

continue to follow this administration's energy policies, we may get there.

As a member of the Senate's Energy and Natural Resources Committee, I was somewhat surprised when a suggestion was made just a few days ago that there are some who believe there is no relationship between U.S. production of petroleum and the price of gasoline in the United States. That simply is not true, and it cannot be true. With oil being the input ingredient into gasoline, it is the precursor for gasoline. Anytime we do anything that cuts off or restricts or limits the supply, that is necessarily going to have an impact on the price, and it does.

The fact that it is indisputable that there are other factors which also influence the price of gasoline makes it no less true that we have to produce petroleum at home in addition to buying it from other places. In order to keep gasoline prices at reasonable levels, we have to produce more.

There are some things we can do in order to help improve that trend. For example, we could open ANWR for drilling. We could open our country's vast Federal public lands to development of oil shale. It is a little known fact that in three Rocky Mountain States, a small segment of Rocky Mountain States—Utah, Colorado, and Wyoming—we have an estimated 1.2 trillion barrels of proven recoverable oil reserves locked up in oil shale. Now, 1.2 trillion barrels is a lot of oil. That is comparable to the combined petroleum reserves of the top 10 petroleum-producing countries of the world combined—just in one segment of three Rocky Mountain States.

Yet we are not producing it commercially, in part to a very significant degree because that oil shale—especially in my State, the State of Utah—is overwhelmingly on Federal public land, and it is almost impossible to get to it, to produce it commercially on federally owned public land. We need to change that.

We need to create a sensible environmental review process for oil and gas production generally. We need to improve the permitting process for offshore development in the Gulf of Mexico and in other areas. We need to allow the States to regulate hydraulic fracturing without the fear of suffocating and duplicative Federal regulations. We need to keep all the Federal lands in the West open to all kinds of energy development. And, of course, we need the President to approve the Keystone XL Pipeline. This will contribute substantially to America's energy security and will provide an estimated 20,000 shovel-ready jobs right off the bat.

There are things we can do to help Americans with this difficult problem—one that will affect almost every aspect of the day-to-day lives of Americans. We need government to get out of the way. We need the government to become part of what the President

laudably outlined as an all-of-the-above strategy in his State of the Union Address just recently. We need to get there. We cannot afford gas at \$6.60 per gallon, which is exactly where we are headed if we continue to do things as this administration has done, which has lead to an increase in the price of gasoline at a staggering rate of 5 cents per gallon every single month.

#### RAILROAD ANTITRUST

Mr. LEE. Madam President.

I stand in this moment in opposition to the railroad antitrust amendment offered by my distinguished colleague, Senator KOHL, and I urge my fellow Senators to do likewise.

As the Antitrust Modernization Commission noted in 2007, free market competition is the fundamental economic policy of the United States. In advancing this overarching policy goal, we should be wary of particularized exemptions from our Nation's antitrust laws. I know Senator KOHL shares my view in that regard.

When properly applied, antitrust laws function to help ensure that market forces promote robust competition, spur innovation, and result in the greatest possible benefit to the American consumer. In many respects, Federal and State agencies enforce antitrust laws in order to forestall the need for burdensome and long-lasting government regulation.

If competition thrives and market forces operate properly, there is no need for extensive government intrusion or interference. Likewise, when the antitrust laws do apply, comprehensive economic regulations should not dictate how an industry operates. It, therefore, makes little sense to impose upon a heavily regulated industry an additional layer of government oversight and enforcement through the application of antitrust laws while at the same time leaving in place a comprehensive regime of government oversight through economic regulation. Piling layer upon layer of government interference will not advance the cause of free market competition, innovation, and consumer welfare.

I am concerned that such layering of government regulation is effectively what the Kohl amendment does. I worry that in extending the reach of antitrust laws to the freight rail industry, the amendment does not remove any authority or jurisdiction of the Surface Transportation Board, the regulatory agency currently overseeing the rail industry. As a result, the amendment simply imposes additional government supervision over the rail industry with attendant increased regulatory burdens and costs as well as inevitable conflicts and uncertainties resulting from a second layer of government oversight over the same activities.

Given the highly regulated nature of the freight rail industry, application of

antitrust laws would likely require courts to wade into the complex realm of rate setting and other highly technical matters—a task for which judges are particularly ill-equipped. In addition to this fundamental unease over multiplying government regulatory burdens, I am also very concerned with a number of the amendment's provisions that seem to reach beyond simply eliminating antitrust exceptions for the rail industry.

First, I worry that section 4 of the amendment limits what is known as the doctrine of “primary jurisdiction” in those antitrust cases that involve railroads. Under this longstanding doctrine, which was established in 1907, a court will normally defer to an expert agency when that agency has jurisdiction over the subject matter of a legal dispute. This doctrine allows courts to balance regulatory requirements with other legal requirements for regulated industries. The primary jurisdiction doctrine is not an antitrust exemption and discouraging the use of this would be a legal and judicial change that reaches far beyond the antitrust laws and its implications.

I would also note that section 4 would give trial lawyers the power to disregard agency action, but only with respect to the railroads. As a result, railroads would be singled out for special treatment, leaving the doctrine of primary jurisdiction available to the courts in cases involving electrical utilities and other regulated industries. I am unaware of any compelling justification for this disparity.

My second concern relates to section 7(a) of the amendment which not only repeals antitrust immunity for rail rate bureaus but also repeals procedural protections that facilitate lawful rail transportation services. Because of their route structures, railroads are often not individually capable of providing rail transportation services to all locations that a customer may request or that regulations may require. As a result, approximately 40 percent of all rail travel is jointly handled by more than one railroad.

While the railroads must work together to provide through service on some routes in order to meet their regulatory obligations and to meet their customers' transportation needs, the railroads compete with one another for freight movements on routes not involved with through service, and they are fully subject to the antitrust laws.

Current law provides that proof of an antitrust violation may not be inferred from discussions among two or more rail carriers relating to interline movements and rates. In the conference report for the Staggers Rail Act of 1980, Congress explained the need for these evidentiary protections as follows:

Because of the requirement that carriers concur in changes to joint rates, carriers must talk to competitors about interline movements in which they interchange.

That requirement could falsely lead to conclusions about rate agreements that were

lawfully discussed. To prevent such a conclusion, the Conference substitute provides procedural protections about lawful discussions and resulting rates.

These evidentiary protections are not antitrust exemptions. They are designed to avoid prejudicial inferences from discussions the railroads must have in order to implement joint arrangements. I am unaware of any compelling reason to alter Congress's considered judgment in establishing these procedural protections. Were these protections to be discarded, railroads would be exposed potentially to legal liability for interline discussions, and they may choose simply not to participate, and rail customers would be faced with the burden of having to deal separately with each railroad in a given route in order to work out commercial and service details.

Third, and perhaps most critically, I am concerned that section 8 of the amendment would effectively lead to retroactive application of antitrust laws, allowing a government agency or private plaintiff to bring a case attacking past railroad activities that were expressly immunized from the antitrust laws in that respect.

Section 8(b) would allow antitrust lawsuits for ongoing railroad activity that was previously immunized from the railroad antitrust laws. This would leave open the possibility that conduct in accordance with railroad merger and line sale transactions previously approved by the Interstate Commerce Commission or the Surface Transportation Board as in the public interest, immunized by statute from antitrust laws, and implemented by the railroads, consistent with the agency's approval, could now be challenged as unlawful.

Were this to become law, the impact on the railroad network and its ability to plan and invest to meet our Nation's growing transportation needs would be adversely affected in a significant way.

In summary, if this amendment eliminated regulatory intervention in the marketplace for rail transportation and left the rail industry subject solely to the antitrust laws, I could, perhaps, endorse that effort. However, that is not the case. This amendment increases rather than improves government oversight of the rail industry's activities and, in my view, is inconsistent with the overarching goal of seeking greater competition in the transportation marketplace unfettered by intrusive government regulation.

In addition, the amendment goes beyond simply eliminating antitrust exemptions and instead changes longstanding policies and judicial doctrine that are not antitrust law tenets.

Last year, when the Judiciary Committee favorably reported S. 49, which is the text of Senator KOHL's current amendment, I made clear that my support was contingent upon resolving these and other concerns prior to floor consideration. Regrettably, such a resolution did not occur, and I must now

oppose the amendment and ask my colleagues in the Senate to do likewise.

Thank you, Madam President.  
The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

### ENERGY

Mr. BINGAMAN. Madam President, I wish to speak for a few minutes about gasoline prices, which my colleague from Utah talked about a few minutes ago, also about domestic oil and gas production, and also about access to federally owned oil and gas resources. These are issues that have been raised by numerous Senators on this Transportation bill. They are issues of critical importance to our country's economy, to national security, and to resource management. I have been increasingly concerned that the issues we are debating and the facts that are being put out there are often not the true facts. There is widespread misunderstanding of what needs to be done to deal with this set of issues, in my opinion.

Let me start with the issue that is most important to most Americans; that is, the price of gasoline at the pump—the price of oil and then, of course, the price of gasoline. We need to understand clearly what is causing these prices, and we need to be direct with our constituents about what is causing these prices.

Let me state as clearly as I can what I believe is really without dispute among experts; that is, we do not face cycles of high gasoline prices in the United States because of a lack of domestic production, and we do not face these cycles of high gasoline prices because of the lack of access to Federal resources or because of some environmental regulation that is getting in the way of us obtaining cheap gasoline. As was made clear in a hearing we had in the Senate Energy Committee in January, the prices we are paying for oil and the products refined from oil, such as gasoline, are set on the world market. They are relatively insensitive to what happens here in the United States with regard to production. Instead, the world price of oil and our gasoline prices are affected more by events beyond our control, such as instability in Libya last year or instability in Iran and concerns about oil supply from Iran this year.

First, I have two charts that I think make this point very clearly. I believe this first chart I have in the Chamber is very instructive. This is entitled "Weekly Retail Price for Premium Unleaded Gasoline, Including Taxes Paid." There are two lines on the chart. The top line contains the weekly retail prices in Belgium, France, Germany, Italy, the Netherlands, and the United Kingdom. You can see how that has fluctuated. This is through January of last year. The comparable prices paid in the United States are reflected in this bottom line. And, of course, the lower prices are because we pay much

less in taxes than do these other countries.

So it is a useful chart that I think makes a couple of important points. The first point it makes is that the price patterns are remarkably similar in all countries; that is, the prices for gasoline in all of these countries reflect the world price of oil. Second, while the patterns are similar, the U.S. price is significantly lower because of the lower taxes we pay in this country.

The second chart I have in the Chamber shows U.S. domestic oil production and U.S. gasoline prices between 1990 and 2011. Here, the red line is the change in domestic production year over year. The blue line is gasoline prices. What is striking about the chart is the lack of relationship between the two lines. Even with U.S. production increasing, as it was at some points, oil prices also were increasing and gasoline prices were increasing.

So while domestic oil production plays an important role in the energy security and the economy of our country, its contribution to the world oil balance is not sufficient to bring global oil prices down. For this reason, increased domestic production unfortunately will not bring down gasoline prices in our country.

We also need to understand the status of domestic production. Here again, the facts are often misunderstood. For example, we have heard the claim that the United States and the Obama administration have turned away from producing the domestic oil and gas resources we possess. The facts are very much to the contrary.

At the hearing we had in January in the Energy Committee, James Burkhard, a managing director of IHS Cambridge Energy Research Associates, described our situation in this country as the "great revival" of U.S. oil production. He provided this next graph, which clearly demonstrates what we are experiencing in the United States. This graph shows the net change in production of petroleum liquids in the United States and in other major oil-producing countries between 2008 and 2011. The U.S. increase is shown by this very large column here on the left. We can see that our increase in production is far greater than that of any other country in the world. The United States is now the third largest oil producer in the world, after Russia and Saudi Arabia.

Another chart on domestic production is also instructive. This chart shows total U.S. oil production between 2000 and 2011. It clearly demonstrates that current increases in oil production are reversing several years of decline in that production. We have not had to change any environmental laws or limit protections that apply to public lands in order to get these increases.

This next chart shows the percentage of our liquid fuel consumption that is imported, including the projections the