

had been disclosed to the public for review.

At the time, I argued that spending this much borrowed money in the middle of a recession on a bill that had been rushed to the floor was extremely irresponsible. At a time when millions were struggling to make ends meet, Washington had no business borrowing hundreds of billions of dollars to pay for government golf carts and ATV trails in the name of economic stimulus. This week, Senator COBURN has catalogued some of the other outrages that are contained in this bill. Here are just a few:

The town of Union, NY, received a \$578,000 grant that it didn't request for a homeless problem it claims it does not have. Florida is planning to spend \$3.4 million in stimulus money to build a 13-foot turtle tunnel at Lake Jackson. That is more than a quarter of a million dollars per foot. This one takes the cake. In North Carolina, \$40,234 in Federal stimulus money will pay for the salary—the salary—of someone whose job is to lobby for more stimulus money. That is \$40,234 to pay someone to lobby for more stimulus money.

This would be comical if it weren't so maddening and if these projects hadn't been sold to the American people as the answer to our economic problems and if the administration hadn't assured us it would make sure every cent of this money was spent efficiently and without waste. But that was then.

The administration had promised since January it would keep an eye on how precious tax dollars were spent. But just months after the stimulus was signed into law, it was already admitting funds would be wasted and people were being scammed.

In January and February, administration economists took to the talk shows promising that the stimulus would create 3 to 4 million jobs. They said that if we passed the stimulus, the unemployment rate would now be about 8 percent. But just a few months later, with job losses continuing to mount, the administration admits their early predictions were simply a guess and that they guessed wrong. Today, the unemployment rate stands at 9.4 percent. Just yesterday, the administration said it expects unemployment to climb even higher.

The \$1 trillion they said was absolutely necessary to jump-start the economy, and which was put on a fast track by an eager-to-please, Democratically led Congress, is now being called a very bad guess by the very people who proposed it.

Now they are asking us to do it again, only this time it is even more than \$1 trillion, and the consequences could be far worse.

The early estimates we are getting for the health care proposal we have seen are that a portion of it—just a portion of it—will be \$1.3 trillion. This figure, staggering in itself, doesn't even account for the money that would be needed to pay for expanding Med-

icaid and creating a new government-run plan. No one can tell us where any of this money will come from.

Yet similar to the stimulus, we are being told, in the most urgent tones, that this government takeover of health care is absolutely necessary, and we have to approve it as soon as possible, without review, without knowing the full cost, and without knowing how it will affect people's lives. Once again, it is rush and spend and rush and spend and a tidal wave of debt.

Everyone in America knows health care reform is needed in this country, but they want us to do it right. They do not want a blind rush to spend trillions—trillions—of dollars in the hope that the administration gets it right. During the debate over the stimulus, we were told we had to pass it right away, with just 24 hours to review—or \$42 billion an hour—for the sake of the economy. Now we are being told we need to approve a particular set of health care reforms for the sake of the economy, but we have no bill. We have no idea of its total cost. Yet it is rush, rush, rush.

We have heard all this before. We have made this mistake already. Americans will not be rushed into another one. Americans do want health care reform, but they want the right reform, not a government takeover disguised as a reform that takes away the care they have, replaces it with something worse, and costs untold trillions that they and their grandchildren will have to pay through higher taxes and even more debt.

The administration admits it made a mistake on its predictions about the stimulus. We shouldn't make the same mistake again when it comes to health care.

I yield the floor.

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#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

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#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business for 1 hour, with Senators permitted to speak for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the final half.

The Senator from Arizona.

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#### HEALTH CARE REFORM

Mr. McCAIN. Mr. President, as we all know, health care dominates the agenda and the thoughts and efforts of the Congress of the United States, and it has to be addressed. It is a historic opportunity to achieve the health re-

forms Americans need today more than ever. We need fundamental reforms—reforms that not only help people get affordable health care coverage but reforms that bring down the cost of health care.

Given the enormous cost associated with the bill that has been proposed, I have called on the other side to scrap the bill and start from scratch. We have to get it right. It shouldn't be a partisan process that forces a bad bill through committee. In starting over, we must address the fundamental components of health care reform, including the major drivers of increasing health care costs.

One of the main factors keeping health care cost trends too high is defensive medicine. Many medical practitioners order additional procedures for fear of litigation, which drives up the medical malpractice insurance costs faced by so many in the medical profession. Medical liability insurance is a direct result of out-of-control lawsuits that force physicians to practice defensive medicine to avoid these often costly and baseless liability lawsuits. Any legislation reforming our health care system is incomplete if it doesn't address this important issue.

A 2003 HHS report estimated the cost of defensive medicine to be between \$70 billion and \$126 billion a year. Put that in the light of the report that is in the Washington Post this morning, which states that CBO says Obama's health plan needs spending controls. It goes on to say of President Obama's plan to expand health coverage to the uninsured:

It is likely to dig the Nation deeper into debt unless policymakers adopt politically painful controls on spending, such as sharp reductions in payments to doctors, hospitals and other providers.

There is a way to save about \$100 billion a year—\$100 billion a year. Because if it were updated, the cost estimate would likely increase to \$100 billion to \$180 billion a year. Where is it in this bill? It is nowhere. It is nowhere. That is a testament to trial lawyers of America.

On Monday, before a receptive crowd at the American Medical Association, the President stuck his toe in the medical liability reform waters by acknowledging that medical liability reform is real. But the President also took caps on noneconomic damages off the table by saying:

Don't get too excited yet, just hold onto your horses here, guys . . . I want to be honest with you, I'm not advocating caps on malpractice awards.

This all but ensures that meaningful reform won't happen. Today, the Wall Street Journal stated in an opinion piece:

President Obama mentioned the medical liability problem and . . . we suppose this is progress [but] Mr. Obama's [call] might have had more credibility had he not specifically ruled out the one policy to deter frivolous suits.

Without caps on medical malpractice awards, "the tort lottery will continue."

Interestingly, my neighboring State of California addressed this precise problem in 1975 by passing legislation that capped jury awards for “non-economic damages,” such as pain and suffering, from medical malpractice lawsuits. Not only does this cap reduce the amount of damages, but it has had the effect of deterring lawsuits. Malpractice filings have fallen in almost every county in California. According to a 2004 RAND study, this has led to awards in medical malpractice lawsuits being 30 percent less than other States. Such a cap is sure to also lead to lower medical malpractice insurance rates.

Not only do you have a reduction in the number of suits themselves, a reduction in awards, but you can imagine the costs that have been saved because doctors no longer feel compelled to practice defensive medicine, thereby prescribing unnecessary and unneeded tests and procedures simply to protect themselves in court from medical malpractice.

There are plenty of ideas that should be considered. Caps on noneconomic damages, health courts, and national standards of care are just a few thoughtful concepts. In State malpractice reform over the years, we have demonstrable success stories that capping noneconomic damages brings down the cost of malpractice insurance. California and Texas both have reformed malpractice to stem the tide of doctors leaving their States.

There is also intriguing ideas involving health courts—courts focused only on health disputes, with specially trained judges having expertise in health court adjudication to make injury compensation decisions.

Some have also pushed for a concept establishing a national standard of care. The concept envisions establishing specific clinical practice guidelines that doctors would be required to follow and enforced by the Department of Health and Human Services. Supporters believe this approach might reduce liability concerns.

These are but three examples that can be considered on both sides of the aisle. There are other ideas we would be well served to consider.

When health care costs are said to be driven up by over \$100 billion and up to 40 percent of medical liability lawsuits being entirely groundless, don't you think the other side would have some provision in their bill to address this fundamental problem; maybe even a modest provision? Well, I am here to tell you that the other side has yet to suggest any provision to address medical malpractice reforms. Shocking. It should be addressed, and it must be addressed as part of real health reform.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. ALEXANDER. Mr. President, today in the Health, Education, Labor and Pensions—HELP—Committee of the Senate, after several days of discussions, we are beginning to work on the health reform legislation that was proposed by our chairman, Senator KENNEDY. As we begin our work today, I want to suggest that we put aside the legislation we were working on and that we start over because the Kennedy bill we are dealing with is so flawed and expensive that it cannot be fixed. There are better proposals available for us to work on, proposals advanced by Senator BURR, by Senator COBURN, there is a bipartisan proposal that Senator WYDEN and Senator BENNETT have offered, and Senator HATCH, a former chairman of the committee, is working with a number of Senators on a proposal that seems, to me, to be a much better base for a beginning.

As we go to work on health care reform, these are the things we should keep in mind. We would want to be able to say to the American people that we are interested in all 300 million of you, not just the 47 million uninsured; that our goal is to provide for each one of you a health care plan that you can afford, a plan in which you and your doctor—not Washington, DC—make the decisions, a plan that emphasizes prevention and wellness. We want to give low-income Americans the same kind of health plan that most Americans already have. We do not want to make it harder for American businesses to compete in the world marketplace by adding to their costs. And we do want a plan that your children and your grandchildren can afford so they are not saddled with a massive debt that devalues the dollars they earn and the quality of their lives.

As the President has repeatedly said, the best way for us to realize all those objectives is to fashion this health care reform in a truly bipartisan way. The bill we are marking up today in the HELP committee is not ready to be considered. We do not have the details of the bill—even though the President, within the last few days, has said that pay-as-you-go rule is important. If we are going to spend a dollar, he said, we ought to save a dollar. Or he might have said raise taxes a dollar. That is what the President said. So surely we are not going to mark up a bill or finish marking it up until we know exactly whether we are going to have to save a dollar or tax a dollar or how many dollars we will need to save or tax in order to pass the bill.

This we do know about the legislation our committee is considering. There are 47 million Americans uninsured today; it leaves 30 million of them still uninsured. We know that it expands one failing government program, Medicaid, and creates another, putting Washington in between you

and your doctor. It reduces the ability of employers to give incentives for wellness and prevention—it doesn't increase it, it reduces it. It freezes 58 million low-income Americans into a Medicaid Program that offers sporadic, substandard care; is so expensive it will literally bankrupt States; and our Government Accountability Office has told us it wastes \$1 for every \$10 it spends—that is \$32 billion a year, three-fourths as much as we spend on all the prescription drugs for senior Americans.

According to unbiased government officials, its additions to the national debt are astronomical. The Congressional Budget Office told us yesterday that the Kennedy bill, so far as it is written, will add \$1 trillion to the debt over the next 10 years. That does not include the Medicaid expansion or the expansion of reimbursements for doctors seeing Medicaid patients. It does not include the government health insurance option. It doesn't include the employer mandate.

The Baucus bill, we are told, according to press reports, in the Finance Committee, may cost \$1.5 trillion over the next 10 years and an independent study released yesterday says the Kennedy bill may mean \$4 trillion. The National Governors Association says Medicaid itself will add a half trillion dollars to the State costs over the next 10 years if reimbursement rates are increased as they are proposed to be increased. This is on top of what the Washington Post said earlier this week is a set of proposals by the Obama administration that would add nearly three times as much to the national debt over the next 10 years as we spent in all of World War II.

This bill, I am sorry to say, is absolutely not a bipartisan bill. We are having a bipartisan discussion. We are all very friendly and civil to one another. CHRIS DODD is doing a tremendous job of sitting in for Senator KENNEDY. We all like him, but we know what a bipartisan bill is, it is when 15 or 20 of us from different sides of the aisle sit around a table and start from scratch and take our best ideas and put it together and get 60 or 70 or 75 votes for something. We have done it many times on energy, on intelligence, but we are not doing it on this. We were presented with a bill last Thursday, or some of a bill, and told: This is it. This is the way we are going to do it. We are going to have a lot of discussion about it but this is the way we should do it.

We should start over. If we start over based on the discussions we have already had, we should be able to agree that every American should be covered. We should be able to agree that it should be at a cost each American could afford. We should be able to agree that preexisting conditions do not disqualify you, and that prevention and wellness is encouraged. We should be able to agree that low-income individuals have the same choices, same opportunities for health insurance that the rest of us do. And we should be able

to agree that Americans should have choices.

On all of those things we ought to be able to agree, if we were starting from scratch. If we do all those things, why do we need to create a so-called government-run insurance plan? That is the big difference of opinion we have in the committee and I believe on the Senate floor. A government-run insurance plan inevitably leads to a Washington takeover, of which we are having far too many these days: Washington takeovers of banks, Washington takeovers of insurance companies, Washington takeovers of student loans, Washington takeover of car companies. Why do we need a Washington takeover of our health system? And why would a government-run insurance plan lead to a Washington takeover?

Think of it this way. It is like putting an elephant in a room with some mice and saying: All right, fellows, compete. I think you know what would happen. After a little while only the elephant would be left. The elephant would be your only choice.

We have a very good example of what that elephant would look like. We call it Medicare, a program that every State has, that the Federal Government pays 62 percent of and the State pays 38 percent, on the average, and it provides health care to low-income Americans, those who are not on Medicaid.

I would like to find a way to require every Senator who votes for expanding Medicaid coverage to be required to go home and serve as Governor of his or her home State for 8 years and try to manage and pay for a Medicaid Program that is expanded to meet the needs of what we are trying to do. The only way you could like the Medicaid Program is if you have been in Washington a long time and you don't have to manage it, you don't have to pay for it, and you don't have to get your health care from it.

Let me be very specific. The Medicaid Program—and I dealt with this for years as Governor myself—is filled with lawsuits. It is riddled with Federal court consent decrees from 25 years ago that restrict the ability of government and legislators to make improvements. It is filled with inefficiencies and delays that take a Governor a year to get permission from Washington to do something 38 other States are doing and, I mentioned, it has intolerable waste of taxpayer dollars. The General Accounting Office says \$32 billion, every year, is wasted in the Medicaid Programs. That is 10 percent of all the money that is appropriated to it.

The second thing wrong with Medicaid, what a Senator who goes home to serve as Governor would find out, it would require higher State taxes at a time when States are making massive cuts in services and are very nearly bankrupt. The State of Tennessee, by my own calculations—I believe it would require a 10-percent new State

income tax by the year 2015, if the Senate were to take the Kennedy bill and the Baucus draft and enact them today.

Why would it do that? The State director of Medicaid in our State says if we increase Medicaid coverage to 150 percent of the Federal poverty level, that costs the State of Tennessee \$572 million. If the Federal Government pays for that, the bill for the Federal Government for that increase is \$1.6 billion, just for the Tennesseans covered.

It would also increase the pay for Medicaid providers to 110 percent of what Medicare pays physicians. That would add another \$600 million in Tennessee, because Tennessee's Medicaid pays physicians 70 percent of what Medicare pays physicians. And Medicare pays physicians 80 percent of what private companies pay physicians.

So the increased costs, just for Tennessee of the Medicaid expansion in the Kennedy bill, is \$1.2 billion, according to our State Medicaid directors. If the Federal Government has to pay the whole thing, it is \$3.5 billion.

But then they are talking in the Finance Committee about shifting those costs back after 5 years to the States. So here comes a \$1.2 billion bill to whoever is Governor of Tennessee in 2015.

Last thing, to put this into perspective, they tried to pass an income tax in Tennessee. Today, a 4-percent income tax would produce \$400 million a year. We are talking about finding \$1.2 billion a year.

The National Governors Association said increasing the Federal poverty level to 150 percent would increase the cost to \$360 billion over 10 years in all the States, and increases in Medicare reimbursement would bring that total to half a trillion in all of the States. That is on top of the trillion dollars that the Congressional Budget Office has said Senator KENNEDY's bill already costs.

One of the effects of this is it would absolutely destroy our public colleges and universities across the country. It is already damaging them, because Governors and legislators are finding they barely have enough money to keep up with increasing Medicaid costs. They have nothing left for colleges and universities. So the quality of the universities goes down and the tuition at the universities goes up.

Finally, Senators serving as a Governor of their home State trying to manage an expanded Medicaid Program would find that most of the people, maybe a majority, would find a hard time getting service. Today, 40 percent of doctors nationally do not provide full service to Medicaid patients because of the low reimbursement rates.

So any version of the bill we are now considering in the Senate HELP Committee will explode into complexity and astronomical spending and will never succeed.

There is a better way. There are several better ways. Instead of stuffing

low-income Americans into one failing government health care program, Medicaid, that now provides substandard care and creating a new government-run program, why do we not give low-income Americans government grants or subsidies so they can purchase private insurance as is provided by the Wyden-Bennett bill, for example, which has a cost of zero to the taxpayers, according to the Congressional Budget Office; or the Coburn-Burr bill, or Senator GREGG's bill, or the bill that Senator HATCH is working on with Senator CORNYN and others.

Those are the ways to meet our objectives. So here are our objectives once more: We want to provide health coverage to 300 million Americans, not just to the 47 million uninsured. We want for you a health care plan that you can afford. We want for you a plan in which you and your doctor make the decisions, not Washington, DC. We want a plan that emphasizes prevention and wellness. We want a plan that gives low-income Americans more of the same opportunities and choices for health care that most Americans already have. And we want a plan that does not make it harder for American businesses to compete in the world marketplace by adding to their cost.

We want, in the end, a program, a health care program your grandchildren and your children can afford and does not heap trillions of dollars of new debt up on them, that devalues the dollar they will eventually earn, and the quality of their lives.

As the President has repeatedly said, the best way to do that is in a bipartisan way. But in order to do that, we need to put aside the bill we are working on today in the HELP Committee and start over again in a truly bipartisan way to meet those objectives.

I yield the floor and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### JUDICIAL CONFIRMATIONS

Mr. SPECTER. Mr. President, I sought recognition to comment on the forthcoming proceedings on the confirmation of Judge Sotomayor for the Supreme Court of the United States.

Judge Sotomayor comes to this position with an extraordinary record. Her academic standing at Princeton was *summa cum laude*, a graduate of the Yale Law School where she was a member of the Yale Law Journal Board of Editors.

Then in her practice, she was an assistant district attorney in Manhattan, a position which gives very extensive experience in many facets of the law,