Constitution allowed it. I would uphold it.

He's writing for the majority. There's no reason for him to have the first person pronoun "I" there. It doesn't make sense. I don't know. Maybe this part he was writing as a dissent, and all of a sudden found himself in the majority, and amazingly, nobody caught this problem of style in writing the opinion.

It doesn't make sense that a man that smart would have a product this poor, using first person, criticizing another justice in the majority with him, then saying what he would do. Well, he is doing, he's writing the majority opinion. He has no business saying that.

And then he goes through, it says the States also can end Medicaid, expansion exceeds authority under the spending clause. But basically he comes back and upholds it, and then strikes down that you can't force the States to do these things.

But, I remind my friends, the President says it's absolutely not a tax. The only way this bill gets upheld is if the Supreme Court finds it is a tax after they find jurisdiction by saying it's not a tax.

But this is the same President who said, if you like your health insurance, you're going to keep it. He said, if you like your doctor, you can keep your doctor. We found those were lies.

He said, it's going to bring down the cost of health care. In every indication we've seen, insurance has dramatically gone up. And I get tired of hearing people say, because their memories are poor in here across the aisle, well, look at the good things in here. Twenty-six year olds can be on their own parents' insurance. Gee, you can buy insurance across State lines because of us. We've taken care of the unfairness that some insurance used with preexisting conditions as an exclusion.

But I would encourage my friends, I know my colleagues here remember, back when they had the House, they had the Senate majority, they had the White House, Republicans, many of us begged them, let us do some bipartisan bills together because we can agree. It's not a problem to let 26-year olds stay on your parents' insurance. Heck, the insurance companies love that because they are usually healthy. It's not a big cost. So we were going to be able to agree on that.

It was a Republican, heck, John Shadegg is the first one I ever heard saying you've got to sell insurance across State lines. That was a Republican idea, so of course most of us supported that.

□ 1850

As for the preexisting conditions, most of us are aware of circumstances in which insurance companies have been grossly unfair in using that exclusion. We were prepared to reach some agreements and have bipartisan, stand-alone bills. I know that my friend Dr. PRICE out here had some concern about health care, his having devoted his life to it before government, trying to fix what government had done to health care. People have been concerned about it. We were willing to agree on these things, but they would not have it.

So to say without ObamaCare we don't have these other things is simply not true, and it forgets current history. We were ready to agree on standalone

bills. They didn't want a bipartisan agreement. They wanted the whole brass ring and to shove it around our heads, around our necks, and eventually down our throats, and that is what has happened. I've been amazed at how many people have picked up laws and started reading them, and I would encourage them to read this opinion. It's a very, very strange opinion. It contradicts itself on so many levels.

ObamaCare takes away religious freedom. I'm Baptist. I see what they're doing to the Catholics, and I don't want to someday say, "I saw what they did to the Catholics, and I remained silent," and eventually there was nobody to object when they did it to me. We all have to stand together, and I'm grateful to stand with my friends.

One other comment. I heard my Democrat friends before we spoke say, without this ObamaCare bill, these clinics will die.

There have been clinics before the ObamaCare bill that helped. We have some in my district, and they're doing wonderful work. They need more help. The best are, really, charitable institutions. The clinics are not going to die.

What came from the President's mouth and was also in his town hall was when a woman in the White House, as part of the town hall, said, Mr. President, at an advanced age, my mother got a pacemaker. If the doctor had not met her, the cardiologist was not going to let her have a pacemaker. After he met her, he said, absolutely, and she has lived years beyond that since she has had a pacemaker. So would you consider someone's quality of life under your panels—we know they don't want to call them "death panels," but whatever you want to call them—will they be able to consider the quality of life that people have before they agree or disagree to let them have a procedure?

The President beat around the bush as he did with Stephanopoulos—and you can find the transcript. It's available on the Net—and ultimately said, You know, maybe we're just better off telling your mother to take a pain pill. You don't get a pacemaker. You don't get these additional years of life. You get a pain pill.

So, when our friends across the aisle tonight say that the clinics will die, I would humbly submit that, based on the President's own words, it's not the clinics that will die under this bill.

I thank you so much for your generous yielding of so much time. It's a bad opinion, and I appreciate having the time to walk through some of it.

Mr. GRAVES of Georgia. I thank the gentleman from Texas for walking us through the opinion.

I hope all those who are viewing this understand that this is about a tax now. This is a new taxing authority, in essence, a broadening of the taxing authority. As Mr. GOHMERT brought up, this is unheard of. We will now have a Federal Government that can do whatever it wants to do through taxation.

In just thinking about the difference between "tax" and "penalty," I guess one way to find out is, who do you send the check to, right? I mean, where is the bill coming from? I imagine it's going to be from the Internal Revenue Service. I remember being on the Appropriations Committee and having the IRS before us. It was wanting hundreds of millions of more dollars to hire more people for the implementation of ObamaCare, and now we all know why, and we know what that agency or that department collects.

So here is the crux of the decision today:

While the Court might have said, well, the Federal Government can't tell you what to do, they can sure as heck punish you through taxes if you don't do what they want you to do, which is to be followed up here by my friend from Kansas (Mr. HUELSKAMP) who has got some great insight.

Thank you for joining us.

Mr. HUELSKAMP. Thank you, Congressman GRAVES. I appreciate your leadership. Sometimes we wish there had been someone like you on the Court today.

Actually, before we forget, as for one of the five votes that upheld ObamaCare, in any other court of law, that Justice would have recused herself. The decision might have only been 4-4. Justice Kagan should not have been in on this decision. In any other court, she would have been recused. If a lawyer had refused to recuse himself as a judge, he would have been violating ethical rules. Every attorney in this country knows that, including the Chief Justice, and they said nothing.

Do you know what? I'm not here to talk specifically about that. You talked about taxes. Our other Congressman friend did as well.

In this bill, there are 21 tax increases by the definition of the Court, but I want to talk about two in particular because I believe, when we look back on the American system of a once limited government, this day, June 28, 2012, will stand as the definitive date in the advance of government tyranny. In today's ruling, a slim majority of the Court turned the Constitution on its head and ruled that the Federal Government, in effect, can force upon the American people anything it darned well pleases so long as it's called a "tax."

Let's not forget that, when our Founding Fathers put everything on the line, risking life, limb, and property to make us an independent Nation, they did so in order to ensure that no man was taxed without representation. They also asserted that every man and woman has inalienable rights that are not to be violated by the government. They enshrined these concepts in the Declaration of Independence and, ultimately, in our Constitution.

Today, in my opinion, the Supreme Court offered a perverse interpretation of the Bill of Rights. Just across the

street from here, they said that, even though you have a right to do something, the decision to exercise that right will incur a tax. The decision to exercise that right, said the Chief Justice of the U.S. Supreme Court, will incur a tax.

Can you imagine the limitless possibilities for Washington? Why not extend this interpretation to other parts of the Constitution? For example, why not tax the exercise of your First Amendment rights?

Sure, you've got First Amendment rights. Send your Member of Congress a letter, but pay a fine to the government. That makes sense under this ruling. Sell a newspaper or publish a blog. Don't forget to tell the IRS and the new 16,500 agents they want to hire to enforce it. What about a right to a fair and speedy trial? That's guaranteed, but you know, that's yours to have but for a fee.

That's the lack of logic. For average Americans who love their Constitution, these are guaranteed. They're not allowed to be imposed if you pay the fine or the fee.

One thing in particular I want to talk about, Congressman GRAVES, is that, in addition to this health insurance mandate tax, the President's health care law creates what is clearly a religion tax. A religion tax? Yes, you heard me right, and it's even if you morally or ethically disagree with something being promoted.

Right now, HHS Secretary Kathleen Sebelius and former Governor of Kansas, look at her record. Most Americans would completely disagree with her moral views, but if you disagree with her mandates of the President's health care plan, it doesn't matter. You will still have to pay for it. If you dare to follow your conscience and, maybe, actually practice your faith or no faith whatsoever and refuse to participate, you will be fined. Why? You will be taxed because of what you believe and your desire to live it out. You will be forced to give your hard-earned money to the IRS in Washington, D.C., because of what you believe. That, my friends, is a religion tax. It's a faith tax. It's a direct attack on our freedom of religion.

Now, today the Court didn't rule on that. There are dozens and dozens and dozens of lawsuits coming on about the HHS mandate coming out of ObamaCare. This is the start: a tax on religion.

I have an employer who sent me an email. He said, Well, Tim, everybody is talking about the individual mandate. What about the employer mandate? I don't want to cover abortions for my employees. I refuse to participate.

He will be fined \$3,000 at a minimum for every single employee. Why? Because of what he believes.

That's why we started this country—for freedom to believe as we ought, not as the government or as the king or as

the Chief Justice would have us believe. But they didn't address this directly in this decision; they'll be coming. This is a shocking attack, I believe, on the first supreme right in the First Amendment, which is the right to believe in and follow the God one chooses.

□ 1900

The Supreme Court may not have dealt ObamaCare the death it deserved, but it's incumbent upon each and every one of us here in Congress and each and every American. I would have loved to have witnessed a home run, knock it out of the park and say it's clearly unconstitutional. Again, if Justice Kagan had been ethical, it would have been a 4-4 decision. They didn't worry about that. Ethics doesn't matter. It's just the end. It's kind of the Progressive Caucus approach. The end justifies the means, but not in America.

I ask all Americans to realize this decision is not about health care. It's about liberty. When we have created and designed a method by which future Congresses, future Presidents, can get around any limit in the Constitution—the Constitution is a limit on my power, on every power of every Member in this Chamber and every Member across the way and every President of the United States. That's what the Constitution does. It doesn't empower us. It takes away our power.

This Court today has said, if you call it a tax, if you use those three words—even though the Chief Justice says “labels don't matter.” He said labels don't matter, and then he turns around and says the word “tax” does matter. If you do that, it makes it suddenly constitutional—anything you do, including attacking the very faith that is held by the Chief Justice himself. It says, You cannot hold that faith, Mr. Chief Justice, unless you're willing to be fined by your own government.

That is a travesty of justice in this country.

What this means is we cannot overturn this with this President in the White House. This has taken an issue, and people are ready to work on it and say, You know what? This is going to be the issue for November 6. This is the choice. Do you want the government to mandate and control everything in your lives, as long as they use that magic word? They love to use the “tax” word. If you allow them to do that, you allow them to be in every part of your life, which is an absolute contradiction to what this country was founded upon.

I appreciate the leadership of many in this room. I am just a freshman. I was not here when this debate started last time, as some of these colleagues who have been fighting all along. But I tell you, if the folks in the First District of Kansas are any indication of what Americans are saying all over, this is the time. They're going to dust off that Constitution. They're going to read it and say, My goodness. I don't want to lose this. It's too precious.

We're leading the world, and now is the time to take back our government, take back our Constitution, and take back power out of Washington, D.C.

I appreciate the leadership of the gentleman from Georgia.

Mr. GRAVES of Georgia. I thank the gentleman from Kansas for your words.

Regarding unintended consequences, I can tell you there are going to be an amazing amount of unintended consequences with the Affordable Care Act, which I'm not sure that we can call it that anymore. I think it's more like the Limited Care Act. It's the Very Expensive Care Act.

For the Progressives that were here earlier—and I know many folks listened to them—they were celebrating. They were excited. They were happy, gleeful; whereas, we're lamenting but resolved to do away with this once and for all.

Why would they be gleeful? Because it's their movement. That's what they've been trying to do now for almost 100 years, and that is increase the size of government, get it into the lives of the American people, dictate their behavior, and limit freedom.

I read recently that part of their agenda is to divorce the Declaration of Independence and the Constitution. But to use one and to prop up on that one so they can almost sort of claim that they are for the founding of this Nation—and we heard earlier when they used the Declaration of Independence: life, liberty, and the pursuit of happiness. They were celebrating that this was the right bill to be in law because of life, liberty, and the pursuit of happiness. If you can claim that with this legislation, there are no bounds in which you can go with this Federal Government, there are no limits.

As the gentleman from Kansas just raised, this is clearly not about health care. This is about freedom, and this is about liberty and preserving it for future generations.

I would like to yield to the gentleman from Louisiana (Mr. LANDRY).

Mr. LANDRY. Thank you, Mr. GRAVES.

Mr. HUELSKAMP was just on the mark. I will venture to say that today's ruling actually extinguishes the fire of life, liberty, and the pursuit of happiness. It destroys life, liberty, and that pursuit.

The question today for this country can best be summed up by President Ronald Reagan when he said, back in the 1960s, in a speech:

Will history write that those who had the most to lose did the least to prevent it from happening?

This is a sad and tragic day for the Constitution. Where are the limits of our government? While the Court has answered that the Commerce Clause does have its limits and gives us that ruling, it takes away by saying that Congress has unlimited taxing power. Its limits are unlimited. I guess that Congress now, when it sees fit to regulate an issue, an industry, need only

now to turn to its taxing power, as Mr. HUELSKAMP said.

This law was sold to us as a mandate and not a tax. It was reaffirmed by the President that this is not a tax. Yet, when the arguments were made to its constitutionality, this administration took the position that it was a tax, and the Court agreed.

Let's see the taxes. In 2010, an excise tax on charitable hospitals was enacted; the codification of the economic substance doctrine; a tax hike of \$4.5 billion was implemented; a black liquor tax hike, a tax that increases on the type of biofuel; a tax on innovator drug companies was enacted; a BlueCross/BlueShield tax hike was enacted; a tax on indoor canning services was enacted; a medicine cabinet tax, so that Americans are no longer able to use their FSAs, flexible spending accounts, or HRAs, their health reimbursement pretax dollars to purchase nonprescription over-the-counter medicine was implemented; the HSA withdraw tax hike was implemented; a tax that will take effect this year, the employer reporting of insurance on W-4s.

Where are they going with that, Mr. GRAVES? Where are they going with that?

Remember, not long ago we had a big debate about that, that now we're going to report to the IRS the amount of your insurance policy that your employer gives you on your W-4, because they want to tax that as income.

And then taxes that will take effect in 2013: a surtax on investment income; a hike in the medical payroll tax.

Wait, the medical payroll tax? I thought we had a payroll tax holiday. Not in 2013. We're going to get an increase.

A tax on medical device manufacturers; a flexible spending account cap that is going to affect those parents who have special needs kids.

So those parents who have special needs kids that the other side of this aisle claims to always want to represent, this health care law is now going to tax.

An elimination of the tax deduction for employers that cover prescription drugs; a \$500,000 annual executive compensation limit; an individual mandate excise tax; an employer mandate excise tax; a tax on health insurers.

And last but not least, in 2018, an excise tax on comprehensive health insurance plans, which will affect union employees.

This ladder of success that we had in this country has now had three rings of it removed, because now the government tells the individual, if you live below a certain poverty line, you will be given food, shelter, and now health care tax free, no requirement by you who is receiving these, to pay anything back to the government, zero.

□ 1910

What is the incentive to climb? Because the moment you start to climb, you lose these amenities and the government starts to take from you. So

the decision becomes, can I jump high enough to grab a rung so that I can then start paying back and get more of the amenities that the government was giving us and I was provided?

Let me conclude as I began, by asking: Will those who have the most to lose do the least to prevent it from happening? And as I spend time in this city, I have come to realize that the giants of America who have been memorialized for their great contributions to our society did not contribute with the goal of being memorialized but did what was right and just in the eyes of the Lord, with no ego and no agenda other than for the greater good. And that is what this country so desperately needs. We need those giants.

Mr. GRAVES of Georgia. I thank the gentleman from Louisiana.

You brought up one major component of all this legislation. I remember in one of the State of the Unions, the President said, We need tax reform. Tax reform.

I think he got tax reform in this law. What did you say? Twenty-one new taxes are being implemented because of ObamaCare? There are 21 new taxes, and yet the Progressives earlier said, No, this is great for America. Free health care. Affordable health care. No one has to pay. They'll actually get credits back.

Somebody's got to pay. That's the way this place works. Whenever they're promising you something, they're taking from someone else. And you just laid out 21 different areas that impact every American that the President promised he wouldn't raise taxes on. So I appreciate you doing that.

And next, the other component of it is, what's left? What really was in this health care law, this Big Government expansion, this overreach into the homes of American families? A tremendous amount is left.

I know Dr. PRICE from Georgia has been leading the fight not only against this measure, but for positive patient-centered and patient-driven measures as well. And I want to thank you for joining us and sharing with us.

Mr. PRICE of Georgia. Thank you, Mr. GRAVES, so very much. I want to commend you for your work on this issue and your leadership for principled solutions, principled solutions in the area of health care and everywhere else.

I know that Republicans think every day is the Fourth of July and Democrats think that every day is April 15. Why would I say that? Today we've been highlighting it in this conversation we're having here, because our friends on the other side of the aisle believe that every day is another day to raise taxes.

Today the Supreme Court of the United States said, If you want to raise taxes, have at it. Raise them as high as you want. In fact, the Democrats are so incredibly happy this day because it's not just that they can now raise taxes or fight to raise taxes on what we do,

but goodness gracious, they can fight to raise taxes on what we don't do. In fact, if you don't do something, then the Federal Government can say, Oh, you'd better do that or we're going to raise your taxes. And that is exactly what the Court said today, which confounds and astounds everybody.

I was privileged to sit in the Court today, though, and hear the reading of the ruling, and Chief Justice Roberts said one thing that I found very, very interesting. He said, "It's not our job to protect citizens from their political decisions."

"It's not our job to protect citizens from their political decisions." And that's exactly what this was. This decision was fixed on Election Day in 2008. This decision came down on Election Day 2008.

As a physician, I want to talk for a very brief moment here about the incredible importance of Election Day 2012 because, as you said, Mr. GRAVES, there are a lot of things in this bill that we're not just talking about money. As a physician, I know what we're talking about is people's lives, the health care of the American people. And nothing could be so important, nothing could be so personal.

And what the Court said today is, Let the things in there stand. The \$500 billion reduction, the \$500 billion decrease from the Medicare program—taking the Medicare program and saying, You don't need that money, seniors in this country. You don't need that money. We're going to use it over here.

What does that mean? What that means is that those seniors—your parents, your grandparents, the parents and grandparents of this great country, the people of the Greatest Generation cited by this country, are now going to have diminished health care.

And how are they going to do it? They're not going to do it through the front door. They're not going to say, We're going to decrease this care for you transparently, openly. Oh, no. They're going to do it through the backdoor, something called the Independent Payment Advisory Board that we've talked about before, the 15-member bureaucratic panel. Nonelected individuals are going to have the power, under this law, to say, Dr. Smith, you can't do that for Mrs. Jones. If you do it, we're not going to pay you. That's the coercive power of this government. That's the coercive power that this Court today said is okay.

Well, Mr. GRAVES, you and I both know that it's not okay for us, and it's not okay for the American people. And that's why we stand here tonight, and we say with every ounce of our being that the election that occurred in 2008 may have written this in stone, but there are some sandblasters out there. And what we're going to do between now and the first Tuesday in November is to make certain that the American people understand and appreciate that there are folks in this town who are fighting as hard as we can to uphold

the rule of law, to uphold the Constitution, and to adhere to those fundamental principles, especially in health care—the principles of affordability and accessibility and quality and choices for the American people.

The bad news was written today. The good news is that you can solve all of these challenges in health care without putting the Federal Government in charge of the thing. We've got the solutions. We've talked about them before. We'll be going on the road now talking about them from now until November, because the American people want to know that there is somebody fighting for them in this town on their behalf. And we are.

What we need from the American people is for them to stand up and say, No more. We will not tolerate a government that will reach into our lives and destroy quality health care in this country to the degree that the Court said it was okay to do today.

I thank my friend for the wonderful work you are doing and for yielding me this time.

Mr. GRAVES of Georgia. I thank the gentleman from Georgia.

Not only are you a physician—you are not here speaking on behalf of physicians. You are here speaking on behalf of patients all across this country and defending them. And I appreciate the great fight that you are putting on and the resolve that you have for each of us, as you are leading us here as Republicans here in the House.

As we go into the last 5 minutes here with the gentleman from Utah (Mr. BISHOP), he brought up the government right now taxes us on what we do or consume, but this is a first in which the government can now tax you on what you don't do. That's an amazing concept. I hadn't really thought of it that way until Mr. PRICE brought it up.

So now the Federal Government has moved into a realm which has never been here before, saying, Hey, because you're not doing something, I'm going to tax you. So I'm going to determine what it is that you should be doing that you are not doing so, therefore, I can collect a little revenue. And here we are today with something such as this.

As we are just wrapping up this spirited discussion here, earlier, Mr. BISHOP, you heard the Progressives celebrating this decision today.

What were they celebrating? The Federal Government can tax you if you do something. But today's celebration was the fact that the Federal Government can tax you when you don't do something.

I appreciate you joining us tonight and giving your thoughts from the great State of Utah.

Mr. BISHOP of Utah. I appreciate the gentleman for yielding me a few moments here. Truly, this is a unique day. And I'm happy to join my colleagues in talking about this particular issue.

You know, the old cliché is simply, a Supreme Court decision should not be



confused with constitutional principles. Today we had one case brought by States to the Supreme Court. And the administration has always said, This ObamaCare is not a tax. It is not a tax.

Well, the Court said, on five of the nine decisions, Yes, it is a tax. And I guess it's legal if you call it a tax. Four of the nine said not even that's good enough; but, nonetheless, it's a tax.

□ 1920

It's appropriate that we talk about that power of taxing because the most famous of all cases, *McCulloch v. Maryland*, which was one the major decisions actually made in this particular building, simply said the power to tax is the power to destroy. And we have that in front of us right now.

I don't think we should've expected judges to do what the legislative branch—in this case, Congress—ought do. And I think it's positive that we move forward in this effort to make sure that this program does not go into effect and we take concerns for our constituents and maybe even learn something from it.

The idea of judicial review didn't exist for the first decade and a half of this country. *Marbury v. Madison* didn't happen until almost 15 years into the country. Washington, in the Constitutional Convention, also thought the veto should be what determined constitutionality, kind of executive review, and Jefferson always said there should be legislative review.

So I think perhaps our Founding Fathers thought all branches should be involved in that kind of concept. And I think there should be a fourth one added to it, which is the States at the same time, who started this process of going to the courts. But we don't come on this floor often and quote anti-Federalists because they lost. However, I want to today, because even though they were wrong on the Constitution, every once in a while they were right on some of the concepts.

So in the "17th Letter from a Federalist Farmer," written either by Melancthon Smith or one of the Lees of Virginia—no one really knows who actually did it—he talked about this idea that the States, if we have the concept of federalism, should have some power to do some real things. He simply said:

I have often heard it observed that our people are well informed and will not submit to oppressive governments, that the State governments will be ready advocates. But of what avail will these circumstances be if the State governments, thus allowed to be guardians of the people, possess no kind of power to stop the laws of Congress injurious to the people?

One of the things they quickly said is States really don't have the concept or the power to actually involve themselves in this particular issue. There are some concepts that are out there. The repeal amendment, which is proposed by some legal scholars and has been proposed by some State organizations, would actually give a tool for

States to be involved in this discussion because it impacts those States. Right now, they simply have to accept what takes place here in the rarified air by the Potomac River.

But, indeed, if we gave the States a tool so if enough States were to ban together to say, No, we disagree with this rule, we disagree with this regulation, we disagree with this law, we even disagree with this Supreme Court decision, the States would have the ability to add a new check and a new balance to make sure that the common people of this country have some kind of voice in these decisions.

I think one of the things we should learn from today's decision is that we desperately need another check and balance in our process to make federalism a realistic and real term, and that means to involve the States in giving them some powers to have real decisions, not so they have to come to us as they have so far, begging, but so they can actually have a say. I think we would be better off as a Nation if we did it.

This decision today, if nothing more, should add a resolve for us to solve a political problem politically, to do it here in the Halls of Congress, but maybe add another player in this process—the States—so they also have a say in this power to tax, which is the power to destroy.

I realize we're coming close to time. I want to give my good friend from Georgia the chance of giving the final word on this particular issue, and I appreciate his efforts to organize this opportunity to talk about what has happened today.

Mr. GRAVES of Georgia. Thank you for your comments tonight and your great insight and reflecting back on early documents and early words that have been shared.

Mr. Speaker, as we conclude tonight, I want the American people to know that we are resolved to restore the liberty that was lost today through the full repeal of ObamaCare. That will be our focus as Republicans in the House.

I yield back the balance of my time.

#### CONFERENCE REPORT ON H.R. 4348, MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT

Mr. MICA (during the Special Order of Mr. GRAVES of Georgia) submitted the following conference report and statement on the bill (H.R. 4348) to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes:

##### CONFERENCE REPORT (H. REPT. 112-557)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4348), to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of

the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

#### SECTION 1. SHORT TITLE; ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) *SHORT TITLE*.—This Act may be cited as the "Moving Ahead for Progress in the 21st Century Act" or the "MAP-21".

(b) *DIVISIONS*.—This Act is organized into 8 divisions as follows:

(1) *Division A—Federal-aid Highways and Highway Safety Construction Programs.*

(2) *Division B—Public Transportation.*

(3) *Division C—Transportation Safety and Surface Transportation Policy.*

(4) *Division D—Finance.*

(5) *Division E—Research and Education.*

(6) *Division F—Miscellaneous.*

(7) *Division G—Surface Transportation Extension.*

(8) *Division H—Budgetary Effects.*

(c) *TABLE OF CONTENTS*.—The table of contents for this Act is as follows:

Sec. 1. Short title; organization of Act into divisions; table of contents.

Sec. 2. Definitions.

Sec. 3. Effective date.

#### DIVISION A—FEDERAL-AID HIGHWAYS AND HIGHWAY SAFETY CONSTRUCTION PROGRAMS

##### TITLE I—FEDERAL-AID HIGHWAYS

##### Subtitle A—Authorizations and Programs

Sec. 1101. Authorization of appropriations.

Sec. 1102. Obligation ceiling.

Sec. 1103. Definitions.

Sec. 1104. National Highway System.

Sec. 1105. Apportionment.

Sec. 1106. National highway performance program.

Sec. 1107. Emergency relief.

Sec. 1108. Surface transportation program.

Sec. 1109. Workforce development.

Sec. 1110. Highway use tax evasion projects.

Sec. 1111. National bridge and tunnel inventory and inspection standards.

Sec. 1112. Highway safety improvement program.

Sec. 1113. Congestion mitigation and air quality improvement program.

Sec. 1114. Territorial and Puerto Rico highway program.

Sec. 1115. National freight policy.

Sec. 1116. Prioritization of projects to improve freight movement.

Sec. 1117. State freight advisory committees.

Sec. 1118. State freight plans.

Sec. 1119. Federal lands and tribal transportation programs.

Sec. 1120. Projects of national and regional significance.

Sec. 1121. Construction of ferry boats and ferry terminal facilities.

Sec. 1122. Transportation alternatives.

Sec. 1123. Tribal high priority projects program.

##### Subtitle B—Performance Management

Sec. 1201. Metropolitan transportation planning.

Sec. 1202. Statewide and nonmetropolitan transportation planning.

Sec. 1203. National goals and performance management measures.

##### Subtitle C—Acceleration of Project Delivery

Sec. 1301. Declaration of policy and project delivery initiative.