

to see a bill such as this passed. But I think we also want to see it passed in an appropriate way, and some of the earlier renditions that have come out of the Finance Committee, unfortunately, have not paid for this bill. It is my sense that maybe what is happening right now is that there is some work being done to try to make that not the case.

I know the Senator from New York is familiar with the health care debate we had years ago, and one of the issues many of the folks on this side of the aisle were concerned about—and I think many folks on the other side of the aisle were concerned about—was some of the gimmickry used to pay for it. We had 6 years' worth of spending and 10 years' worth of revenues. Obviously, people around the country—rightfully so—were concerned about that. What we have at present with this highway bill is something that is even worse than that. We have 2 years' worth of spending and 10 years' worth of revenues to pay for it. Everybody in this body knows there is no family in New York and no family in Tennessee who could possibly survive under that scenario.

I had an op-ed published this morning in the Washington Post talking about the fact that we have had so many bipartisan efforts here to try to deal with deficit reduction. We had the Bowles-Simpson report that came out; we had 64 Senators—32 on each side of the aisle—who wrote a letter to the President to encourage him to embrace deficit reduction and progrowth tax reform. We had another group of colleagues who became involved in something called Go BIG, and the whole focus was to deal with the fiscal issues of this country.

I come in somewhat hopeful this morning, but what I fear is happening is because this highway bill is so popular that Members on both sides of the aisle are willing to kick the can down the road in an area where we could—in a bipartisan way—address deficit reduction and get the highway bill on a spend-as-you-go basis, meaning that we pay for it as we go—instead of doing that, because this is an election year and this is a popular bill, both parties—instead of leading on deficit reduction—are going to cave in and basically kick the can down the road because this is “a popular bill.” To me, that is not what the American people sent us to do.

So we have this opportunity to pay for it. I don't know whether we are going to get where we need to go. As a matter of fact, even though I am hopeful we are going to make progress on this issue, I don't think we are going to quite get there. I sense in this body a desire to kick the can down the road, to turn our head, to not live up to our responsibilities as it relates to this bill.

So I am going to offer two amendments. One amendment would say: Look, we have a highway trust fund.

We have had the transfer of \$34 billion or \$35 billion into it from the general fund since 2008. We have a trust fund. We ought to either spend the money that comes into it accordingly and reduce the amount of spending on highways or what we should do is lower discretionary spending someplace else.

Again, we have not seen the final bill because another negotiation is taking place. It appears to me, in order to live up to our responsibilities to the American people, that what we would have to do is cut about \$11 billion or \$12 billion out of the discretionary caps we agreed to as part of the Budget Control Act to make this appropriate. I will offer an amendment once we see what the final package is that does just that.

In other words, if we all think highways and transit bills are important—and by the way, I do. I used to be the mayor of a city. I know that infrastructure is very important to our economic growth in this country. But if we believe spending on highways and transit is important and it is a priority, then what we need to do is lower discretionary caps and lower spending in another area. For us to do anything short of that would be making a mockery of the American people and certainly making a mockery of the arrangement that was created through the Budget Control Act. So I am certainly hopeful this amendment will pass if we continue on this course. I can't imagine that in a bipartisan way both sides would show the irresponsibility that has led to today anyway. I am still hopeful that by the time we pass this highway bill, we will have come together and acted responsibly and actually paid for this. But I think the American people understand that passing a bill that spends money over 2 years and tries to recoup it over a 10-year period is a highway to insolvency.

So I am committed more than ever to us living up to our responsibilities to the American people. I believe there is something brewing in this body that says we have to live up to these responsibilities. I think the best place for us to start is on this highway bill.

I will close with this. I know the Senator from Utah wishes to speak for a few moments also. A lot of people are saying: Senator CORKER, this is such a small amount of money; and, gosh, this is such a popular bill—everybody likes it. Can't we just turn our heads on this issue and kick the can down the road and do something we know fiscally is totally irresponsible because all of us like highways?

My response is, look, if we cannot deal with the highway bill that, by the way, is just simple math—this isn't something such as Medicare reform or something else where we have all kinds of moving parts that are very difficult to deal with—the highway bill is just simple math. If we don't have the ability in this body to deal with just addition and subtraction, there is no way the American people are going to trust us with things such as Medicare reform

and Social Security reform and making sure those programs are solvent down the road for seniors who depend upon them.

So what I would say to this body is we have a great opportunity this week and next week to show the American people we are serious about getting this country on a solid footing. There is no better place to do that than on a popular bill. In other words, if we have to make priorities, if we have to make choices, if we have to cut spending in other places to make 2 years' worth of payouts equal 2 years' worth of income, there is no place better to do it than on the highway bill. I urge this body to stand tall, to meet its responsibilities, and only pass this bill if it is paid for over the same amount of time that it is extended. So that means all the money that goes out is paid for over the next 2 years. I will be offering amendments to do that if the Finance Committee does not in and of itself.

I thank my colleagues for listening, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

#### GAS PRICES

Mr. LEE. Madam President, the American people need help because they are suffering at the gas pump. With the national average price for gasoline up at around \$3.75 per gallon, representing an increase of about 40 cents from a year ago and about 20 cents from just 1 month ago, citizens are suffering and they need relief.

It is important to point out in this context that when President Obama took office, gas prices were at about \$1.85 per gallon. Now that they are up to about \$3.75 per gallon we can see a steady increase. Over this 38-month period of time of his Presidency so far, gasoline prices have risen an average of about 5 cents per gallon per month. This is staggering when we think about the fact that if he is reelected—if he serves out the rest of this term and if he is reelected—that is a total of an additional 58 months. With that increase, gas prices will be up at around \$6.60 per gallon.

This is a lot of money. It is staggering. It affects everything we do—from the miles we drive to the products we buy at the grocery store. Everything gets more expensive when the fuel we use to transport ourselves and our products becomes more expensive.

Now, to some extent, one could suggest this was not only foreseeable, but it was actually foreseen. To some, it was considered a desired outcome. Let's consider, for example, that in 2008, Dr. Steven Chu, who now serves as President Obama's Energy Secretary, said:

Somehow we have to figure out how to boost the price of gasoline to the levels in Europe.

Well, Mr. Chu, it looks as though we are headed in that direction, and if we

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 led 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