

Fund spending in fiscal year 1998-1999 to 16 percent ten years later. As part of the solutions for our current year's budget shortfall, we have had to reduce Medicaid provider reimbursement by over \$300 million and freeze institutional reimbursement rates, resulting in an additional loss of more than \$60 million. However, budgetary savings cannot be achieved solely through provider reductions. Arizona also recently made the difficult decision to eliminate coverage for 9,500 parents of children enrolled in our Children's Health Insurance Program. Looking forward to fiscal year 2010-2011, we know that further reductions will be necessary.

Despite these reductions, we are sacrificing other state programs that impact the education, health and safety of our children and our seniors in order to cover the growing costs of Medicaid. Considering this, it is incomprehensible that Congress is contemplating an enormous unfunded entitlement mandate on the states. The disconnect between policymakers in Washington and the reality of state and local governments is disheartening.

These are realities that many states across the country are facing. Arizona's situation, however, is compounded by the fact that we have already expanded our Medicaid program to all residents with incomes under 100 percent of the federal poverty level (FPL). This decision means that, under your proposal, our state will be unable to take advantage of the higher level of federal funding that will be provided to states that have not enacted similar expansions. In essence, the Chairman's Mark penalizes Arizona for its early coverage of non-traditional Medicaid populations, like childless adults.

I must also point out my concern that estimates developed at the federal level do not accurately reflect the costs that states will ultimately bear. While I have great respect for the Congressional Budget Office (CBO), in this instance, its estimates are substantially below Arizona's fiscal estimates and I believe they understate the cost of expansion. For instance, the CBO analysis estimates the State cost of the Medicaid expansion and "woodwork" to be \$454 million. Arizona has an estimated 200,000 citizens below 100 percent of the FPL that are currently eligible for Medicaid, but not enrolled. If only half of those individuals enrolled, the cost of this "woodwork" effect alone would be over \$2.0 billion for FY 2014 through FY 2019, using the traditional Medicaid match. That is a significant difference for just one small state.

I want to reiterate my opposition to these unfunded mandates on states. I implore you to bear in mind the fiscal realities states are facing as we attempt to maintain responsible balanced budgets while preserving services for our most vulnerable residents. I hope you find this information useful as you consider the various proposals before you, and please do not hesitate to contact my office should you require additional information.

Sincerely,

JANICE K. BREWER,  
*Governor.*

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

#### CLIMATE CHANGE

Ms. MURKOWSKI. Mr. President, I know the Senate is focused on health care, but I have come to the floor to speak on another very important topic and that is climate change. I wish to discuss a recent action by the Environmental Protection Agency and the consequences that could entail for our economy and why Congress must pre-

vent it from taking effect. I remind my colleagues that I have committed to a careful evaluation of all the options to address climate change in order to develop an approach that will benefit both our environment and our economy. Over time it has become increasingly apparent that some approaches are better than others. While we have not yet found that right approach, we have certainly identified the wrong approach: EPA regulation of greenhouse gases under the Clean Air Act. I believe this option should be taken off the table so we can focus our attention on more viable policies.

My concerns about this led me to file an amendment in September that would have limited EPA's ability to regulate certain greenhouse gas emissions for a period of 1 fiscal year. I offered my amendment for two reasons: first, to ensure that Congress had sufficient time to work on climate legislation and to ensure that the worst of our options, EPA regulation, did not take effect before that point. Even though Congress was and today remains nowhere close to completing legislation, the majority chose to block debate on my amendment. Since then the EPA has continued its steady march toward regulation. Last week the Administrator signed an endangerment finding for carbon dioxide and five other greenhouse gases. This finding is supposedly rooted in concerns about the public health and the public welfare. What it really endangers is jobs, economic recovery, and American competitiveness. Some have praised the endangerment finding as a step forward in our Nation's efforts to reduce emissions. They view it merely as an affirmation of the scientific assertion that human activities contribute to global climate change. Such a conclusion is within EPA's authority and appears to be appropriate given the years of research indicating that this is the case. Those same scientific findings underscore my desire to address this challenge in a proactive way.

Unfortunately, the endangerment finding is not just a finding. Despite what some in the administration have claimed, its effect is not limited to the science of global climate change. In reality, the finding opens the doors to a sweeping and convoluted process that will require the EPA to issue economywide command and control regulations. Once that finding is finalized, the EPA no longer has discretion over whether they can impose regulations.

As the Administrator noted last week, the agency is now obligated and compelled to take action. This is where it becomes evident that EPA regulation is an awful choice for climate policy. If a pollutant is regulated under one section of the Clean Air Act, it triggers identical treatment in other sections of that statute. So while the EPA initially intends to address only mobile source emissions, meaning vehicles, the agency will also be required to

regulate stationary source emissions as well.

Think of it this way: If the EPA attempts to control any greenhouse gas emissions, the agency will be required to control all greenhouse gas emissions. Because EPA regulations will consist of command and control directives rather than market-based decisions, this approach will increase the price of energy, add greatly to administrative costs, and create many new layers of bureaucracy that must be cut through.

This is why you often see EPA regulations described as intrusive or Byzantine or maze like. They are all of the above. While the permitting process that will be created is unclear, the consequences of imposing these regulations are not. The bottom line is, our economy will suffer. Businesses will be forced to cut jobs, if not close their doors for good. Domestic energy production will be severely restricted, increasing our dependence on foreign suppliers as well as threatening our national security. Housing will become less affordable and consumer goods more expensive, as we see the impacts of the EPA's regulations ripple and break their way across our economy.

In the wake of the majority's decision to block my effort to establish a 1-year timeout for this process, we now find ourselves in a bit of a bind. Even though Congress is working on climate legislation, the EPA is proceeding with a tremendously expensive regulatory scheme. It appears increasingly likely that the EPA will finalize its regulations before Congress has an opportunity to complete debate on climate legislation. That outcome is simply unacceptable as our Nation struggles to regain its economic footing.

Today I have come to announce that I intend to file a disapproval resolution under the provisions of the Congressional Review Act related to the EPA's endangerment finding. I have this resolution drafted. I will introduce it as soon as the EPA formally submits its rule to Congress or publishes it in the Federal Register, as is required by law. My resolution would stop the endangerment finding. In general terms, I am proposing that Congress veto it. Like my previous amendment, this one is also rooted in a desire to see Congress pass climate legislation because the policy is sound on its own merits and not merely as a defense against the threat of harmful regulations.

While I know that passage of this resolution will be an uphill battle, I believe it is in our best interest. It is the best course of action available to us. This is a chance to ensure that Congress, not unelected bureaucrats, decides how our Nation will reduce its emissions.

To understand why my resolution is so critically important, we have to dig deeper into the economic consequences that will result from regulations based upon the endangerment finding. Because there are no regulations within

the finding itself, the agency has omitted any projection of what they might cost our Nation.

Even though the EPA has not prepared projections of what these regulations will cost, I expect the totals would be staggering. The price tags attached to the climate bills pending in the Senate, which a majority of Members have concluded are too high, would almost certainly pale in comparison.

There are a few figures that can help us put the potential costs in perspective. In one of its recent proposals, the EPA noted that some 6 million "sources" could be required to obtain new operating permits if greenhouse gases are regulated. The word "sources" refers to the businesses, schools, hospitals, and other fixtures found in every town in America that would suddenly face scrutiny due to their carbon footprints. Farms, landfills, and any other "source" that emits more than 250 tons of greenhouse gases per year would be caught in the same net.

Facing the heaviest regulation will be the facilities that are subject to the Clean Air Act's "Prevention of Significant Deterioration" permitting process. This is referred to as "PSD." Today, 300 facilities are covered by that requirement. Under EPA regulation, that number would soar to 40,000. The PSD process prevents existing facilities from making certain modifications until the EPA has granted its approval. The same holds true for new construction as well. Any facility expected to emit more than 250 tons per year would not be allowed to break ground until their owners have secured the EPA's permission to proceed.

The PSD process is already hugely expensive and time-consuming for affected facilities. It can take years, and cost tens if not hundreds of thousands of dollars, to navigate the PSD process. And that is true today, well before the number of facilities it covers is increased by an order of magnitude.

Earlier this year, in sharing their reference for congressional action, the editors of the Washington Post provided a pretty good description of what EPA regulation would be like on a daily basis. They stated in their editorial:

The EPA in theory . . . could go shopping mall by shopping mall, apartment building by apartment building . . . But even plant by plant, how can you "limit" greenhouse gas? The short answer is, you can't. Or, no one knows. Or, you can't, yet. Take, for example, a coal-fired power plant. EPA regulation would be triggered only when someone wanted to build one or update an old one. At that point, the agency could demand that the plant use the "best available control technology" (BACT) to limit emissions.

The editorial goes on to state:

Right now, no such BACT exists for coal-fired plants beyond better efficiency measures. A lot of attention has been focused on carbon capture and sequestration, but it wouldn't be considered BACT until it was up and running successfully in a coal-fired

power plant somewhere in the United States. Even then, its use would have to be weighed against a number of other factors, such as the amount of energy used, the environmental impact and the effect on the output of other regulated pollutants. If past practice applies, the issuance of the final permit would be followed by a series of lawsuits. The whole process could take a decade or more—and that would be multiplied hundreds or thousands of times across the country.

No one is more aware of how damaging these regulations could be than the EPA itself, so it is no surprise the agency has sought to dramatically increase the Clean Air Act's regulatory threshold—from 250 tons per year right now, to 25,000 tons per year for greenhouse gases. As the EPA admitted earlier this year, if the Clean Air Act's current threshold is not lifted, "the administrative burdens would be immense, and they would immediately and completely overwhelm the permitting authorities"—meaning, of course, the EPA and its State and local counterparts.

Now, I do give some credit to the EPA for recognizing that the 250-ton per year threshold is "not feasible" for greenhouse gases. While most pollutants are measured in much smaller amounts, greenhouse gases are far more abundant.

After all, nearly every form of economic activity results in at least some level of emissions. But I am also deeply disturbed that instead of recognizing and accepting that the Clean Air Act is simply not suited for this task, the agency attempted to make it so by ignoring its explicit, statutory requirements.

As we all know, whenever an executive agency fails to adhere to the laws passed by Congress, it opens itself up to litigation. The EPA's so-called tailoring rule is no exception, and I fully expect that lawsuits will be filed if the agency issues it. Once the rule is challenged, I expect the courts will reject it, as it has no legal basis, and restore the regulatory threshold to 250 tons per year. At that point, the agency will be mired in the regulatory nightmare it hopes to avoid.

In the meantime, it is also worth noting that the EPA is proceeding with the regulation of greenhouse gases even though the tailoring proposal is not part of the existing statute. So for all of the agency's promises of regulatory relief, and a safety net to help minimize the pain associated with these regulations, there is nothing behind that yet. And given the larger conversation that needs to take place about amending the Clean Air Act, that relief may never materialize.

Given the tremendous economic, administrative, and bureaucratic drawbacks associated with EPA regulation, it should come as no surprise that Members of the majority, the administration, and environmental groups have expressed their preference for congressional legislation.

The Democratic chairman of the House Agriculture Committee declared

that EPA regulation would result "in one of the largest and most bureaucratic nightmares that the U.S. economy and Americans have ever seen." He went on to add, "Let me be clear, this is not a responsibility we want to leave in the hands of EPA."

The most senior Member of the House of Representatives, a Democrat, who has served our country for more than half a century, has concluded that EPA regulation would create a "glorious mess." He has also said that, "As a matter of national policy, it seems to me to be insane that we would be talking about leaving this kind of judgment, which everybody tells us has to be addressed with great immediacy, to a long and complex process of regulatory action."

Shortly before I filed my amendment in September, the EPA Administrator herself insisted that "new legislation is the best way to deal with climate change pollution." You wouldn't guess that by looking at the efforts of some in her agency as they helped to defeat my amendment, but just last week, she reiterated the claim by stating, "I firmly believe . . . and the president has said all along that new legislation is the best way to deal with climate change."

With such widespread, high-level, and bipartisan agreement that EPA regulation is such a bad idea, you would think it would be easy to suspend the EPA's regulatory efforts. Unfortunately, you would be mistaken. Many seem convinced that the threat of EPA regulation will force Congress to work more quickly than it otherwise would.

This is not a conspiracy theory. It is an open and well-established strategy on the part of the administration, confirmed just this week when a senior White House economic official was quoted as saying "If you don't pass this legislation, then . . . the EPA is going to have to regulate in this area . . . And it is not going to be able to regulate on a market-based way, so it is going to have to regulate in a command-and-control way, which will probably generate even more uncertainty."

An author of the House cap-and-trade bill has posed the question: "Do you want the EPA to make the decision or would you like your Congressman or Senator to be in the room and drafting legislation?" going on to say that, "Industries across the country will just have to gauge for themselves how lucky they feel if regarding EPA regulation." The Wall Street Journal has referred to this as the "'Dirty Harry' theory of governance."

This approach is often likened, rather starkly, to "putting a gun to Congress's head." Personally, I believe that is a terrible way to pursue climate policy, and beyond that, a terrible way to govern this country. It is difficult to grasp how or why Congress would feel compelled to enact economically damaging legislation in order to stave off economically damaging regulations.

We are being presented with a false choice that should be rejected outright. The majority and the administration are saying: Don't make us do this. My answer to this is, simply: You don't have to.

Before concluding, I want to spend a few minutes putting to rest some of the criticism that will surely follow my decision to offer a disapproval resolution. During the debate over my last amendment, several baseless arguments were made. So I would like to challenge anyone who finds reason to oppose my resolution to keep their remarks, and thereby this debate, as substantive as possible.

First, I want to reiterate my desire to take meaningful action to reduce our Nation's greenhouse gas emissions. Such a policy can and should be drafted by Congress, and designed to both protect the environment and strengthen our economy. I was a cosponsor of a climate bill last Congress, and I am continuing to work on legislation that will lead to lower emissions. Senator BINGAMAN and I spent more than 6 months developing a comprehensive energy bill in committee, and have now held six hearings on our climate policy options.

Next, my resolution is not meant to run contrary to the Supreme Court's decision in *Massachusetts v. EPA*. Remember, I previously sought a 1-year delay of this process that would have allowed mobile source emissions to be regulated. That amendment was blocked by the majority from even being considered and, at this point, I am left with little choice but to raise the question of whether the Clean Air Act is capable of effectively regulating greenhouse gas emissions.

Finally, I am not interested in trying to embarrass the President, either here at home or on the international stage. I have stated publicly that I wish the President well in making progress on international issues. And I think it is safe to acknowledge that I didn't choose to release the endangerment finding on the opening day of the Copenhagen climate conference; that was the EPA's decision. As Administrator Jackson reportedly said, the EPA "tried to make sure we had something to talk about" in Copenhagen.

Mr. President, I understand I may have come to the end of my 20 minutes. I ask unanimous consent for a minute and a half to conclude my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. MURKOWSKI. I thank the Chair.

If the administration truly wanted something to highlight in Copenhagen, it should have prioritized climate legislation over health care. The Senate majority could have devoted weeks spent on a tourism bill and other matters to working through a climate bill here on the floor. And even if climate legislation could not be agreed to, Congress has now had nearly 6 months to take up the comprehensive bill we re-

ported from the Energy Committee. That bill would have allowed the President to highlight significant accomplishments on energy efficiency, clean energy financing, and renewable energy generation. Instead, he is left to tout regulations that his administration doesn't really want, that a wide range of stakeholders dread, and that many Members in both Chambers of Congress actively oppose.

We need to only look back to the development of the Clean Air Act itself for an example of how this process can, and should, work. The product of both Presidential leadership and congressional unity, the 1970 Clean Air Act was unanimously passed by the Senate. I hope the current administration will take note of that example. And should we ever reach a point where the President is able to sign climate legislation into law, I truly hope it will be the result of his administration having brought Congress together to complete this important task.

Right now, though, the administration and the majority in Congress continue to choose a different path. Threatening to disrupt the Nation's economy until Congress passes a bad bill by the slimmest of margins won't be much of an accomplishment, nor is that approach worthy of the institutions and people we serve. It isn't appropriate for a challenge of this magnitude. No policy that results from it will achieve our common goals or stand the test of time.

As I said earlier, I am submitting this resolution because it will help prevent our worst option for reducing emissions from moving forward. The threat of EPA regulations are not encouraging Congress to work faster, they are now driving us further off course and increasing the division over how to proceed.

I understand that some are comfortable with the threat of EPA regulations hanging over our heads. But, in closing, I would simply remind my colleagues of an observation once made by President Eisenhower:

Leadership is the art of getting someone else to do something you want done because he wants to do it.

What we are dealing with right now isn't leadership—is an attempt at leverage. The EPA's endangerment finding may be intended to help protect our environment, but the regulations that inevitably follow will only endanger our economy. That lack of balance is unacceptable. We can cut emissions, but we can't cut jobs. We can move to cleaner energy, but we can't force our businesses to move overseas. It is past time to remove the EPA's thinly veiled and ill-advised threat, and we can do that by passing my resolution and giving ourselves time to develop a real solution.

With that, I yield the floor, and I thank my colleague from Connecticut for his courtesy.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Connecticut is recognized.

## HEALTH CARE REFORM

Mr. DODD. Madam President, I wish to resume the conversation about the pending health care proposal.

We have had a lot of talk, going back for 60 years, I guess, about health care. But in the last year, if we tried to calculate the number of times there have been meetings and conversations, not including the ones that occur here on the floor of the Senate but throughout the Capitol, both in the other body as well as here, between Members and staffs, it has been voluminous, to put it mildly. We are coming down to what appears to be the remaining few hours before we will decide as a nation whether to move forward or to leave things as they are with the hope that one way or the other things may correct themselves in terms of the cost, affordability, and quality of health care. So the next few days of debates could largely determine whether, once again, the Congress of the United States, Democrats and Republicans, as well as the administration and all of the others who have grappled with this issue now for many months, will succumb to what has afflicted every other Congress and every other administration and every other group of people since the 1940s. That is our inability to answer the question of whether we can do what almost every other competitor nation of ours around the world did decades ago—provide decent, affordable health care for our fellow citizens.

If nothing else, this debate has proven how complex this issue is and it has demonstrated the wide variety of viewpoints that exist among those not only in this very Chamber but among people across the country. Certainly, that was evident during this summer's townhall meetings. I held four of them in my State earlier this year. I know most of my colleagues either did telemeetings or conducted them in their respective States. Because this issue affects one-sixth of our economy and 100 percent of our constituents, not only those here today but obviously the millions yet to come, our debates have been spirited and our disagreements at times emotionally charged, not only here in this Chamber but across the country.

So to my Democratic colleagues who still have concerns over aspects of the legislation, as all of us do; to any of my Republican colleagues who still desire to put people, as I know they do, ahead of partisanship; and to my fellow Americans who worry that politics will once again triumph over progress, which it has for six decades, let me offer some context for the debate that begins again this afternoon and will arrive at a closure in a matter of hours and days. The answer ultimately will be whether we move forward and do what I think the majority of our fellow citizens want us to do or fall back, once again, into the same paralysis that affected Congresses, administrations, and generations before us.

The consensus we have already reached as a Senate is that health care