

what we already have on the books. With Social Security and Medicare alone, the unfunded liability out many years is like \$100 trillion. We have no idea where we are going to get all this money. How can we even discuss starting a new government entity when the ones we have started are at the heart of our economic problems. One can't understand our economy without seeing that Fannie Mae and Freddie Mac played a key role in bringing the worldwide economy to its knees. We don't have to look back but 1 month to see what the last government program we created in cash for clunkers did. It was going to be a \$1 billion, 6-month promotion to sell a lot of cars. We were out of money in 1 week, and we voted to pass another \$2 billion. A couple weeks later, they canceled the program. We can't run the travel and promotion industry from Washington, DC.

I have to draw a very difficult conclusion. Any of my fellow Senators who vote for this either don't understand the severity of our economic and fiscal problems or they don't care. They certainly didn't hear the millions of Americans speaking over the August break and telling us they want us to get back to the business of a constitutional form of government and stop trying to win votes by bringing home the bacon—wasteful spending, earmarks, and new government programs, all the false, empty promises based on government solutions.

I encourage colleagues, let us get the rest of the year started off in a reasonable way. Let's talk about how to fix health care. Let's talk about how to create jobs. For heaven's sake, let's not create a new government program as the first vote we take in the Senate.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Arizona.

#### HEALTH CARE REFORM

**Mr. MCCAIN.** Mr. President, today Congress returns from the August recess. Perhaps one of the most important issues of recent times affecting one-sixth of America's gross domestic product and rising to as much as one-fifth, the issue of health care and health care reform, will be front and center, including a highly unusual appearance tomorrow night before a joint session of Congress by the President. The last time such a joint session of Congress was called for, aside from the regular one, was by former President Bush concerning the events surrounding the attacks on the United States of 9/11.

During the recess, I had, similar to all my colleagues, a very busy schedule of meetings addressing various issues, including travel to Iraq and Afghanistan. That visit will be the subject of other statements on the floor. But in Arizona, I hosted townhall meetings with my constituents. I also attended meetings and forums with health care providers in Missouri, North Carolina,

and Florida so I could, along with my colleagues, better understand America's thoughts and ideas on reforming our Nation's health care system. I have no doubt there is a peaceful revolution going on out in America. I have not seen, in the years I have been a Member of Congress, such anger and dissatisfaction with the way the Congress and we in Washington are doing business. We all know the President's approval numbers continue to fall.

The unruly and sometimes disruptive behavior at townhall meetings has been an exhibit of the anger and dissatisfaction Americans feel. I would like to make it clear that I think the townhall meetings should be conducted with respect. They should be conducted in a way that is an American tradition, that all Americans can be heard from as well as their elected representatives. But there is no doubt people attended townhall meetings that never before in their lives have been engaged in any debate in America. There is something going on out there. I certainly got the message. I hope the majority of my colleagues did as well.

It is more clear to me that we have to reform the way health care is provided, but we have to do it in the right way, without a government takeover of the health care system. The problem with health care is not the quality of health care. The problem with health care in America is the cost of health care and almost double-digit inflation that takes place annually which deprives more and more Americans of their ability to acquire and keep health insurance.

Among other places I visited recently, one of them was a place called M.D. Anderson, a cancer treatment facility in Houston, TX. There were patients there from 90 countries around the world. Why? Because it is the highest quality health care.

The fundamental difference we have here between those of us who want to reform health care to reduce the cost and maintain the quality is the argument from the President and the other side of the aisle that they want a government option. They refuse to address the issue of medical malpractice reform. They refuse to allow someone to go across State lines and acquire the health insurance of their choice, and they continue to allow practices to go on that breed fraud, abuse, and waste in Medicare, which are well documented to the tune of hundreds of billions of dollars a year.

We must reform health care. We can't do it with a government solution that is advocated by the other side. That is why we have been unable to reach agreement—because we have two fundamental philosophical differences between ourselves and those who want to have a government option, who want to have greater and greater intervention in the health care system.

On the way over I read this:

Washington (AP)—A top senator is calling for fines of up to \$3,800 on families who fail

to get medical insurance after a health care overhaul goes into effect.

Do we want to do that to the American people, a \$3,800 fine? That is why we also need to step back and examine the 600-page bill passed through the HELP Committee, without a financing provision, the 1,000 pages or so bill passed through the House before they left, and figure out what else we have added in this bill.

Why are Americans angry and upset? They are angry and upset because of this, because we spent \$787 billion on the stimulus, which is \$1.1 trillion with interest; \$700 billion on TARP; \$410 billion with 9,000 earmarks in it on the Omnibus appropriations bill; \$3.5 trillion on the budget resolution; \$83 billion to bail out the auto companies; \$33 billion to expand the Children's Health Insurance Program; and a \$1 to \$2 trillion cost associated with the HELP Committee's plan that went through the HELP Committee, according to the Congressional Budget Office, which would not bend the curve, according to the Congressional Budget Office.

What have we gotten for all this? We have gone to 9.7 percent unemployment. We have gone to 9.7 percent unemployment in this country, after the President and all his economic advisers said that if we pass this stimulus bill, unemployment will be a maximum of 8 percent. As they say: You can look it up. It is now at 9.7 percent. The public debt is \$11.7 trillion. Sometime in October, we are going to have to increase the Federal debt limit which is going to go beyond \$12.1 trillion.

We are all responsible for what we say. In 2006, the current President spoke in opposition to raising the debt limit to \$9 trillion saying:

Washington is shifting the burden of bad choices today on to the backs of our children and grandchildren. America has a debt problem and a failure of leadership.

That was from the then-Senator from Illinois, now President of the United States. Where did we go? Where did we go from 11 to 12 and now, of course, a few weeks ago, a small rounding error, the 10-year deficit was raised \$7 to \$9 trillion, just a \$2 trillion rounding error. That is what the American people are worried about, the commission of generational theft on our children and grandchildren. No one in the administration has a plan for bringing the budget back into balance. I think the American people at least deserve it.

Yesterday the President spoke in front of union allies in a partisan, campaign-style speech, where he questioned the motives of those who raise concerns about too much government control over our health care economy and instead wrongly criticized our side for having no ideas of our own. We have plenty of ideas. None of them have been considered in the HELP Committee or by the Senate or by the House of Representatives. The HELP Committee bill was written only by the Democrats. There was no input from

this side of the aisle. Every meaningful amendment proposed was rejected, including malpractice reform. How can we possibly look the American people in the face and say: We are going to bring down the cost of health care without medical malpractice reform.

Ask any physician and they will tell you physicians are required to practice defensive medicine because of the fear of being sued. Unnecessary tests and procedures are performed time after time after time. I was in Miami at the Palmetto Hospital, a fine institution. I asked one of the surgeons: How can you afford your health insurance premiums? He said: We don't keep insurance anymore. We can't afford it. We will probably not get sued because they know we only have so much in assets.

Now we are putting physicians and care providers in a position where they basically cannot afford, nor can they get, malpractice insurance because the premiums are so high, and they are targets for the trial lawyers.

We have a number of alternatives. Most of them are market based. Most of them have to do with preserving the quality of health care yet bringing down the cost, which should be our goal. Why don't we have insurance reforms to improve access? That means someone can go across State lines. If a citizen of Arizona wants to go to North Dakota and get health insurance there, why can't they? Why can't that family do that? Why can't they? They cannot today.

Why is it we cannot reform medical malpractice? Let's have tax reforms. Let's have incentives to purchase insurance either in the form of tax credits for families in America or—or—why don't we give the same tax treatment to families that businesses get in the provision of health insurance? Why don't we have real competition in any State? Why don't we set up the risk pools that are necessary to ensure those who were previously uninsurable or for those with "preexisting conditions"? Let's set up those risk pools. Yes, that will take some taxpayer dollars.

Why don't we allow the insurance companies to compete so they can provide insurance, so we can provide affordable and available health care to all Americans? Why don't we look at cost reductions? Why don't we look at incentives for wellness and fitness? One of the most famous corporations in America recently is Safeway. We have heard from their CEO. They reward people financially for wellness and fitness. And—guess what—their costs for health care have gone down because there are incentives to do so.

Here is a small idea: Why don't we see what the school lunch program is in our local schools? Why don't we see what the physical education requirements are in our local school districts? Why don't parents do that? I was appalled, and I am sure my colleagues and all Americans were, to see recently there is one State in America where

one-third of the population suffers from obesity. We know what obesity does to health care costs, not to mention the lives of individuals.

Why don't we also look at what has been tried and done before: an outcome treatment of patients. A patient has diabetes. You pay that provider for 6 months or a year or 2 years and say: OK, here is the amount of money, and if you keep that patient well, you will receive a reward at the end of that treatment period, rather than to pay for every single test and procedure.

My friends, there are cases of abuse of Medicare that stretch into the hundreds of billions of dollars. We have to go after these people who abuse health care, Medicare, and Medicaid.

And a practical question: Suppose we adopted what passed through the HELP Committee and through the House. There are dramatic increases in State Medicaid payments. What States can afford the additional burden of Medicaid that is envisioned by this legislation? Not many. Not many, my friends.

So we do have legitimate, workable, doable, viable alternatives to the government option. When the President of the United States stands up and says we do not, he either is not paying attention to what we are saying—which has been one of the big problems with this debate—or he willfully ignores the fact there are solutions we can move forward with to reduce health care costs in America and preserve the quality.

I wish to make a comment about the so-called co-op approach. My friends, you can call it the government option. You can call it a co-op. You can call it a banana. But the fact is, it is government intervention into the free marketplace, which will lead to crowding out, which over time will lead to government control of health care in America.

A co-op can exist today. They do not have to wait for legislation. They can exist today. Yet very few do. If there was a pressing need for more co-ops, wouldn't more of them have been created? Under the co-op approach, the Federal Government would design, fund, and foster their creation. But let's not kid ourselves. Creating a new, massive government plan designed in Washington is still Washington involvement in health care. And if we did not learn any lessons from the Fannie Mae and Freddie Mac co-ops, nobody has been paying attention.

Let me talk about the "trigger" for a second. The trigger in the bill would implement the public option only if private insurance companies failed to meet certain benchmarks, such as lowering overall health spending or shrinking the number of the uninsured.

The Wall Street Journal stated yesterday:

Liberals should love the idea because a trigger isn't a substantive concession; it merely ensures that the public option will arrive eventually, instead of immediately. Democrats will tweak the tests so that pri-

vate insurers can't possibly meet them, mainly by imposing new regulations and other costly burdens.

Additionally, this trigger appears to blatantly and patently violate the Constitution's delegation of lawmaking powers to Congress and not the executive branch. We must decide whether to implement a "government option" or not. I vote to not do so and oppose any suggestion that abdicates my duties as a lawmaker and allows the executive branch to create a "government option" based on a trigger.

Mr. President, I ask unanimous consent that the Wall Street Journal column entitled "Whoa, Trigger"—a good name—be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Sept. 8, 2009]

#### WHO, TRIGGER

President Obama has decided that another oration will rejuvenate his health-care agenda—despite having given 27 speeches entirely on health care, and another 92 in which it figured prominently. We'll see how tomorrow night's Congressional appeal works out, but the important maneuvers are taking place in the cloak rooms, as the White House tries to staple together a majority.

The latest political gimmick is the notion of a "trigger" for the public option: A new government program for the middle class would only come on line if private insurance companies fail to meet certain benchmarks, such as lowering overall health spending or shrinking the number of the uninsured. This is supposed to appeal to Maine Republican Olympia Snowe, who could end up as ObamaCare's 60th Senator, while still appeasing the single-payer left.

Liberals should love the idea because a trigger isn't a substantive concession; it merely ensures that the public option will arrive eventually, instead of immediately. Democrats will goose the tests so that private insurers can't possibly meet them, mainly by imposing new regulations and other costly burdens.

Keep in mind that every version of ObamaCare now under consideration essentially turns all private insurers into subsidiaries of Congress. All coverage will be strictly regulated down to the fine print, and politics will dictate the level of benefits as well as premiums, deductibles and copays. Under the House bill, a "health choices commissioner" will have the final say, no doubt with Democrats Henry Waxman and Pete Stark at his elbow, if not another part of his anatomy.

The same bill also rewrites the 1974 federal law known as Erisa that lets large and mid-sized employers offer insurance with little regulation. Many businesses—including Safeway, General Mills and Marriott—are finding innovative ways to drive down spending, largely with worker incentives to live healthier and be more sensitive to the costs of care. Many Democrats call this discriminatory.

In the individual insurance market, Democrats intend to outlaw medical underwriting: Everyone must be charged the same rate or close to it for the same policies, regardless of health status or history. But this "community rating" tends to price younger and low-risk consumers out of the market. In a 2006 NBER paper, Bradley Herring of John Hopkins and Mark Pauly of the University of Pennsylvania found that community rating results in an overall increase in the uninsured in the individual market, maybe as

high as 7.4%. For that reason, 35 states have no community rating at all, and another six allow very wide variations.

The larger reality is that private insurance won't be less expensive until overall health-care costs go down. Democrats may be confused on this point because government, which paid nearly 47 cents of every medical dollar in 2007, simply sets lower prices when Congress feels like it. On average, doctors and hospitals are forced to accept 20% to 30% less for their services in Medicare. That's another reason insurers wouldn't meet a trigger's thresholds, given that providers shift costs onto private under-65 patients to make up government shortfalls.

Conceivably insurers could make their products more affordable by cracking down on treatments and refusing payment more often, much as HMOs held down spending in the 1990s. But both patients and doctors hated this "managed care"—and in any case, Democrats would find a new rationale for the public option in the inevitable voter outcry about private "rationing."

It's true that there was a trigger in the Medicare prescription drug benefit and the world didn't end. But recall the dynamics in 2003: The GOP decided that private stand-alone or Medicare Advantage plans should manage the benefit. As a concession to Democrats, they agreed to trigger a "public option" for drugs—in which the government would have bought them directly, with its typical "negotiating" tactics—if seniors didn't have more than two plans in a given region.

Today, there are 1,689 stand-alone and 2,099 Advantage plans, and on average seniors have 50 to choose from—and costs in 2007 were \$26 billion lower than expected. For all its problems, the Medicare drug plan created more choice for seniors and more competition among providers to offer packages that they found most attractive, holding down costs. In short, it created the incentives for multiple "private options."

ObamaCare doesn't bother with incentives, instead merely increasing government command and control of private insurance while making it more expensive in the process. That's why a trigger will inevitably lead to the public option, and also why ObamaCare will make all of our current health problems worse.

Mr. MCCAIN. So, Mr. President, let me summarize. I come back from this recess—and I see my colleague also from Arizona in the Chamber—both of us come back, as a lot of my colleagues do, in the face of extreme unease, anger, and frustration on the part of the American people, not just over the issue of health care but over the issue, as I pointed out, of this massive spending and debt and deficit we have laid on future generations of Americans.

They want us to act in their interests. So wouldn't it be appropriate for the President, tomorrow night, if I may be so bold, to say: My friends and colleagues, the citizens have spoken. They want us to sit down together, and they want us to do what is doable. They want us to fix this cost escalation of health care in America, which is making it less and less affordable to all Americans. But the message we have gotten is, they are very skeptical about "government-run health care" or a "government option."

When the President says: If you like your health insurance policy, you can keep it, that is not true either. It is not

true either. Because if you had a government option, and it looked more attractive to your employer, and your employer decided to select the government option rather than the health insurance policy you now have, then you cannot keep it. So it is simply not true that under the government option, if you like your health insurance policy, you can keep it.

But the real point is, why don't we sit down—which we did not do; we did not do that at the beginning of this process—why don't we sit down with the smartest people on both sides of the aisle and say: OK, what can we get done? What can we get done here together and go to the American people and say we are going to make significant progress in eliminating this problem of out-of-control costs in health care in America.

I recall when I first came to the Congress of the United States—and it was pretty partisan then—Ronald Reagan had only been elected a couple years before that time, and Social Security was about to go broke. Social Security was going broke, and two old Irishmen—Tip O'Neill, a liberal Democrat from Massachusetts, and the conservative from California—sat down together and said: OK, we are going to sit together. We are going to fix Social Security. And they did. There American people were not only proud and grateful but they benefited.

Let's go back to square one. Let's sit down together and get this issue resolved.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Republican whip is recognized.

#### ORDER OF PROCEDURE

Mr. KYL. Mr. President, I ask unanimous consent to speak in morning business for not to exceed 15 minutes.

Mr. DORGAN. Mr. President, will the Senator yield for a unanimous consent request?

Mr. KYL. Yes.

Mr. DORGAN. Mr. President, I would make a request that Senator WHITEHOUSE be recognized following the presentation by the Senator from Arizona, that I be recognized following Senator WHITEHOUSE, and Senator INHOFE be recognized following my presentation.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KYL. Thank you, Mr. President. I thank my colleague.

#### REMEMBERING SENATOR EDWARD KENNEDY

Mr. KYL. Mr. President, I want to speak to the same issue my colleague Senator MCCAIN spoke to in a couple minutes. But first I wish to make some brief comments about two of our colleagues who will no longer be with us—of course, our friend and colleague, Senator KENNEDY, and Senator MARTINEZ.

Let me, first of all, speak to Senator KENNEDY's departure from this body due to his untimely death.

During his five decades of public service, Senator KENNEDY served with diligence, tireless passion, and, of course, vigor—the word that immediately evokes the Kennedy spirit.

Because of who he was, he could have gotten by without a lot of hard work. But that was not his way. He believed deeply, so he worked hard—as hard as any Senator I have known.

One thing that has been commented on by many who worked with Senator KENNEDY was his willingness to compromise. I have characterized Senator KENNEDY as a legislator's legislator, often a results-oriented pragmatist, who knew that clashes between the two parties are inevitable and, in fact, an integral part of our political system, and that it was important to reach across the aisle if you wanted to get things done. He believed that people with dramatically different points of view could usually find some common ground.

While Senator KENNEDY and I did not share a perspective on very many issues, and he was always ready to make an ideological or political point, my colleagues and I appreciated his efforts to actually legislate as well. His dedication, his hard work, humor, and high spirit will always be remembered. My wife Caryll and I extend our thoughts and prayers to his family.

#### TRIBUTE TO SENATOR MEL MARTINEZ

Mr. KYL. Mr. President, I also want to say a couple words about our colleague MEL MARTINEZ from Florida who will be leaving the Senate on this coming Thursday. He has been an admirable public servant, both in this body and as Secretary of Housing and Urban Development. To each position he brought his considerable talent and devoted himself to solving problems in a practical, thoughtful, and bipartisan way.

Senator MARTINEZ never sought the limelight; he simply wanted to make a difference. He was disappointed, I know, that he was unable to move immigration reform forward. But we will try to apply what he has taught us about that issue. His positive influence here in Washington will be greatly missed.

A farewell to Senator MARTINEZ would not be complete without a note about his compelling life story and about his wife Kitty. As a Cuban emigre who came to America with few ties, Senator MARTINEZ represents one of the most inspiring aspects of American life: that talent and hard work unlock the door to great success. He has not forgotten those who helped him, just as all of us will not forget him. His wife Kitty has, likewise, made many friends in Washington and will also be missed.

Although I know he will not need it, I wish him all the best in his future endeavors, and I know he will remain an