

care needs relate to individuals and vary from person to person and region to region. As a policy matter, States have a better understanding of what kind of improvements to health care access are needed.

Here is what they wrote:

The administration's attempt to fashion a singular, universal solution is not necessary to deal with the variegated issues arising in these markets. States have taken the lead in past reform efforts. They should be an integral part of improving the functioning of health-care and health-insurance markets.

If the States have the legal power to address health issues and are better equipped to do so, then where does the justification for Federal jurisdiction come from? The authors note that the administration's argument is that the Federal Government mandate is needed to address the cost-shifting, the thing I talked about before. But they note that this is a red herring. "In reality," the authors write, "the mandate has almost nothing to do with cost-shifting." That is because, in actuality, the young and the healthy—the people who are not buying health insurance—aren't imposing much of a burden on the system because they do not get sick that often. They do not need as much insurance because they do not need as much health care. The authors say that "the insurance mandate cannot reasonably be justified on the ground that it remedies costs imposed on the system by the voluntarily uninsured." In other words, as I said, there is not that much free-riding going on.

The authors conclude that the real purpose of the mandate is not to decrease the costs of uncompensated care, it is meant to force the young and the healthy to buy health insurance at rates far above the amount and scope of coverage they actually need because they are generally healthy individuals. But this extra money will help fund health insurance companies and therefore offset the huge increased costs imposed upon them by ObamaCare's many new regulations. This is the real reason for the individual mandate. In fact, as an amicus brief by over 100 economists points out, "The [Affordable Care] Act is projected to impose total net costs of \$360 billion on health insurance companies from 2012 to 2021." With the mandates, however, "insurance companies can be expected to essentially break even." This is no coincidence.

If this is the real justification for the mandate to purchase health care, I submit it should have been done through an enumerated power—perhaps under the tax power of the Federal Government, which is at least one of the powers the Constitution explicitly provides.

In any event, this individual mandate cannot be justified to regulate interstate commerce. The supporters of the mandate have therefore introduced a second argument. They say health care is just different from all other commerce. It is bigger. Everybody has to have health care—as if they did not

have to have food on the table or shelter over their head or clothes on their back and so on. In any event, they say health care is different and somehow this difference gives Congress the right to force people to buy government-mandated health insurance under its power to regulate interstate commerce. But the argument that "this particular market is just different" is beside the point even if it were true because it does not articulate a constitutional limitation that is judicially enforceable.

The question before the Court is whether there is any limit to Congress's power to regulate commerce. Obviously, the Framers would never have countenanced a Federal requirement to purchase a product so that the government could then regulate it. So what limit on constitutional power is suggested by the health care market? None. That is precisely the point. The government cannot draw a line, and, as a result, it would have to argue that there is no limit to its powers, and that, of course, would run counter to the reason the Framers put limitations into the Constitution.

The individual mandate is not the only provision in ObamaCare that is constitutionally impermissible. The Medicaid expansion is also violative. While Congress has well-established power to use its purse strings to encourage the States to adopt certain Federal policies, it cannot force them or compel them to do so. ObamaCare's Medicaid expansion essentially coerces the States into complying with new Medicaid policies.

This occurs in two different ways. First, if a State does not comply with the ObamaCare eligibility expansion, it would lose all of its Federal Medicaid funds—even for patient populations that the State had already covered long before ObamaCare was passed. Few if any States would be able to continue their existing Medicaid Programs if they lost all of this Federal funding.

An amicus brief signed by over 100 economists examined Medicaid data to determine the economic impact of States losing all of their Medicaid funds, and it found that if States were forced to absorb Federal Medicaid expenditures into their own State budgets, "the State's total budgetary expenditures would jump by 22.5 percent." In other words, there is no real choice. The options for States are to do as the Federal Government says or leave Medicaid, which by now is so engrained in the care for the indigent that unwinding it, in effect, disentangling it from existing Federal-State relationships, would be virtually impossible and would obviously jeopardize care for the population without other health coverage. This is coercion, plain and simple. It is unconstitutional.

Second, ObamaCare expands Medicaid eligibility to everyone under 138 percent of the Federal poverty level. For individuals who make less than 138 percent of the poverty level,

ObamaCare provides no means for complying with the individual mandate other than enrolling in Medicaid. In their brief to the Supreme Court, the States suing over the Medicaid expansion said it best:

When Congress mandates that Medicaid-eligible individuals maintain insurance, but provides no alternative means for them to obtain it, it is impossible to label the States' participation in Medicaid voluntary.

If it is the only way someone can get it, it is not voluntary.

Well, ObamaCare, as a whole, cannot survive without these unconstitutional provisions, and these are the reasons I believe it will and can be struck down as unconstitutional.

#### MISSILE DEFENSE

Mr. KYL. Mr. President, the last subject I would like to comment on is an unrelated subject. It has to do with comments the President was overheard making in a meeting he was holding with Russian President Dmitri Medvedev at the Nuclear Security Summit in South Korea. He had a hot mike which captured comments he was making privately to President Medvedev. He requested a little space, as he put it, in negotiations over missile defense issues until after the election when he said he would have more flexibility.

Well, obviously, this presents a problem that is going to have to be discussed with the Congress because if the President is, in effect, saying he would like to make a deal to limit U.S. missile defenses now, but he would be accountable to the American public if they became aware of it before his reelection bid, it would be very difficult for him to make the kind of concessions that President Medvedev wants. But if the Russian President would just wait until after the next election, then the President will have more flexibility to work with the Russians on what they want.

Well, President Medvedev very helpfully said: I will pass this on to Vladimir.

Here are a few things we know: We know President Obama canceled plans to station antiballistic defense systems in Poland and the Czech Republic. We know the President supported language in a new START treaty to link missile defense to nuclear reduction. We know the administration is sharing information with Russia, including plans to deploy missile defenses in Europe. We know the President has significantly reduced funding for and curtailed development of the U.S. national missile defense system, undermining our ability to effectively intercept long-range ballistic missiles, and we know the President has doubled down on efforts to reduce our nuclear arsenal while failing to honor his promises to modernize the aging nuclear weapon complex.

What we don't know is what President Obama has in mind for working

with the Russians after his reelection when he would—as he put it—have some flexibility in negotiating with them. Perhaps the Russians in whom the President confided could shed some light on missile defense plans. Then perhaps the President should shed that light on these negotiations with the American people before discussing them with the Russians.

I yield the floor.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

#### FACING THE ISSUES

Mr. MCCONNELL. Mr. President, as Americans filled up their cars with gas this weekend, I am sure a lot of them wondered how much higher gas prices could actually go. Well, today the Democratic-controlled Senate plans to send these folks a message: If they had their way, gas prices would be even higher.

Today Democrats will propose raising taxes on America's energy manufacturers, something common sense and basic economics tell us will lead to even higher prices at the pump. This is the Democratic response to high gas prices, and, frankly, I cannot think of a better way to illustrate how completely and totally out of touch they are on this issue. That is why Republicans plan to support moving forward on a debate over the legislation because it is a debate the country deserves.

We are going to use this opportunity to explain how out of touch Democrats are on high gas prices and put a spotlight on the commonsense ideas Republicans have been urging for years—ideas that reflect our genuine commitment to the kind of “all of the above” approach the President claims to support but actually doesn't.

Look, this isn't terribly complicated. Americans from Maine to California are frustrated at high gas prices. What do they see in Washington? They see Democrats pushing legislation that even they admit doesn't have a thing to do with lowering gas prices. At least seven Democrats are on record saying this bill doesn't do a thing to lower gas prices. Last year its own sponsor said nobody has made the claim this is about reducing gas prices—all of which raises an obvious question: What are we doing it for? How does this help the American people now?

Of course it doesn't. In response to record-high gas prices, Democrats in Congress want to raise taxes on the very people who produce it. Meanwhile the President is blocking a pipeline that would decrease our dependence on Middle East oil and create literally thousands of American jobs.

Americans see the Democratic response to high gas prices to make them

even worse. That is the Democrats' response to high gas prices, to make them even worse. They are starting to wonder if this might as well be the Democrats' official slogan: Vote for us, and we will make things worse. Because whether it is jobs or debt or spending or gas prices, that is the Democratic record, which leads me to health care.

Today, as we all know, the Supreme Court began hearing arguments on the President's health care law. Among other things, the Court will consider whether the mandate at the core of this law is constitutional. As one of the many public officials who filed a brief before the Court opposing this law, I believe strongly the law is, in fact, unconstitutional, and I hope the Court agrees.

Even if the Court ends up disagreeing with me, the case for repeal becomes increasingly difficult to refute. The President was right to seek reform, but the bill he gave us and the Democrats forced through Congress on a party-line vote is not working. Instead of lowering costs, it is increasing them. Instead of strengthening Medicare, it raided Medicare. Instead of helping States, it has created financial burdens they cannot even bear. Instead of lowering insurance premiums, it has caused them actually to go up.

When it comes to jobs, some have called the law the single biggest detriment to job creation in America right now, and most Americans believe it is unconstitutional. This law is a mess, an absolute mess, and regardless of what the Court decides, it needs to be repealed and replaced with commonsense reforms that actually lower costs and that Americans really want.

So we will keep one eye on the Supreme Court this week, and we are basing our opinion on something simpler than the legal arguments we will hear this week. We are looking at whether this law helped or hurt. On that question the verdict is already in, just like so much else this President has done over the past few years.

Look, we need health care reform, but this law has made things worse. On that basis alone it should be repealed and replaced. That is what Americans want, and that is what we plan to do.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

#### OIL MARKET SPECULATION

Mr. LEVIN. Mr. President, once again, oil prices have spiked to high levels threatening our economic recovery. Prices are now nearing \$110 a barrel, up nearly 30 percent since October 2011, only 5 months ago. For years now the commodity markets have taken the American people on an expensive and damaging roller coaster ride with rapidly changing prices for crude oil.

In 2007, a barrel of crude oil started out costing \$50 a barrel. By the end of the year, the price had nearly doubled.

In 2008, oil prices shot up in July to nearly \$150 a barrel, and then by the end of the year crashed to \$35. In the beginning of 2011, oil prices took off again, climbing to over \$110 per barrel in May. Then they began falling. In October oil traded at \$75 per barrel, a drop of more than 30 percent over 4 months.

Now 5 months later oil prices are back up to nearly \$110 a barrel. This unpredictable and incessant price volatility is burdening American consumers and businesses with both uncertainty and expense.

Some in the media are blaming recent events in the Middle East for the latest oil price spikes, but Middle East instability cannot explain these large gyrations. We have seen uncertainty, unrest, and armed conflict in that region for more than 50 years without seeing this same pattern of extreme price volatility in oil prices. That volatility has become a feature of U.S. oil markets over the last 7 years.

There is something else at work behind the spikes and sudden drops in the price of oil and other commodities in recent years, and we have strong evidence showing what it is. It is the increasing role of market speculators betting on price swings.

For years now the Permanent Subcommittee on Investigations, which I chair, has been digging into the problem of excessive speculation in the commodity markets. Since 2002, the subcommittee has conducted a series of investigations into commodities pricing, in particular focusing on how speculators have changed the game. Our investigations have used specific case histories involving oil, natural gas, and wheat prices to show how excessive speculation in the futures and swaps markets have distorted prices, overwhelmed normal supply-and-demand factors, and pushed up prices at the expense of consumers and American businesses.

For example, in 2006 the subcommittee released a report that found that billions of dollars of commodity index trading by speculators in the crude oil market had helped push up futures prices in 2006, causing a corresponding increase in cash prices and was responsible for an estimated \$20 out of the then \$70 cost for a barrel of oil. Since then even more speculators have entered the commodities markets. Today we have commodity index traders, exchange-traded products, even mutual funds betting billions of dollars on crude oil prices on a daily basis.

Speculators have now come to dominate our futures and swaps markets, overwhelming the commercial users and producers who use and need these markets to set fair prices and hedge risks.

At a November hearing before my subcommittee, the Chairman of the Commodity Futures Trading Commission, Gary Gensler, testified that over 80 percent of the outstanding futures