2011 SENATE HUMAN SERVICES

CONFERENCE COMMITTEE

SB 2309

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2309
4-13-2011
Job Number 16555

☒ Conference Committee

Committee Clerk Signature Pamela Dixon

Explanation or reason for introduction of bill/resolution:

Relating to nullification of federal health care reform legislation.

Minutes:

Senator Gerald Uglem opened the conference committee on SB 2309.
All members were present: Senator Gerald Uglem, Senator Dick Dever, Senator Tim Mathern, Rep. Jim Kasper, Rep. Dan Ruby, and Rep. Ed Gruchalla.

Rep. Kasper explained that the House IBL committee heard SB 2309. In Section 2 they added "**likely**" because they had some consternation on their side on making a hard statement that it is unconstitutional because the federal courts have not ruled. They also softened the wording and said it "**may**" violate its true meaning..... .
He referred to HB 1165 which has passed chambers and has been signed by the Governor. 1165 dealt with the statement that the residents of ND could not be required to purchase health insurance under the individual mandate in the federal health reform act.
As the committee deliberated on 2309 there were a couple of areas they felt should go a little further than what 1165 had done.
He read through Section 1 and explained what they did. They wanted to protect the right of the people of ND in statute in 1(a) and 1(b). Protection for medical providers is addressed in 1(c) but also protects citizens, especially in emergency situations, with the addition of "as provided by law".
Exceptions are listed in subsection 2.
With the uncertainty of what is happening in Washington with the health care protection act and not knowing how the rules are going to come down they wanted to make a statement that our citizens and providers have certain rights that are protected in statute.

Senator Tim Mathern asked who the bill applies to in light of the #2 exceptions.

Rep. Kasper replied that it applies to all the citizens and providers in the state with the exceptions of those listed. That could be people who are uninsured and citizens who have coverages that do not apply to the areas that are the exemptions. It's more a statement of rights of our citizens.

Rep. Ruby added that the language suggested from BC/BS encompasses a lot of people. They also looked at the providers as well. They were told that insurance companies have to comply with federal law but when federal law is not quite written yet and the rules aren't promulgated then they'll have to follow state law.

Senator Tim Mathern asked if this would require all insurers to provide payment for all providers who are licensed.

Rep. Kasper said an insurer would have two obligations – to the insured under the contract and to the providers under the contract. This would not interfere with the contract.

Senator Dick Dever thought that some of the provisions of this amended bill seem to be similar to 1386 which was a bill that would break that contract to allow people to go outside of their network to seek medical services. He saw it as having some similar implications. He asked which committee in the Senate that 1165 went through.

Rep. Kasper thought it was the IBL committee.

Senator Gerald Uglem had questions concerning line 12. He wanted to know what that does to a HMO that has specific providers and they don't work outside of that. Also, could it affect a hospital not granting privileges to a physician? Would that hospital be interfering with the right of the physician to treat their patient? What effect to the licensing boards?

Rep. Kasper suggested that reading it carefully helps to assuage those concerns.

Senator Gerald Uglem still felt there was a problem with the hospital granting privileges and wondered if they needed more exemptions.

Rep. Kasper pointed out that they had worked with the providers to try to get the language in a satisfactory form and the providers were comfortable with the final language

Senator Tim Mathern wondered if this provided protection to new providers such as naturopaths, music therapists, and behavior analysts to make sure they could provide those services at a hospital even though the hospital may not want to provide privileges.

Rep. Kasper replied that was not the intent of the bill. This is not meant to interfere with the hospital's rights to admit or not admit.

Rep. Ruby agreed. This is mainly dealing with the provider to provide the services to a resident/individual. He didn't see it as interfering with the contracts of whether they are going to give privileges to a doctor.

Rep. Gruchalla said this bill had a number of amendments and was voted on in their committee on the last possible day. At that time they were hearing that there were other possible exemptions but he hasn't heard of any since.

Senator Dick Dever didn't disagree with the intent of the bill and pointed out that this committee hadn't heard 1165. He wasn't ready to make a decision. He needed time to

consider the implications. The most dangerous law is the law of unintended consequences.
He wanted to know if line 8 on page 1 was implying that the provider is obligated to provide the service without regard to their ability to pay.

Rep. Kasper didn't believe so. The intent is not to simply say the resident can go anyplace regardless of what the provider may wish to do. The providers can still practice according to what the law currently says.

Rep. Ruby emphasized that "provided by law" is a key term.

The meeting was adjourned and will be rescheduled.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2309
4-14-2011
Job Number 16609

☒ Conference Committee

Committee Clerk Signature JAMorrison

Explanation or reason for introduction of bill/resolution:

Minutes:

Senator Gerald Uglem reconvened the conference committee on SB 2309.
All members were present.

Senator Gerald Uglem planned on having amendments ready for this meeting but heard that there were other concerns so the amendments were not ready yet.

Rep. Ruby asked what the concerns were.

Senator Gerald Uglem replied that they were still the basic concerns from last time about exempting hospital granting privileges and possibly exempting professional boards within the state.
Amendments would be drafted for the next meeting if they needed to be.

Rep. Kasper referred to the term "federal law". It was discussed in the House IBL Committee whether they could put anything in legislation that would say "federal law does not apply in ND". There was concern of the potential conflict under the constitutions.
He repeated the intent of their amendments which is simply to put into statute that the citizens and providers in ND are protected in statute to practice medicine and seek medical care.

Senator Gerald Uglem pointed out that this came out of Senate Human Services with a Do Not Pass recommendation and then passed on the floor. He still had concerns with the language in Section 2 of the old language – prevent the enforcement of PPACA. He would question that as far as constitutionality to prevent enforcement of a federal law.

Rep. Kasper suggested looking at how a law is administered after it becomes law – line 24 says the assembly "shall consider" enacting. It is not declaratory and not a demand.
He felt the key to the bill was on page 1 of the amendments.

Senator Tim Mathern didn't think there was a need for this bill. It's clear there will be a special session and there are already a number of state entities monitoring what's going on with the federal government. They are almost assured of having an interim legislative committee to monitor all of these issues and that will all happen without this bill. He felt that process is already addressing the concerns raised here.

Rep. Kasper responded that if the Supreme Court acts between now and the special session, which is a possibility, this bill could be extremely important. If the Supreme Court does not act before the special session but there are new rules and regulations that the HHS promulgates that could be undesirable to our citizens and providers then this bill is also important.

Senator Dick Dever felt the purpose of 2309 to start with and as amended in the Senate was that the legislature take a position considering it to be unconstitutional. It is scary to him that Congress uses the commerce clause to justify any kind of legislation that it wants to usurp the power of the states. That is an important reason to support the bill. Regarding the special session, the agenda is likely to be limited.

Rep. Ruby felt that reading page 2 subsection 2 starting on line 24 separately is really taking it out of context if you don't combine it with subsection 1. He didn't feel that waiting for an amendment would make it any clearer and would prefer to settle today.

Senator Gerald Uglem was still concerned over unintended consequences.

Rep. Kasper talked about the FL lawsuit and said the Attorney General sued under the US Constitution. The judge ruled that the whole act was unconstitutional because the commerce clause did not apply and the Congress had gone beyond its authority under the commerce clause. This ruling is important but all the more reason to try to put into statute now the protections for our citizens and providers.

Senator Tim Mathern added that our Attorney General is already involved in this issue. He moved forward and had what he felt to be the legitimate interests of the state in mind where he could take some action. He did that before this bill became a matter before the committee.
Sen. Mathern didn't feel this bill is one that weighs ND in or out of the federal lawsuit because our state is already involved.

Rep. Kasper agreed with all of what Sen. Mathern said. He didn't intend to imply anything to the contrary. The Attorney General had the right and the power and the status to join the Florida lawsuit as he did without legislative action. He did it on his own. This is a totally different issue – an issue of putting in statute the rights of our citizens for their ability to seek medical care and the rights of our providers to provide it.

The meeting was adjourned.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2309
4-15-2011
Job Number 16666

☒ Conference Committee

Committee Clerk Signature DMorton

Explanation or reason for introduction of bill/resolution:

Minutes: Attachment

Senator Gerald Uglem called the conference committee on SB 2309 to order.
All members were present.

Rep. Kasper had an amendment for the committee to consider - .03014. Attachment #1
Changes were made to clean up language to try to alleviate concerns and unintended consequences of concerned constituents.
He pointed out that the amendment was being rewritten to put the items in 1 into three separate statements and to correct a spelling error in h. on page 2 (regulated should be regulate).

Senator Gerald Uglem asked if there was a definition of "interfere".

Rep. Kasper replied gave an example. He explained that the intent would be that no one can interfere with a provider to practice their practice unless the board said says you have to operate under certain ways.

Senator Gerald Uglem said this is under the insurance chapters of the law. Does this medical treatment fit and do they have power to enforce something like this.

Rep. Kasper said he couldn't answer.

Senator Tim Mathern asked if the penalty provision of this chapter should apply or if another application of a penalty should.

Rep. Kasper answered that whatever penalty would apply to this section of the law would apply.

Rep. Gruchalla said that if you are talking about a person you are also talking about a hospital or an entity. If you talk about that you are talking about a bigger penalty for an infraction than an individual. A clarification is probably needed.

There was continued discussion on penalties and the use of the word person.

Senator Dick Dever wanted to know who decided to delete the language within the medical provider's scope of practice.

Rep. Kasper recalled there were some people who were concerned about things that may or may not be in the scope of practice and also concern about providers practicing those things without being in their scope of practice.

Senator Gerald Uglem said it was his impression that someone might be trained in something so it would be in their scope of practice but it is not an approved practice in our state.

Rep. Ruby thought with the new language under h. the medical board regulates and if someone is practicing medicine outside of their scope or without being properly licensed they regulate that. They are covered under that provision.

Senator Tim Mathern asked if the intent of removing the "resident" wording is to try to make this apply to oilworkers or people coming into the state. He wondered what the rationale was to take out resident.

Rep. Kasper said it was apparent to him that the word "resident" was causing heartburn particularly in the provider area. There was concern that having that word in there implies something they don't wish to imply. In subsection a they are dealing with the resident/the person so now they are calling it the individual. Under b and c they are dealing with the providers of service and they want to focus in on their freedom to practice medicine as they desire. This may or may not be practicing with residents.

Discussion continued on the removal of "resident".

The meeting was adjourned and will be rescheduled to address the corrected draft of the amendment.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2309
4-18-2011
Job Number 16715

☒ Conference Committee

Committee Clerk Signature Tgmonson

Explanation or reason for introduction of bill/resolution:

Minutes: Attachment

Senator Gerald Uglem reconvened the conference committee meeting on SB 2309. All members were present. (Senator Tim Mathern arrived late.)

Rep. Kasper explained amendment .03016. Attachment #2 He explained that it attempted to simplify and get rid of the problem language, move it into a section so there is very little penalty, and still preserve the key to the amendment which he believed to be 1 and 2 on page 1.

Senator Dick Dever explained his amendment to the .03000 version of the bill – Attachment #3.

Rep. Kasper noted that in the House version of 2309 there were two changes that he suggested they consider adding back in along with Sen. Dever's amendment. Line 9, the word "likely" before the word "are" and on line 10, the word "may" before "violate".

Senator Dick Dever said his feeling is that it is not authorized by the US constitution and it does violate its true meaning. But he said he would concede to the wishes of the committee.

Rep. Kasper said he would agree but sometimes making those bold statements at a time like this might not be the right thing to say for the survival of the bill.

Rep. Ruby said they do need to acknowledge there are some court cases going that will decide it. At least the softer language would leave room for some kind of result at higher court levels.

Discussion – there is no penalty in this section. Is a penalty needed? If it is only to help in a lawsuit and not direct behavior why would they need Section 1?

Rep. Kasper - HB 1165 has passed and has been signed by the Governor. That bill says that the people in ND cannot be required to purchase health insurance under the individual mandate. It is set in statute that ND citizens do not have to abide by the Health Affordability Act. This bill, 2309, and the amendments, whether it the .03016 or Sen. Dever's amendments, goes a step further and talks about the individual's choice of medical providers in ND and insurance providers in ND. That part is not in 1165.

Senator Dick Dever moved that the **House recede from its amendments and adopt the Dever amendments with the suggested additions by the House.**

Seconded by **Rep. Kasper**.

Roll call vote 4-2-0 – **Motion carried.**

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Senate Human Services

Bill/Resolution No. SB 2309 as (re) engrossed

Date: _____

Roll Call Vote #: _____

Action Taken

- ☐ SENATE accede to House amendments
- ☐ SENATE accede to House amendments and further amend
- ☐ HOUSE recede from House amendments
- ☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) _____ -- _____

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: _____ Seconded by: _____

Senators	4-13	4-14	4-15	Yes	No	Representatives	4-13	4-14	4-15	Yes	No
Sen. Uglem	✓	✓	✓			Rep. Kasper	✓	✓	✓		
Sen. Dever	✓	✓	✓			Rep. Ruby	✓	✓	✓		
Sen. Mathern	✓	✓	✓			Rep. Gruchalla	✓	✓	✓		

Vote Count: Yes _____ No _____ Absent _____

Senate Carrier _____ House Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

#3

SB 2309 Prepared by Senator Dever

An amendment to the 03000 version of SB 2309.

Motion that the House recede from its amendments and amend as follows:

On line 14, after "state." Insert:

3. No provision of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 may interfere with an individual's choice of medical provider or their choice of an insurance provider except as provided by North Dakota State law.

11.0742.03017
Title.06000

Adopted by the Conference Committee

April 18, 2011

4-18-11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

That the House recede from its amendments as printed on pages 1289 and 1290 of the Senate Journal and pages 1450 and 1451 of the House Journal and that Engrossed Senate Bill No. 2309 be amended as follows:

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Page 1, after line 14, insert:

"3. No provision of the Patient Protection and Affordable Care Act or the Health Care and Education Reconciliation Act of 2010 may interfere with an individual's choice of a medical or insurance provider except as otherwise provided by the laws of this state."

Renumber accordingly

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Senate Human Services

Bill/Resolution No. SB 2309 as (re) engrossed

Date: 4-18-2011

Roll Call Vote #: 1

Action Taken

- ☐ SENATE accede to House amendments
- ☐ SENATE accede to House amendments and further amend
- ☐ HOUSE recede from House amendments
- ☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 1450 - 1451

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) SB 2309 was placed on the Seventh order of business on the calendar

Motion Made by: Sen. Dever Seconded by: Rep. Kasper

Senators	4-18			Yes	No		Representatives	4-18			Yes	No
Sen. Uglem	✓			✓			Rep. Kasper	✓			✓	
Sen. Dever	✓			✓			Rep. Ruby	✓			✓	
Sen. Mathern	✓			·	✓		Rep. Gruchalla	✓				✓

Vote Count: Yes 4 No 2 Absent 0

Senate Carrier Sen. Dever House Carrier Rep. Kasper

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2309, as engrossed: Your conference committee (Sens. Uglem, Dever, Mathern and Reps. Kasper, Ruby, Gruchalla) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1289-1290, adopt amendments as follows, and place SB 2309 on the Seventh order:

That the House recede from its amendments as printed on pages 1289 and 1290 of the Senate Journal and pages 1450 and 1451 of the House Journal and that Engrossed Senate Bill No. 2309 be amended as follows:

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Page 1, after line 14, insert:

"3. No provision of the Patient Protection and Affordable Care Act or the Health Care and Education Reconciliation Act of 2010 may interfere with an individual's choice of a medical or insurance provider except as otherwise provided by the laws of this state."

Renumber accordingly

Engrossed SB 2309 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2309

Testimony on SB 2309 Margaret Sitte #1

Senate Human Services

9:45 a.m. Feb. 2, 2011

As of today, there are 11 states with health care nullification legislation pending. They are Oregon, Idaho, Montana, Texas, Maine, Oklahoma, New Hampshire, Nebraska, South Dakota, Wyoming and North Dakota. The idea arises from Thomas Jefferson and James Madison. Let me paraphrase their wording in the Kentucky and Virginia Resolutions that led to the overturning of the Alien and Sedition Acts.

The individual states composing the United States of America constituted the federal government for specific purposes and delegated to that government certain definite powers, each State reserving to itself, the residuary mass of right to its own self-government. Whenever the federal government assumes undelegated powers, its acts are unauthoritative, void, and of no force.

When each State acceded as a State, an integral part, its co-States forming, as to itself, the other party of the United States of America, it agreed to this limited power of the federal government as enumerated in the Constitution and its Amendments. The government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that as in all other cases of compact among powers having no common judge, each party has an equal right to judge infractions for itself, as well as the mode and measure of redress. The Tenth Amendment to the Constitution declares that "The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people."

Now therefore, be it resolved the act of Congress is altogether void, and of no force; and the power is reserved, and, of right, appertains solely and exclusively to the state within its own territory.

We have all read about the court case in Florida this week where the federal judge ruled the bill to be unconstitutional. I have attached a news article labeled Attachment 2 that uses several of the judge's quotes. Here's what else he had to say:

"It would be a radical departure from existing case law to hold that Congress can regulate inactivity under the Commerce Clause. If it has the power to compel an otherwise passive individual into a commercial transaction with a third party merely by asserting — as was done in the Act — that compelling the actual transaction is itself "commercial and economic in nature, and substantially affects interstate commerce" [see Act § 1501(a)(1)], it is not hyperbolizing to suggest that Congress could do almost anything it wanted. It is difficult to imagine that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America would have set out to create a government with the power to force people to buy tea in the first place. If Congress can penalize a passive individual for failing to engage in commerce, the enumeration of powers in the Constitution would have been in vain for it would be "difficult to perceive any limitation on federal power"[Lopez, supra, 514 U.S. at 564], and we would have a Constitution in name only. Surely this is not what the Founding Fathers could have intended.

Phil Roe, MD, 1st Dist. Tennessee recently provided five reasons for repealing the health care law:

1) it costs too much;
2) it includes $500 billion dollars in tax increases;
3) it includes Medicare cuts that are harmful to seniors;
4) it puts in jeopardy individuals' ability to choose their own health care plan; and
5) it uses taxpayer dollars to fund abortions.

In order to solve the medical liability crisis and lower costs, Republicans have offered a comprehensive medical liability reform proposal that offers:

1) cap on non-economic damages ($250,000);

2) proportional responsibility;
3) limits on attorney contingency fees;
4) limits on punitive damages; and
5) protection for states with existing functional medical liability laws.

According to the Congressional Budget Office, these reforms would reduce the federal budget deficit by $54 billion over 10 years.

Let me leave you with the words of Thomas Jefferson: "The will of the people is the only legitimate foundation of any government, and to protect its free expression should be our first object." Let North Dakota join with so many other states to stand together against federal mandates. I urge you to recommend this bill for passage.

Attachment 1

Talking Points from Thomas Woods, 10th Amendment Center

A reading of the Constitution through the original understanding of the Founders and Ratifiers makes it quite clear

1. Like any legal document, the words of the Constitution mean today the same as they meant the moment it was ratified.

2. The power to regulate commerce among the several states was delegated to the Congress in Article I, Section 8, Clause 3 of the Constitution. As understood at the time of the founding, the regulation of commerce was meant to empower Congress to regulate the buying and selling of products made by others (and sometimes land), associated finance and financial instruments, and navigation and other carriage, across state jurisdictional lines. This power to regulate "commerce" does not include agriculture, manufacturing, mining, malum in se crime, or land use. Nor does it include activities that merely "substantially affect" commerce.

3. Article I, Section 8, Clause 1 of the Constitution, the "general welfare clause," is not a blank check that empowers the federal government to do anything it deems good. It is instead a general introduction explaining the exercise of the enumerated powers of Congress that are set forth in Article I, Section 8 of the Constitution of the United States. When James Madison was asked if this clause were a grant of power, he replied with "If not only the means but the objects are unlimited, the parchment [the Constitution] should be thrown into the fire at once." Thus, this clause is a limitation on the power of the federal government to act in the welfare of all when passing laws in pursuance of the powers delegated to the United States.

4. Article I, Section 8, Clause 18 of the Constitution, the "necessary and proper clause," is not a blank check that empowers the federal government to do anything it deems is necessary or proper. It is instead a limitation of power under the common-law doctrine of "principals and incidents," which allows the Congress to exercise incidental powers. Two main conditions are required for something to be incidental, and thus, "necessary and proper." The law or power exercised must be 1) directly applicable to the main, enumerated power (some would say that without it, the enumerated power would be impossible to exercise in current, common understanding), and 2) lesser than the main power.

5. The Commerce Clause, the General Welfare Clause and the Necessary and Proper Clause have not been amended.

What Is It?

State nullification is the idea that the states can and must refuse to enforce unconstitutional federal laws.

Attachment 1

Says Who?

Says Thomas Jefferson, among other distinguished Americans. His draft of the Kentucky Resolutions of 1798 first introduced the word "nullification" into American political life, and follow-up resolutions in 1799 employed Jefferson's formulation that "nullification...is the rightful remedy" when the federal government reaches beyond its constitutional powers. In the Virginia Resolutions of 1798, James Madison said the states were "duty bound to resist" when the federal government violated the Constitution.

But Jefferson didn't invent the idea. Federalist supporters of the Constitution at the Virginia ratifying convention of 1788 assured Virginians that they would be "exonerated" should the federal government attempt to impose "any supplementary condition" upon them – in other words, if it tried to exercise a power over and above the ones the states had delegated to it. Patrick Henry and later Jefferson himself elaborated on these safeguards that Virginians had been assured of at their ratifying convention.

What's the Argument for It?

Here's an extremely basic summary:

1) The states preceded the Union. The Declaration of Independence speaks of "free and independent states" that "have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do." The British acknowledged the independence not of a single blob, but of 13 states, which they proceeded to list one by one. Article II of the Articles of Confederation says the states "retain their sovereignty, freedom, and independence"; they must have enjoyed that sovereignty in the past in order for them to "retain" it in 1781 when the Articles were officially adopted. The ratification of the Constitution was accomplished not by a single, national vote, but by the individual ratifications of the various states, each assembled in convention.

2) In the American system no government is sovereign. The peoples of the states are the sovereigns. It is they who apportion powers between themselves, their state governments, and the federal government. In doing so they are not impairing their sovereignty in any way. To the contrary, they are exercising it.

3) Since the peoples of the states are the sovereigns, then when the federal government exercises a power of dubious constitutionality on a matter of great importance, it is they themselves who are the proper disputants, as they review whether their agent was intended to hold such a power. No other arrangement makes sense. No one asks his agent whether the agent has or should have such-and-such power. In other words, the very nature of sovereignty, and of the American system itself, is such that the sovereigns must retain the power to restrain the agent they themselves created. James Madison explains this clearly in the famous Virginia Report of 1800.

Attachment 1

Why Do We Need It?

As Jefferson warned, if the federal government is allowed to hold a monopoly on determining the extent of its own powers, we have no right to be surprised when it keeps discovering new ones. If the federal government has the exclusive right to judge the extent of its own powers, it will continue to grow – regardless of elections, the separation of powers, and other much-touted limits on government power. In his Report of 1800, Madison reminded Virginians and Americans at large that the judicial branch was not infallible, and that some remedy must be found for those cases in which all three branches of the federal government exceed their constitutional limits.

Isn't This Ancient History?

Two dozen American states nullified the REAL ID Act of 2005. More than a dozen states have successfully defied the federal government over medical marijuana. Nullification initiatives of all kinds, involving the recent health care legislation, cap and trade, and the Second Amendment are popping up everywhere.

What's more, we've tried everything else. Nothing seems able to stop Leviathan's relentless march. We need to have recourse to every mechanism of defense Thomas Jefferson bequeathed to us, not just the ones that won't offend Katie Couric or MSNBC.

Attachment 2

The Miami Herald
Posted on Mon, Jan. 31, 2011

Florida judge rules federal health care law unconstitutional

BY JANET ZINK
Herald/Times Tallahassee Bureau

Al Diaz / Miami Herald Staff

The emergency room filled with patients and medical personnel at Jackson Memorial Hospital.

TALLAHASSEE - U.S. District Judge Roger Vinson ruled Monday afternoon that the federal health care legislation is unconstitutional.

Vinson made the decision after hearing arguments in December in the case, which pits 26 states against the federal government.

Among other things the states, led by Florida, argue that the legislation passed by Congress in March and pushed by President Barack Obama is unconstitutional because it requires people to buy health care or pay a fine, a provision known as the ``individual mandate."

Vinson agreed.

``I must reluctantly conclude that Congress exceeded the bounds of its authority in passing the Act with the individual mandate," Vinson wrote in his 78-page ruling. ``Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void."

The case likely will be appealed to the U.S. Supreme Court.

In his opinion, Vinson said that everyone recognizes the nation's health care system needs reform, and that Congress has the power to do that.

``The principal dispute has been about how Congress chose to exercise that power here," he wrote. ``Congress must operate within the bounds established by the Constitution."

Former Florida Attorney General Bill McCollum filed the lawsuit in March, and current Attorney General Pam Bondi is carrying it forward.

``Today's ruling by Judge Vinson is an important victory for every person who believes in the freedoms granted to us by our Constitution," said Bondi in a statement. ``This proves that the federal government requiring Americans to purchase health insurance is in fact unconstitutional."

``In addition, the bipartisan effort from Attorneys General across the country shows the federal government that we will not back down from protecting the constitutional rights of our citizens," she added.

Florida Gov. Rick Scott, an outspoken opponent of the health care law he and Republicans call ``Obamacare," applauded Vinson's ruling.

``The judge has confirmed what many of us knew from the start: ObamaCare is an unprecedented and unconstitutional infringement on the liberty of the American people," he said in a prepared statement. ``Patients should have more control over health care decisions than a federal government that is spending money faster than it can be printed."

Sen. Marco Rubio, R-Fla., said the U.S. Senate should hold an up-or-down vote on the bill passed by the House this month to repeal the health care law.

``We cannot leave this decision in the hands of judges alone," Rubio said in a statement. ``The optimal outcome for Florida and the American people is to repeal the federal health care law and replace it with common sense reforms that will lower health care costs and get more Americans insured."

Florida Democratic Party Executive Director Scott Arceneaux criticized the judge's decision, saying he ``wrongly" interprets the Constitution.

``As several other judges around the country have ruled in similar challenges to the needed health care reforms passed by Congress last year, the Affordable Care Act falls well within Congress's power to regulate economic activity under the Commerce Clause, the Necessary and Proper Clause, and the General Welfare Clause," said Arceneaux. The National Federation of Independent Business, which joined the states in filing suit, said they were ``extremely pleased" with Vinson's decision.

Said NFIB/Florida executive directo Bill Herrle in a statement: ``NFIB joined this case to protect the rights of small-business owners to own, operate, and grow their businesses free from unconstitutional government intervention. The individual mandate gives the federal government entirely too much power."

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Nullification: Answering the Objections

by Thomas E. Woods, Jr.

In January 2011 my book *Nullification* became notorious when it was linked to a bill that declared Barack Obama's health care law unconstitutional and therefore void and of no effect in the state of Idaho. (Other states have been introducing similar bills, but Idaho grabbed the media's attention.) Legislators had read it, the news media reported, and while Governor Butch Otter turned down a state senator's offer of a copy, that was only because he already had one. He had read it, too.

Naturally, the smear patrol went into overdrive. Why, this is crazy talk from a bunch of "neo-Confederates" who hate America! Anyone who has observed American political life for the past 20 years could have predicted the hysterical replies down to the last syllable.

"Nullification" dates back to 1798, when James Madison and Thomas Jefferson drafted the Virginia and Kentucky Resolutions, respectively. There we read that the states, which created the federal government in the first place, by the very logic of what they had done must possess some kind of defense mechanism should their creation break free of the restraints they had imposed on it. Jefferson himself introduced the word "nullification" into the American political lexicon, by which he meant the indispensable power of a state to refuse to allow an unconstitutional federal law to be enforced within its borders.

Today, political decentralization is gathering steam in all parts of the country, for all sorts of reasons. I fail to see the usefulness of the term "neo-Confederate" – whatever this Orwellian neologism is supposed to mean – in describing a movement that includes California's proposal to decriminalize marijuana, two dozen states' refusal to abide by the REAL ID Act, and a growing laundry list of resistance movements to federal government intrusion. As states north and south, east and west, blue and red, large and small discuss the prospects for political decentralization, the Enforcers of Approved Opinion have leaped into action. Not to explain where we're wrong, of course – we deviants are entitled at most to a few throwaway arguments that wouldn't satisfy a third grader – but to smear and denounce anyone who strays from Allowable Opinion, which lies along that glorious continuum from Joe Biden to Mitt Romney.

Anyone who actually reads the book will discover, among many other things, that the Principles of '98 – as these decentralist ideas came to be known – were in fact resorted to more often by northern states than by southern, and from 1798 through the second half of the nineteenth century were used in support of free speech and free trade, and against the fugitive-slave laws, unconstitutional searches and seizures, and the prospect of military conscription, among other examples. And nullification was employed not in support of slavery but against it.

When *Nullification* was released, here's what I predicted would happen: "If the book's arguments are addressed at all, they will be treated at a strictly second-grade level. (Official Left and Right agree on more than they care to admit, an unswerving commitment to nationalism being one of those things.) The rest of the so-called reply will run like this: Nullification is a secret plot to restore the southern Confederacy, and Woods himself is a sinister person with wicked intentions, before which all his fancy moral and constitutional arguments are nothing but a devious smokescreen." (I went on to make my Interview With a Zombie video to suggest how a typical media interview on the subject might run, and made my first video blog in response to the hysteria over Idaho.)

Since that is indeed what has happened, I'm following up with this point-by-point reply to the standard arguments I knew would be trotted out against the idea. (My replies to these claims are discussed in much greater detail in the book.)

"Nullification violates the Constitution's Supremacy Clause."

This may be the most foolish, ill-informed argument against nullification of all. It is the reply we often hear from law school graduates and professors, who are taught only the nationalist version of American history and constitutionalism. It is yet another reason, as a colleague of mine says, never to confuse legal training with an education.

Thus we read in a recent AP article, "The efforts are completely unconstitutional in the eyes of most legal scholars because the U.S. Constitution deems federal laws 'the supreme law of the land.'" (Note, by the way, the reporter's use of the unnecessary word "completely," betraying his bias.)

What the Supremacy Clause actually says is: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land."

In other words, the standard law-school response deletes the most significant words of the whole clause. Thomas Jefferson was not unaware of, and did not deny, the Supremacy Clause. His point was that only the Constitution and *laws which shall be made in pursuance thereof* shall be the supreme law of the land. Citing the Supremacy Clause merely begs the question. A nullifying state maintains that a given law is not "in pursuance thereof" and therefore that the Supremacy Clause does not apply in the first place.

Such critics are expecting us to believe that the states would have ratified a Constitution with a Supremacy Clause that said, in effect, "This Constitution, and the Laws of the United States which shall be made in pursuance thereof, plus any old laws we may choose to pass, whether constitutional or not, shall be the supreme law of the land."

"Nullification is unconstitutional; it nowhere appears in the Constitution."

This is an odd complaint, coming as it usually does from those who in any other circumstance do not seem especially concerned to find express constitutional sanction for particular government policies.

The mere fact that a state's reserved right to obstruct the enforcement of an unconstitutional law is not expressly stated in the Constitution does not mean the right does not exist. The Constitution is supposed to establish a federal government of enumerated powers, with the remainder reserved to the states or the people. Essentially nothing the states do is authorized in the federal Constitution, since enumerating the states' powers is not the purpose and is alien to the structure of that document.

James Madison urged that the true meaning of the Constitution was to be found in the state ratifying conventions, for it was there that the people, assembled in convention, were instructed with regard to what the new document meant. Jefferson spoke likewise: should you wish to know the meaning of the Constitution, consult the words of its friends.

Federalist supporters of the Constitution at the Virginia ratifying convention of 1788 assured Virginians that they would be "exonerated" should the federal government attempt to impose "any supplementary condition" upon them – in other words, if it tried to exercise a power over and above the ones the states had delegated to it. Virginians were given this interpretation of the Constitution by members of the five-man commission that was to draft Virginia's ratification instrument. Patrick Henry, John Taylor, and later Jefferson himself elaborated on these safeguards that Virginians had been assured of at their ratifying convention.

Nullification derives from the (surely correct) "compact theory" of the Union, to which no full-fledged alternative appears to have been offered until as late as the 1830s. That compact theory, in turn, derives from and implies the following:

1) The states preceded the Union. The Declaration of Independence speaks of "free and independent states" that "have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do." The British acknowledged the independence not of a single blob, but of 13 states, which they proceeded to list one by one. Article II of the Articles of Confederation says the states "retain their sovereignty, freedom, and independence"; they must have enjoyed that sovereignty in the past in order for them to "retain" it in 1781 when the Articles were officially adopted. The ratification of the Constitution was accomplished not by a single, national vote, but by the individual ratifications of the various states, each assembled in convention.

2) In the American system no government is sovereign, not the federal government and not the states. The peoples of the states are the sovereigns. It is they who apportion powers between themselves, their state governments, and the federal government. In

doing so they are not impairing their sovereignty in any way. To the contrary, they are exercising it.

3) Since the peoples of the states are the sovereigns, then when the federal government exercises a power of dubious constitutionality on a matter of great importance, it is they themselves who are the proper disputants, as they review whether their agent was intended to hold such a power. No other arrangement makes sense. No one asks his agent whether the agent has or should have such-and-such power. In other words, the very nature of sovereignty, and of the American system itself, is such that the sovereigns must retain the power to restrain the agent they themselves created. James Madison explains this clearly in the famous Virginia Report of 1800:

The resolution [of 1798] of the General Assembly [of Virginia] relates to those great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential right of the parties to it. The resolution supposes that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the Judicial Department also may exercise or sanction dangerous powers beyond the grant of the Constitution; and consequently that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority, as well as by another, by the judiciary, as well as by the executive, or the legislature.

"The Supreme Court declared itself infallible in 1958."

The obscure *obiter dicta* of *Cooper v. Aaron* (1958) is sometimes raised against nullification. Here the Supreme Court expressly declared its statements to have exactly the same status as the text of the Constitution itself. But no matter what absurd claims the Court makes for itself, Madison's point above holds – the very structure of the system, and the very nature of the federal Union, logically require that the principals to the compact possess a power to examine the constitutionality of federal laws. Given that the whole argument involves who must decide such questions in the last resort, citing the Supreme Court against it begs the whole question – indeed, it should make us wonder if those who answer this way even understand the question.

"Nullification was the legal doctrine by which the Southern states defended slavery."

This statement is as wrong as wrong can be. Nullification was never used on behalf of slavery. Why would it have been? What anti-slavery laws were there that the South would have needed to nullify?

To the contrary, nullification was used *against* slavery, as when northern states did everything in their power to obstruct the enforcement of the fugitive-slave laws, with the Supreme Court of Wisconsin going so far as to declare the Fugitive Slave Act of 1850 unconstitutional and void. In *Ableman v. Booth* (1859), the U.S. Supreme Court scolded it for doing so. In other words, modern anti-nullification jurisprudence has its roots in the

Supreme Court's declarations in support of the Fugitive Slave Act. Who's defending slavery here?

"Andrew Jackson denounced nullification."

True, though Jackson was presumably not infallible. (Had nullification really been all about slavery, then Jackson, a slaveholder himself, should have supported it.) His proclamation concerning nullification was in fact written by his secretary of state, Edward Livingston, and that proclamation was, in turn, dismantled mercilessly – *mercilessly* – by Littleton Waller Tazewell.

"You must be a 'neo-Confederate.'"

I confess I have never understood what this Orwellian agitprop term is supposed to mean, but it is surely out of place here. Jefferson Davis, president of the Confederacy, denounced nullification in his farewell address to the U.S. Senate. South Carolina, in the document proclaiming its secession from the Union in December 1860, cited the North's nullification of the fugitive-slave laws as one of the grievances justifying its decision.

Don't expect critics of nullification to know any of this, and you won't be disappointed.

One of the points of my book *Nullification*, in fact, is to demonstrate that the Principles of '98 were not some obscure southern doctrine, but at one time or another were embraced by all sections of the country. In 1820, the Ohio legislature even passed a resolution proclaiming that the Principles of '98 had been accepted by a majority of the American people. I do not believe there were any slaves in Ohio in 1820, or that Ohio was ever part of the Confederacy.

"James Madison spoke against the idea of nullification."

More sophisticated opponents think they have a trump card in James Madison's statements in 1830 to the effect that he never intended, in the Virginia Resolutions or at any other time, to suggest that a state could resist the enforcement of an unconstitutional law. Anyone who holds that he did indeed call for such a thing has merely misunderstood him. He was saying only that the states had the right to get together to protest unconstitutional laws.

This claim falls flat. In 1830 Madison did indeed say such a thing, and pretended he had never meant what everyone at the time had taken him to mean. Madison's claim was greeted with skepticism. People rightly demanded to know: if that was all you meant, why even bother drafting such an inane and feckless resolution in the first place? Why go to the trouble of passing solemn resolutions urging that the states had a right that absolutely no one denied? And for heaven's sake, when numerous states disputed your position, why in the Report of 1800 did you not only not clarify yourself, but you actually persisted in the very view you now deny and which everyone attributed to you

at the time? Madison biographer Kevin Gutzman (see *James Madison and the Making of America*, St. Martin's, forthcoming 2011) dismantled this toothless interpretation of Madison's Virginia Resolutions in "A Troublesome Legacy: James Madison and 'The Principles of '98,'" *Journal of the Early Republic* 15 (1995): 569-89. Judge Abel Upshur likewise made quick work of this view in *An Exposition of the Virginia Resolutions of 1798*, excerpted in my book.

The elder Madison, in his zeal to separate nullification from Jefferson's legacy, tried denying that Jefferson had included the dreaded word in his draft of the Kentucky Resolutions. Madison had seen the draft himself, so he either knew this statement was false or was suffering from the effects of advanced age. When a copy of the original Kentucky Resolutions in Jefferson's own handwriting turned up, complete with the word "nullification," Madison was forced to retreat.

In summary, then, (1) the other state legislatures understood Madison in 1798 as saying precisely what Madison later tried to deny he had said; (2) Madison did not correct this alleged misunderstanding when he had the chance to in the Report of 1800 or at any other time during those years; and (3) the text of the Virginia Resolutions clearly indicates that each state was "duty bound" to maintain its constitutional liberties within its "respective" territory, and hence Madison did indeed contemplate action by a single state (rather than by all the states jointly), as supporters and opponents alike took him to be saying at the time.

"Nullification has a 'shameful history.'"

So we are instructed by the scholars who populate the Democratic Party of Idaho. Was it "shameful" for Jefferson and Madison to have employed the threat of nullification against the Alien and Sedition Acts of 1798? Was it "shameful" of the northern states to have employed the Principles of '98 against the unconstitutional searches and seizures by which the federal embargo of 1807-1809 was enforced? Was it "shameful" for Daniel Webster, as well as the legislature of Connecticut, to have urged the states to protect their citizens from overreaching federal authority should Washington attempt military conscription during the War of 1812? Was it "shameful" for the northern states to do everything in their power to obstruct the enforcement of the fugitive-slave laws (whose odious provisions they did not believe were automatically justified merely on account of the fugitive-slave clause)? Was it "shameful" when the Supreme Court of Wisconsin declared the Fugitive Slave Act of 1850 unconstitutional and void, citing the Kentucky Resolutions of 1798 and 1799 in the process?

May I take a wild guess that no Democrat in the Idaho legislature knows any of this history?

The "shameful history" remark is surely a reference to southern resistance to the civil rights movement, in which the language of nullification was indeed employed. The implication is that Jeffersonian decentralism is forever discredited because states have behaved in ways most Americans find grotesque. They *are* states, after all, so we

should not be shocked when their behavior offends us. But this is apples and oranges. This outcome was possible only at a time when blacks had difficulty exercising voting rights, a situation that no longer obtains. Things have changed since Birmingham 1963 in other ways as well. The demographic trends of the past three decades make that clear enough, as blacks have moved in substantial numbers *to* the South, the only section of the country where a majority of blacks polled say they are treated fairly. It is an injustice to the people of the South, as well as an exercise in emotional hypochondria, to believe the states are on the verge of restoring segregation if only given the chance. I mean, really.

By exactly the same reasoning, incidentally, any crime by any national government anywhere would immediately justify a *world* government. Anyone living under that world government who then favored decentralization would be solemnly lectured about all the awful things that had happened under decentralism in the past.

Supporters of nullification do not hold that the federal government is bad but the state governments are infallible. The state governments are rotten, too (which is why we may as well put them to *some* good use by employing them on behalf of resistance to the federal government). We are asking under what conditions liberty is more likely to flourish: with a multiplicity of competing jurisdictions, or one giant jurisdiction? There is a strong argument to be made that it was precisely the *decentralization* of power in Europe that made possible the development of liberty there.

This objection – why, an institutional structure was once put to objectionable purposes, so it may never be appealed to again – never seems to be directed against centralized government itself, particularly the megastates of the nationalistic twentieth century. I rather doubt nullification critics would turn this argument against themselves – by saying, for instance, "Centralized governments gave us hundreds of millions of deaths, thanks to total war, genocide, and totalitarian revolutions. In the U.S. we can point to the incarceration of hundreds of thousands of Japanese and a horrendously murderous military-industrial-congressional complex, among other enormities. Our federal government is so remote from the people that it has managed to rack up debts (including unfunded liabilities) well in excess of $100 trillion. In light of this record, what intellectual and moral pygmy would urge nationalism or the centralized modern state as the solution to our problems?"

"Nullification would be chaotic."

It is far more likely that states will be too timid to employ nullification. But the more significant point is this: if the various states should have different policies, *so what*? That is precisely what the United States was supposed to look like. As usual, alleged supporters of "diversity" are the ones who most insist on national uniformity. It says quite a bit about what people are learning in school that they are terrified at the prospect that their country might actually be organized the way Americans were originally assured it would be. Local self-government was what the American Revolution was

fought over, yet we're told this very principle, and the defense mechanisms necessary to preserve it, are unthinkable.

Part of the reason the idea of nullification elicits such a visceral response from establishment opinion is that most people have unthinkingly absorbed the logic of the modern state, whereby a single, irresistible authority issuing infallible commands is the only way society can be organized. Most people do not subject their unstated assumptions to close scrutiny, particularly since the more deeply embedded the assumption, the less people are aware it exists. And it is this modern assumption, dating back to Thomas Hobbes, that – whether people realize it or not – lies at the root of nearly everyone's political thought. Not only is this assumption false, but (as I discuss in the book) the modern state to which it gave rise has been the most irresponsible and even lethal institution in history, racking up debts and carrying out atrocities that the decentralized polities that preceded them could scarcely have imagined. Why it should be given the moral benefit of the doubt, to the point that all skeptics are to be viciously denounced, is unclear.

"The compact theory may apply to the first 13 states, but since all the other states were created by the federal government, we cannot describe these later states as building blocks of the Union in the same sense."

The Idaho attorney general's office tried making this argument against the Idaho health-care nullification bill. Superficially plausible, the argument amounts to a gross misunderstanding of the American system. Were the Idaho attorney general correct, American states would not be states at all but provinces.

The argument of the Idaho attorney general's office, in fact, amounts to precisely the Old World view of the nature of the state and the people that Americans fled Europe to escape. The *American* position has always been that an American state is created by the people, not the federal government. Jefferson himself amplified this point in the controversy over the admission of Missouri. The people of Missouri had drafted a constitution and were applying for admission to the Union. Were they not admitted, Jefferson told them, they would be an independent state. In other words, their statehood derived from their sovereign people and its drafting of a constitution, not the approval of the federal government.

"The Civil War settled this."

The Civil War was not fought over nullification, and as I've said above, at the time of the war it was the northern states that had much more recently been engaged in nullification. The legitimacy of nullification involves a philosophical argument, and philosophical arguments are not – at least to reasonable people – decided one way or the other by violence. No one would say, when confronted with the plight of the Plains Indians, "Didn't the U.S. Army settle that?" If the arguments for nullification make sense, and they do, that is what matters. Reality is what it is. The compact theory, from

which nullification is derived, does describe U.S. history. There is no way to evade that brute fact.

My primary intention in writing *Nullification* was to rescuscitate portions of American history which, having proven inconvenient to the regime in Washington, had slipped down the Orwellian memory hole. I wanted Americans to realize that illustrious figures from their country's past posed questions about the most desirable form of political organization – questions that today one is written out of polite society for asking. I wanted to make a case, backed by overwhelming historical evidence, that the inhumane system whereby a single city hands down infallible dictates to 309 million people is not a fated existence. Jefferson and others proposed an alternative, one we might wish to revisit in light of how obviously dysfunctional the present system has become. Before this information can be put to much immediate use there is a good deal of educational groundwork to be laid. I intended the book to be a first step along the road back to sanity.

Old-style, "small-is-beautiful" progressives would have sympathized with this view, as New Left historian William Appleman Williams did. The commissars of approved opinion who pass as "progressives" today cannot even take the trouble to understand it.

Afterword: The problem with Jefferson's position is not that it was too "extreme," but that if anything it was too timid. Should you want something more challenging still, read Lysander Spooner.

#2

Support Senate Bill 2309

Chris Stevens | Cell: 208-220-6401
402 6th Ave NE, Jamestown, ND 58401

The last election demonstrated that the American people do not want nationalized health care. One of the first things the new Congress did was repeal it. ND elected a new congressman who fulfilled a campaign promise by voting for repeal.

On Monday another federal district court judge agreed with 26 state-government plaintiffs, including ND, and ruled that the new national health care law is unconstitutional, and that the entire law must be voided.

The lawsuits and the fight to repeal this in Congress will likely last for years. Many have concluded that the best strategy is nullification on a state-by-state basis. With so much of our freedom and prosperity at stake it is highly advisable to pursue all three strategies.

Nullification refers to the process by which a state passes a law declaring certain federal laws to be null and void within that state based on the absence of constitutional authority for the federal government to pass such laws. Historian Thomas Woods has written an excellent history of state nullification of federal laws in his book, "Nullification: How to Resist Federal Tyranny in the 21st Century."

In recent years dozens of states, including ND, have introduced various nullification-type bills to stop Real ID, to affirm the Tenth Amendment, to reject federal firearms laws for guns manufactured, sold, and used intrastate (known as Firearms Freedom Acts), and to reject the federal mandate to buy healthcare insurance. With a couple dozen states taking a stand against various aspects of the Real ID Act, this federal program has been effectively stopped.

At least twelve states, including ND, have introduced bills *this year* similar to Senate Bill 2309, to nullify the entire new health care law.

These twelve bills would nullify the "Patient Protection and Affordable Care Act" and "Health Care and Education Reconciliation Act of 2010" because they were not authorized by the Constitution of the United States. Nearly all of these state bills have a provision for criminal penalties for federal and state agents who would try to enforce the federal mandate within that state.

Idaho estimates that nullification will save state taxpayers initially more than $228,000,000!

It's appalling that some would waste our time and taxpayer dollars implementing this unconstitutional federal mandate (HB 1125, 1126, 1127), another bureaucracy like those that have never worked and cannot succeed and will only further destroy our freedom and prosperity.

While it appears that we are on the way to having nullification bills introduced in 20 or more states within the next year, it is necessary to get as many as possible of the already-introduced bills passed. It's hard to predict the course of events in this situation, but it would be a healthy first step toward restoration of federalism, where states are asserting their Tenth Amendment powers as parties to the compact that created the federal government in the first place.

The states should rein in our out-of-control federal government by enforcing the Constitution through nullification of unconstitutional federal mandates!

#3

North Dakota Legislative Assembly
62nd Session, 2011

A BILL

TO AMEND ARTICLE XI, SECTION 16 OF THE NORTH DAKOTA CONSTITUTION BY CLARIFYING EXEMPTIONS FROM SERVICE IN THE RESERVE AND ACTIVE MILITIA.

Be it enacted by the 62nd Legislative Assembly of the State of North Dakota:

Article XI, Section 16 of the North Dakota Constitution is amended as follows:

Section 16. The reserve militia of this state consists of all able-bodied individuals eighteen years of age and older residing in the state, unless exempted by the laws of the United States or of this state that are fully compliant with the United States Constitution, as determined by the legislative assembly and governor of the state of North Dakota. The active militia is the national guard of this state and consists of individuals who volunteer and are accepted unless exempted by the laws of the United States or of this state that are fully compliant with the United States Constitution, as determined by the legislative assembly and governor of the state of North Dakota. An individual whose religious tenets or conscience scruples forbid that individual to bear arms may not be compelled to do so in times of peace, but that individual shall pay an equivalent for personal service.

...AND TO AMEND ARTICLE XI, SECTION 17 OF THE NORTH DAKOTA CONSTITUTION BY CLARIFYING THE REQUIREMENT THAT THE MILITIA SHALL BE ORGANIZED, UNIFORMED, ARMED AND DISCIPLINED IN SUCH A MANNER AS SHALL BE PROVIDED BY NORTH DAKOTA LAW, NOT INCOMPATIBLE WITH THE UNITED STATES CONSTITUTION OR SUCH LAWS OF THE UNITED STATES THAT ARE FULLY COMPLIANT WITH THE UNITED STATES CONSTITUTION, AS DETERMINED BY THE LEGISLATURE AND GOVERNOR OF THE STATE OF NORTH DAKOTA.

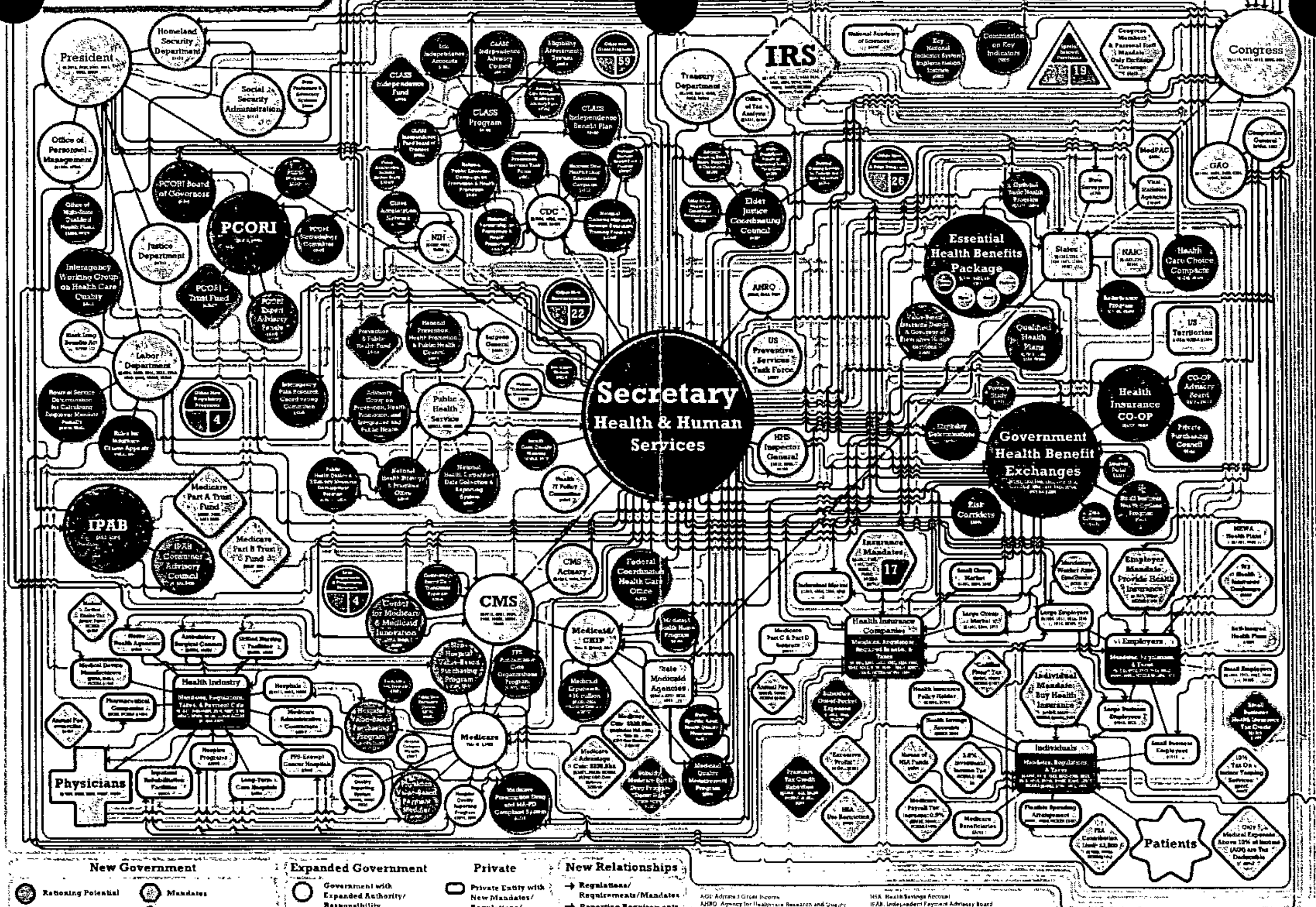
Be it enacted by the 62nd Legislative Assembly of the State of North Dakota:

Article XI, Section 17 of the North Dakota Constitution is amended as follows:

Section 17. The militia shall be enrolled, organized, uniformed, armed and disciplined in such a manner as shall be provided by North Dakota law, ~~not incompatible~~ and compatible with the United States Constitution or such laws of the United States that are fully compliant with the United States Constitution, as determined by the legislative assembly and governor of the state of North Dakota.

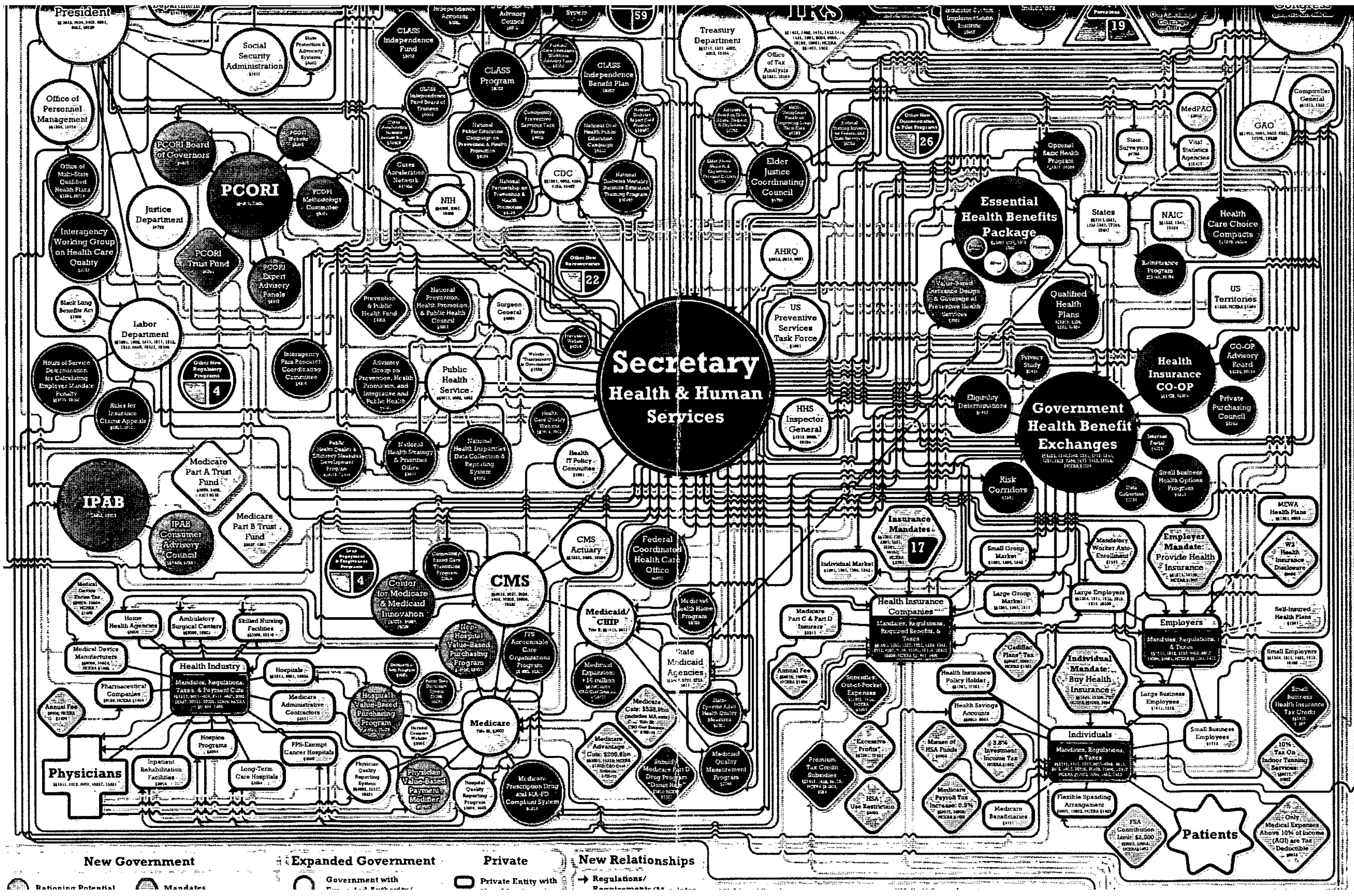
#4

...ur New Health Care System



Patient Protection & Affordable Care Act, P.L. 111-148;
Health Care & Education Reconciliation Act, P.L. 111-152

Prepared by: Joint Economic Committee, Republican Staff
Congressman Kevin Brady, Senior House Republican
Senator Sam Brownback, Ranking Member


President
Social Security Administration
State Protection & Advocacy Systems
Office of Personnel Management
Office of Multi-State Qualified Health Plans
PCORI Board of Governors
PCORI
PCORI Methodology Committee
PCORI Trust Fund
PCORI Expert Advisory Panels
Justice Department
Interagency Working Group on Health Care Quality
Black Lung Benefits Act
Labor Department
Hours of Service Determination for Calculating Employer Mandate Penalty
Rules for Insurance Claims Appeals
Other New Regulatory Programs
4
CLASS Independence Fund
CLASS Program
CLASS Independence Benefit Plan
CLASS Independence Fund Board of Trustees
Cures Acceleration Network
NIH
CDC
National Public Education Campaign on Prevention & Health Promotion
Community Preventive Services Task Force
National Oral Health Public Education Campaign
National Diabetes Mortality Statistics Education Training Program
Other New Bureaucracies
22
59
Prevention & Public Health Fund
National Prevention, Health Promotion, & Public Health Council
Surgeon General
Interagency Pain Research Coordinating Committee
Advisory Group on Prevention, Health Promotion, and Integrative and Public Health
Public Health Service
National Health Strategy & Priorities Office
National Health Disparities Data Collection & Reporting System
Health Care Quality Website
Health IT Policy Committee
Treasury Department
IRS
Office of Tax Analysis
Elder Justice Coordinating Council
Other New Demonstration & Pilot Programs
26
AHRQ
US Preventive Services Task Force
Secretary Health & Human Services
HHS Inspector General
Optional Basic Health Program
Essential Health Benefits Package
Value-Based Insurance Design & Coverage of Preventive Health Services
Qualified Health Plans
Privacy Study
Eligibility Determinations
Government Health Benefit Exchanges
Risk Corridors
Internet Portal
Small Business Health Options Program
Data Collection
States
State Surveyors
Vital Statistics Agencies
MedPAC
GAO
Comptroller General
NAIC
Health Care Choice Compacts
Reinsurance Program
US Territories
Health Insurance CO-OP
CO-OP Advisory Board
Private Purchasing Council
19
Congress
Medicare Part A Trust Fund
Medicare Part B Trust Fund
IPAB
IPAB Consumer Advisory Council
Center for Medicare & Medicaid Innovation
CMS
CMS Actuary
Federal Coordinated Health Care Office
Medicaid/CHIP
Medicaid Health Home Program
State Medicaid Agencies
Medicaid Expansion: $16 million
Medicare Cuts: $528.9bn
Medicare Advantage Cuts: $205.9bn
Subsidy Medicare Part D Drug Program "Donut Hole"
Medicaid Quality Measurement Program
State Specific Adult Health Quality Measures
Non-Hospital Value-Based Purchasing Program
FFS Accountable Care Organizations Program
Hospital Value-Based Purchasing Program
Medicare
Medicare Prescription Drug and MA-PD Complaint System
Physician Quality Reporting System
Physician Value-Based Payment Modifier
Hospital Quality Reporting Program
Medical Device Excise Tax
Home Health Agencies
Ambulatory Surgical Centers
Skilled Nursing Facilities
Medical Device Manufacturers
Health Industry
Mandates, Regulations, Taxes, & Payment Cuts
Pharmaceutical Companies
Hospitals
Medicare Administrative Contractors
Annual Fee
Hospice Programs
PPS-Exempt Cancer Hospitals
Inpatient Rehabilitation Facilities
Long-Term Care Hospitals
Physicians
Insurance Mandates
17
Individual Market
Small Group Market
Large Group Market
Health Insurance Companies
Mandates, Regulations, Required Benefits, & Taxes
Medicare Part C & Part D Insurers
Annual Fee
Subsidies: Out-of-Pocket Expenses
Premium Tax Credit Subsidies
Excessive Profits
HSA Use Restriction
Health Insurance Policy Holder
Health Savings Accounts
Manner of HSA Funds
3.8% Investment Income Tax
Medicare Payroll Tax Increase: 0.9%
Medicare Beneficiaries
Cadillac Plans Tax
Mandatory Worker Auto-Enrollment
Large Employers
Employer Mandate: Provide Health Insurance
MEWA Health Plans
W2 Health Insurance Disclosure
Self-Insured Health Plans
Employers
Mandates, Regulations, & Taxes
Small Employers
Individual Mandate: Buy Health Insurance
Large Business Employees
Small Business Employees
Small Business Health Insurance Tax Credit
Individuals
Mandates, Regulations, & Taxes
10% Tax On Indoor Tanning Services
Flexible Spending Arrangement
FSA Contribution Limit: $2,500
Patients
Only Medical Expenses Above 10% of Income (AGI) are Tax Deductible
New Government
Rationing Potential
Mandates
Expanded Government
Government with
Private
Private Entity with
New Relationships
Regulations/

#5

February 2, 2011
SB 2309
Testimony Notes
Sebastian Ertelt

Good morning Madam Chairman, Members of the Committee,

My name is Sebastian Ertelt. I am a mechanical engineer from Oriska, ND. I am here today representing myself and yet untold numbers of ND residents not present. I will be speaking in favor of SB 2309 seeking nullification of federal health care reform legislation passed last year.

Before I begin, let me disclose that I currently carry no health insurance policy. I also receive no benefits as a temporary employee, including paid time off, and I am therefore sacrificing this day's wages to be before you today. I only include this last statement to let you know of my sincerity and the importance of the bill before you.

While we do not know all of the objectionable aspects of this near 3,000 page monstrosity of a bill, there are already plenty we do know of to necessitate the action of nullification.

Among the objectionable aspects necessitating action, there is the individual insurance mandate, inevitable rationing of health care services, unjust fines and penalties, the funding of abortion, extreme cost, massive bureaucracy and the list goes on. On the matter of bureaucracy, I don't know how many people or how long it will take to decipher the implications of this massive bill. Have you ever seen such an explosion of bureaucracy? I will refer you here to the chart titled "Your New Health Care System", which only represents about one-third of the system. How can our representation in Washington, D.C. be serious about reducing the deficit when they pass legislation such as this?

On the matter of the individual mandate, you have undoubtedly heard of the recent rulings in federal court in both Virginia and Florida, holding the federal bill unconstitutional. While the focal point of those decisions has been the individual mandate, the primary issue to be considered today is the infringement on states' powers.

I would like to return your attention to Amendment X to the United States Constitution which states: The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

The federal government has not been delegated the authority to legislate health care. This power, therefore, is reserved to the states or to the people. If we need to "reform" health care in North Dakota, then let's do it at the state level. Let me also be clear here that this is not a partisan issue. State legislators of all parties should demand that power be restored to the states if we are to retain any semblance of this nation's government as first given to us.

Nullification is a means of appeal or redress to actions taken by the federal government that are outside its authority. North Dakota would not be acting alone in this manner. At least 10 other states are considering such legislation. We must draw a line in the sand and the time is now. We do not how long it may be before a ruling by the Supreme Court on the federal health care reform legislation and we cannot be guaranteed that they will even hear the case at all.

This method of redress has been used before. Having similar concerns over privacy and cost, the REAL ID Act was denounced by the North Dakota legislature's passage of a resolution. Along with resolutions and **binding laws** of 24 other states refusing to implement the unconstitutional REAL ID Act, it has been rendered virtually null and void. Let us continue this trend of reclaiming our powers.

While resolutions are not without merit, they may not be enough by themselves to discourage contrary action. Without a penalty provision as set forth in SB 2309, it would become little more than a resolution. The ND legislature passed a 10th Amendment Resolution last session asserting states' rights. Does it appear as though Congress took note? No, there must be provision for penalty. If SB 2309 becomes law in ND, state employees will be required to follow it just as they are required to follow all other state laws.

In closing, I pose these questions to you. How long will we continue to relinquish our sovereignty to the federal government? Are we willing to become no more than administrators of this federal government which is continually overstepping its bounds? Or will we uphold the United States Constitution? Madam Chairman, Members of the Committee, please do so today by entering a Do Pass recommendation on SB 2309.

Thank you for your time. I will take any questions you may have at this time.

Testimony 1

Testimony on SB 2309

House Industry, Business and Labor

2:30 p.m. March 21, 2011

Mr. Chairman and members of the committee, I am Margaret Sitte, Senator from District 35 in Bismarck.

As of today, 11 states have similar health care nullification legislation pending. Two – Idaho and Montana – have passed it. The bill as you have it is simple. It says the Patient Protection and Affordable Car Act and its enabling legislation are not authorized by the Constitution and violate the intent of the Constitution. In other words, the federal government cannot compel its citizens to purchase healthcare. The second point says the legislature shall consider enacting any measure necessary to prevent enforcement of the health care reform legislation within this state.

The idea for this bill arises from Thomas Jefferson and James Madison who stood together against the Alien and Sedition Acts, which made it a crime to criticize the President. These two great legal minds crafted the Kentucky and Virginia Resolutions that led to the overturning of these acts. Let me paraphrase their wording: The individual states composing the United States constituted the federal government for specific purposes and delegated to that government certain definite powers, each state reserving to itself the residuary mass of rights for its own self-government. Whenever the federal government assumes undelegated powers, its acts are unauthoritative, void, and of no force. When each state acceded to the Union joining the other states to form the United States, it agreed to this limited power of the federal government as enumerated in the Constitution and its Amendments. The government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself since that would have made its discretion, and not the Constitution, the measure of its powers. In all other cases of compact among powers having no common judge, each party has an equal right to judge infractions for itself, as well as the mode and measure of redress. The Tenth Amendment to the Constitution declares, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Now, therefore, be it resolved the act of Congress is altogether void, and of no force; and the power is reserved, and, of right, appertains solely and exclusively to the state.

That's the thought process used by Jefferson and Madison to rein in Congress when it first overstepped its bounds, and that's the process being used across the country once again.

We have all read about the court case in Florida where the federal judge ruled the health care bill to be unconstitutional. Here is some of what Judge Roger Vinson wrote in his ruling:

"It would be a radical departure from existing case law to hold that Congress can regulate inactivity under the Commerce Clause. If it has the power to compel an otherwise passive individual into a commercial transaction with a third party merely by asserting – as was done in the Act—that compelling the actual transaction is itself 'commercial and economic in nature, and substantially affects interstate commerce' [see Act 1501(a)(1)], it is not hyperbolizing to suggest that Congress could do almost anything it wanted. It is difficult to imagine that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America would have set out to create a government with the power to force people to buy tea in the first place. If Congress can penalize a passive individual for failing to engage in commerce, the enumeration of powers in the Constitution would have been in vain for it would be 'difficult to perceive any limitation on federal power' [Lopez, supra, 514 U.S. at 564], and we would have a Constitution in name only. Surely this is not what the Founding Fathers could have intended."

Congressman Phil Roe, M.D., from the first district in Tennessee recently provided five reasons for repealing the health care law:

1) it costs too much;
2) it includes $500 billion dollars in tax increases;
3) it includes Medicare cuts that are harmful to seniors;
4) it puts in jeopardy individuals' ability to choose their own health care plan; and
5) it uses taxpayer dollars to fund abortions.

In order to solve the medical liability crisis and lower costs, Republicans in Congress have offered a comprehensive medical liability reform proposal that offers the following:

1) cap on non-economic damages ($250,000)
2) proportional responsibility;
3) limits on attorney contingency fees;
4) limits on punitive damages; and
5) protection for states with existing functional medical liability laws.

According to the Congressional Budget Office, these reforms would reduce the federal budget deficit by $54 billion over 10 years.

In contrast, some estimates say that the current health care reform will cost North Dakota $10 billion to implement in the next 10 years. In addition, the most recent election testified to the public dissatisfaction with the federal health care plan. Let me leave you with the words of Thomas Jefferson: "The will of the people is the only legitimate foundation of any government, and to protect its free expression should be our first object." I urge you to support this bill and allow North Dakota to stand with other states against the federal health care mandate.

Attachment 1

Talking Points from Thomas Woods, 10th Amendment Center

A reading of the Constitution through the original understanding of the Founders and Ratifiers makes it quite clear

1. Like any legal document, the words of the Constitution mean today the same as they meant the moment it was ratified.

2. The power to regulate commerce among the several states was delegated to the Congress in Article I, Section 8, Clause 3 of the Constitution. As understood at the time of the founding, the regulation of commerce was meant to empower Congress to regulate the buying and selling of products made by others (and sometimes land), associated finance and financial instruments, and navigation and other carriage, across state jurisdictional lines. This power to regulate "commerce" does not include agriculture, manufacturing, mining, malum in se crime, or land use. Nor does it include activities that merely "substantially affect" commerce.

3. Article I, Section 8, Clause 1 of the Constitution, the "general welfare clause," is not a blank check that empowers the federal government to do anything it deems good. It is instead a general introduction explaining the exercise of the enumerated powers of Congress that are set forth in Article I, Section 8 of the Constitution of the United States. When James Madison was asked if this clause were a grant of power, he replied with "If not only the means but the objects are unlimited, the parchment [the Constitution] should be thrown into the fire at once." Thus, this clause is a limitation on the power of the federal government to act in the welfare of all when passing laws in pursuance of the powers delegated to the United States.

4. Article I, Section 8, Clause 18 of the Constitution, the "necessary and proper clause," is not a blank check that empowers the federal government to do anything it deems is necessary or proper. It is instead a limitation of power under the common-law doctrine of "principals and incidents," which allows the Congress to exercise incidental powers. Two main conditions are required for something to be incidental, and thus, "necessary and proper." The law or power exercised must be 1) directly applicable to the main, enumerated power (some would say that without it, the enumerated power would be impossible to exercise in current, common understanding), and 2) lesser than the main power.

5. The Commerce Clause, the General Welfare Clause and the Necessary and Proper Clause have not been amended.

What Is It?

State nullification is the idea that the states can and must refuse to enforce unconstitutional federal laws.

Attachment 1

Says Who?

Says Thomas Jefferson, among other distinguished Americans. His draft of the Kentucky Resolutions of 1798 first introduced the word "nullification" into American political life, and follow-up resolutions in 1799 employed Jefferson's formulation that "nullification...is the rightful remedy" when the federal government reaches beyond its constitutional powers. In the Virginia Resolutions of 1798, James Madison said the states were "duty bound to resist" when the federal government violated the Constitution.

But Jefferson didn't invent the idea. Federalist supporters of the Constitution at the Virginia ratifying convention of 1788 assured Virginians that they would be "exonerated" should the federal government attempt to impose "any supplementary condition" upon them – in other words, if it tried to exercise a power over and above the ones the states had delegated to it. Patrick Henry and later Jefferson himself elaborated on these safeguards that Virginians had been assured of at their ratifying convention.

What's the Argument for It?

Here's an extremely basic summary:

1) The states preceded the Union. The Declaration of Independence speaks of "free and independent states" that "have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do." The British acknowledged the independence not of a single blob, but of 13 states, which they proceeded to list one by one. Article II of the Articles of Confederation says the states "retain their sovereignty, freedom, and independence"; they must have enjoyed that sovereignty in the past in order for them to "retain" it in 1781 when the Articles were officially adopted. The ratification of the Constitution was accomplished not by a single, national vote, but by the individual ratifications of the various states, each assembled in convention.

2) In the American system no government is sovereign. The peoples of the states are the sovereigns. It is they who apportion powers between themselves, their state governments, and the federal government. In doing so they are not impairing their sovereignty in any way. To the contrary, they are exercising it.

3) Since the peoples of the states are the sovereigns, then when the federal government exercises a power of dubious constitutionality on a matter of great importance, it is they themselves who are the proper disputants, as they review whether their agent was intended to hold such a power. No other arrangement makes sense. No one asks his agent whether the agent has or should have such-and-such power. In other words, the very nature of sovereignty, and of the American system itself, is such that the sovereigns must retain the power to restrain the agent they themselves created. James Madison explains this clearly in the famous Virginia Report of 1800.

Attachment 1

Why Do We Need It?

As Jefferson warned, if the federal government is allowed to hold a monopoly on determining the extent of its own powers, we have no right to be surprised when it keeps discovering new ones. If the federal government has the exclusive right to judge the extent of its own powers, it will continue to grow – regardless of elections, the separation of powers, and other much-touted limits on government power. In his Report of 1800, Madison reminded Virginians and Americans at large that the judicial branch was not infallible, and that some remedy must be found for those cases in which all three branches of the federal government exceed their constitutional limits.

Isn't This Ancient History?

Two dozen American states nullified the REAL ID Act of 2005. More than a dozen states have successfully defied the federal government over medical marijuana. Nullification initiatives of all kinds, involving the recent health care legislation, cap and trade, and the Second Amendment are popping up everywhere.

What's more, we've tried everything else. Nothing seems able to stop Leviathan's relentless march. We need to have recourse to every mechanism of defense Thomas Jefferson bequeathed to us, not just the ones that won't offend Katie Couric or MSNBC.

Attachment 2

The Miami Herald
Posted on Mon, Jan. 31, 2011

Florida judge rules federal health care law unconstitutional

BY JANET ZINK
Herald/Times Tallahassee Bureau

Al Diaz / Miami Herald Staff

The emergency room filled with patients and medical personnel at Jackson Memorial Hospital.

TALLAHASSEE - U.S. District Judge Roger Vinson ruled Monday afternoon that the federal health care legislation is unconstitutional.

Vinson made the decision after hearing arguments in December in the case, which pits 26 states against the federal government.

Among other things the states, led by Florida, argue that the legislation passed by Congress in March and pushed by President Barack Obama is unconstitutional because it requires people to buy health care or pay a fine, a provision known as the ``individual mandate."

Vinson agreed.

``I must reluctantly conclude that Congress exceeded the bounds of its authority in passing the Act with the individual mandate," Vinson wrote in his 78-page ruling. ``Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void."

The case likely will be appealed to the U.S. Supreme Court.

In his opinion, Vinson said that everyone recognizes the nation's health care system needs reform, and that Congress has the power to do that.

``The principal dispute has been about how Congress chose to exercise that power here," he wrote. ``Congress must operate within the bounds established by the Constitution."

Former Florida Attorney General Bill McCollum filed the lawsuit in March, and current Attorney General Pam Bondi is carrying it forward.

``Today's ruling by Judge Vinson is an important victory for every person who believes in the freedoms granted to us by our Constitution," said Bondi in a statement. ``This proves that the federal government requiring Americans to purchase health insurance is in fact unconstitutional."

``In addition, the bipartisan effort from Attorneys General across the country shows the federal government that we will not back down from protecting the constitutional rights of our citizens," she added.

Florida Gov. Rick Scott, an outspoken opponent of the health care law he and Republicans call ``Obamacare," applauded Vinson's ruling.

``The judge has confirmed what many of us knew from the start: ObamaCare is an unprecedented and unconstitutional infringement on the liberty of the American people," he said in a prepared statement. ``Patients should have more control over health care decisions than a federal government that is spending money faster than it can be printed."

Sen. Marco Rubio, R-Fla., said the U.S. Senate should hold an up-or-down vote on the bill passed by the House this month to repeal the health care law.

``We cannot leave this decision in the hands of judges alone," Rubio said in a statement. ``The optimal outcome for Florida and the American people is to repeal the federal health care law and replace it with common sense reforms that will lower health care costs and get more Americans insured."

Florida Democratic Party Executive Director Scott Arceneaux criticized the judge's decision, saying he ``wrongly" interprets the Constitution.

``As several other judges around the country have ruled in similar challenges to the needed health care reforms passed by Congress last year, the Affordable Care Act falls well within Congress's power to regulate economic activity under the Commerce Clause, the Necessary and Proper Clause, and the General Welfare Clause," said Arceneaux. The National Federation of Independent Business, which joined the states in filing suit, said they were ``extremely pleased" with Vinson's decision.

Said NFIB/Florida executive directo Bill Herrle in a statement: ``NFIB joined this case to protect the rights of small-business owners to own, operate, and grow their businesses free from unconstitutional government intervention. The individual mandate gives the federal government entirely too much power."

Janet Zink can be reached at jzink@sptimes.com or (850) 224-7263.

Support Senate Bill 2309 Testimony 2

Chris Stevens | Cell: 208-220-6401
402 6th Ave NE, Jamestown, ND 58401

[redacted]Senate passed an amended (gutted) bill. It now essentially says, "We should consider enacting a measure to [redacted]what this originally did." Please amend it to restore the original bill and nullify ObamaCare in North Dakota.

The last election demonstrated that the American people do not want nationalized health care. One of the first things the new Congress did was repeal it. ND elected a new congressman who fulfilled a campaign promise by voting for repeal.

Another federal district court judge agreed with 26 state-government plaintiffs, including ND, and ruled that the new national health care law is unconstitutional, and that the entire law must be voided.

The lawsuits and the fight to repeal this in Congress will likely last for years. Many have concluded that the best strategy is nullification on a state-by-state basis. With so much of our freedom and prosperity at stake it is highly advisable to pursue all three strategies.

Nullification refers to the process by which a state passes a law declaring certain federal laws to be null and void within that state based on the absence of constitutional authority for the federal government to pass such laws. Historian Thomas Woods has written an excellent history of state nullification of federal laws in his book, "Nullification: How to Resist Federal Tyranny in the 21st Century."

In recent years dozens of states, including ND, have introduced various nullification-type bills and resolutions to stop Real ID, to affirm the Tenth Amendment, to reject federal firearms laws for guns manufactured, sold, [redacted]used intrastate (known as Firearms Freedom Acts), and to reject the federal mandate to buy healthcare [redacted]ance. With a couple dozen states taking a stand against various aspects of the Real ID Act, this federal [redacted]gram has been effectively stopped.

At least twelve states, including ND, have introduced bills *this year* similar to Senate Bill 2309, to nullify the entire new health care law.

These twelve bills would nullify the "Patient Protection and Affordable Care Act" and "Health Care and Education Reconciliation Act of 2010" because they were not authorized by the Constitution of the United States. Nearly all of these state bills have a provision for criminal penalties for federal and state agents who would try to enforce the federal mandate within that state.

Idaho estimates that nullification will save state taxpayers initially more than $228,000,000!

It's appalling that some would waste our time and taxpayer dollars implementing this unconstitutional federal mandate (HB 1125, 1126, 1127), another bureaucracy like those that have never worked and cannot succeed and will only further destroy our freedom and prosperity.

While it appears that we are on the way to having nullification bills introduced in 20 or more states within the next year, it is necessary to get as many as possible of the already-introduced bills passed. It's hard to predict the course of events in this situation, but it would be a healthy first step toward restoration of federalism, where states are asserting their Tenth Amendment powers as parties to the compact that created the federal government in the first place.

[redacted]e states should rein in our out-of-control federal government by enforcing the Constitution through nullification of unconstitutional federal mandates!

Testimony 3

11.0742.03006
Title.

Prepared by the Legislative Council staff for
Representative Kasper
March 21, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, line 2, after "legislation" insert "; to provide a penalty; and to declare an emergency"

Page 1, after line 3, insert :

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance coverage not required - Freedom to choose and provide medical services - Penalty.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer, under a plan sponsored by the state or federal government, or from any source, a person may not require the resident to obtain or maintain a policy of health coverage or penalize a resident for failure to obtain or maintain a policy of health coverage. This subsection does not apply to coverage that is required by a court or by the department of human services through a court or administrative proceeding.

2. Regardless of whether a resident of this state has or is eligible for health insurance coverage, a person may not take any action or inaction that would have the effect of:

   a. Preventing, attempting to prevent, interfering with, or withholding medical treatment from that resident if the prohibited act is based on a federal law, rule, or regulation that has not received specific statutory approval by the legislative assembly; or

   b. Preventing, attempting to prevent, or interfering with that resident's choice or selection of medical treatment provider if the prohibited act is based on a federal law, rule, or regulation that has not received specific statutory approval by the legislative assembly.

3. A person may not prevent, attempt to prevent, or interfere with a medical treatment provider's provision of medical treatment to a resident of this state if the prohibited act is based on a federal law, rule, or regulation that has not received specific statutory approval by the legislative assembly.

4. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

c. An individual who is required by a religious institution to obtain and maintain health insurance.

5. This section does not impair the right of an individual to contract privately for health insurance coverage for family members or former family members.

6. Violation of this section is a class B misdemeanor."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Page 1, after line 14, insert:

"**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

For Release: August 2, 2010
Contact: Brian J. Gottstein
Email: bgottstein@oag.state.va.us (best contact method)
Phone: 804-786-5874

Federal judge rules against feds' Motion to Dismiss Virginia health care lawsuit; suit will move forward

Richmond (August 2, 2010) – A federal judge ruled today that Virginia does indeed have standing to bring its lawsuit seeking to invalidate the federal Patient Protection and Affordable Care Act. The judge also ruled that Virginia had stated a legally sufficient claim in its complaint. In doing so, federal district court judge Henry E. Hudson denied the federal government's motion to dismiss the commonwealth's suit.

"We are pleased that Judge Hudson agreed that Virginia has the standing to move forward with our suit and that our complaint alleged a valid claim," said Attorney General Ken Cuccinelli. Cuccinelli and his legal team had their first opportunity in court on July 1, arguing that Virginia's lawsuit was a valid challenge of the federal health care act and that the court should not dismiss the case as the federal government had requested.

The U.S. Department of Justice argued that Virginia lacked the standing to bring a suit, that the suit is premature, and that the federal government had the power under the U.S. Constitution to mandate that citizens must be covered by government-approved health insurance or pay a monetary penalty.

In denying the motion to dismiss, Judge Hudson found that Virginia had alleged a legally recognized injury to its sovereignty, given the government's assertion that the federal law invalidates a Virginia law, the Health Care Freedom Act. In addressing the issue of Virginia's statute, the Court recognized that the "mere existence of the lawfully-enacted [Virginia] statute is sufficient to trigger the duty of the Attorney General of Virginia to defend the law and the associated sovereign power to enact it." He also found that even though the federal insurance mandate doesn't take effect until 2014, the case is "ripe" because a conflict of the laws is certain to occur.

"This lawsuit is not about health care, it's about our freedom and about standing up and calling on the federal government to follow the ultimate law of the land – the Constitution," Cuccinelli said. "The government cannot draft an unwilling citizen into commerce just so it can regulate him under the Commerce Clause."

The Court recognized that the federal health care law and its associated penalty were literally unprecedented. Specifically, the Court wrote that "[n]o reported case from any federal appellate court has extended the Commerce Clause or Tax Clause to include the regulation of a person's decision not to purchase a product, notwithstanding its effect on interstate commerce."

A summary judgment hearing is scheduled for October 18, 2010, at 9:00 a.m. to decide if the federal health care law is unconstitutional.

The case is *Commonwealth of Virginia v. Kathleen Sebelius* in the U.S. District Court for the Eastern District of Virginia, in Richmond.

Link to ruling:

http://www.vaag.com/PRESS_RELEASES/index.html

Link to the attorney general's previous health care lawsuit news releases and briefs:

http://www.vaag.com/PRESS_RELEASES/index.html

The Volokh Conspiracy

Thoughts on the Federal District Court Ruling Refusing to Dismiss the Virginia Health Care Lawsuit

Ilya Somin • August 2, 2010 1:09 pm

Federal District Judge Henry Hudson's opinion refusing to dismiss Virginia's lawsuit challenging the constitutionality of the Obama health care plan has several interesting aspects. The suit focuses primarily on a challenge to the "individual mandate" element of the plan, which requires most American citizens and legal residents to purchase a government-approved health insurance plan by 2014 or pay a fine for nocompliance. Here are a few of the most important points covered in the opinion.

First, Hudson rejected the federal government's claim that Virginia did not have standing to challenge the mandate. Although states are generally not allowed standing to litigate the interests of their citizens, Hudson argues that Virginia has standing because the federal health care bill conflicts with a recently enacted Virginia state law, the Health Care Freedom Act. This, he argues, is enough to give Virginia standing, overcoming the sorts of federal government standing arguments that I discussed in this post. This argument may have negative implications for the other major lawsuit against Obamacare, filed by 20 states and the National Federation of Independent Business. Most of those states do not have state laws comparable to the Health Care Freedom Act. NFIB, however, has individual members who are subject to it, such as self-employed businessmen. In addition, the other states could try to establish standing by relying on the broad theories of state standing endorsed by the Supreme Court in *Massachusetts v. EPA*. Hudson also rejects the federal government's argument that the lawsuit isn't "ripe" for adjudication because the individual mandate will not come into effect until 2014. He

points out that the new federal law will force both individuals and the state government to make adjustments to their health insurance plans even before that.

Second, Hudson agrees with co-blogger Randy Barnett that the individual mandate isn't clearly covered by existing Supreme Court precedent under either the Commerce Clause or federal government's power to tax. He argues that this provision "literally forges new ground and extends Commerce Clause powers beyond its current high watermark." He takes the same view of the government's Tax Clause argument:

> While this case raises a host of complex constitutional issues, all seem to distill to the single question of whether or not Congress has the power to regulate — and tax — an individual's decision not to participate in interstate commerce. Neither the US Supreme Court nor and federal circuit court of appeals has squarely addressed this issue. No reported case from any federal appellate court has extended the Commerce Clause or Tax Clause to include the regulation of a person's decision not to purchase a product...

I previously criticized the Commerce Clause and Tax Clause rationales for the individual mandate here.

Judge Hudson's decision does not decide the case in Virginia's favor. It merely denies the federal government's motion to dismiss the suit on the grounds that the state's arguments are too weak to justify a full-scale consideration of the merits. It is also possible that Hudson will ultimately decide the case in the federal government's favor. Moreover, any decision made by the district court will surely be appealed to the Fourth Circuit Court of Appeals and ultimately the Supreme Court.

Nonetheless, Hudson's ruling is a victory for Virginia and others who contend that the individual mandate is unconstitutional. It also makes it more difficult to argue that the state lawsuits against the mandate are merely political grandstanding with no basis in serious legal argument.

Categories: Federalism, Health Care

397 Comments

1. ***Mark Field* says:**

   Henry Hudson? Really?

   Quote

   August 2, 2010, 1:30 pm

2. ***Hans* says:**

   Well put.

   But I have one minor quibble. How could the Fourth Circuit overturn it? Denials of motions to dismiss aren't appealable.

   (You wrote, "Even this ruling could potentially be overruled by the Fourth Circuit Court of Appeals (though I consider that unlikely").

   As I've noted earlier, I think the individual mandate is unconstitutional.

Federal Judge In Virginia Rules Parts Of Obamacare Are Unconstitutional

Rob Port • **December 13, 2010**
Share |

That per breaking news from CNN. No links yet. I'll update with more information as it becomes available.

This is the first ruling against the health care law, coming from Judge Henry Hudson, appointed by George W. Bush in 2002.

Update: The full text of the ruling is below. A key excerpt pertaining to the insurance mandate:

> Article I Section 8 of the Constitution confers upon Congress only discreet enumerated governmental powers. The powers not delegated to the United States by the Constitution, no prohibited by it to the States, are reserved to the states respectively, or to the people.
>
> On careful review, this Court must conclude that Section 1501 of the Patient Protection and Affordable Care Act – specifically the Minimum Essential Coverage provision – exceeds the constitutional boundaries of congressional power.

In other words, it is illegal for Congress to order you to buy health insurance. Note, though, that the ruling does not invalidate the entire Obamacare law. Rather, it only invalidates the portions it finds unconstitutional leaving the rest in place.

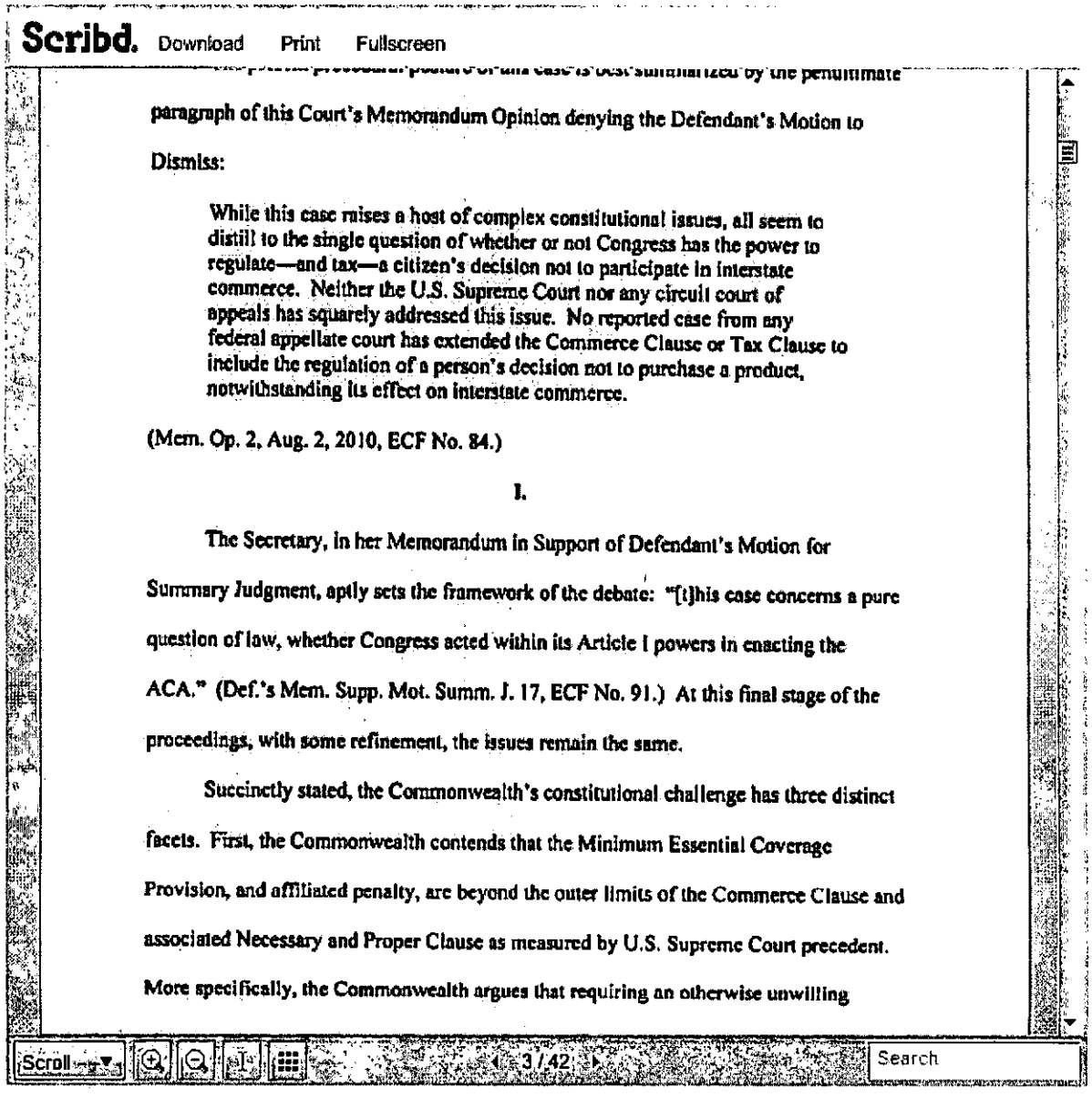
Update: "Without the individual mandate, the entire structure of reform would fail," said Obama healthcare guru Jonathan Gruber. Given that, the entire bill should be undone by

Congress given that the mandate is unconstitutional…though I expect the Obama administration will appeal this all the way to the Supreme Court.

Update: Per the ruling below, the Court will allow the "problematic portions" to be severed away from the law "while leaving the remainder intact." This means that Obamacare is not being overturned, just parts of it most notably the insurance mandate.

Update: Remember that two other federal judges have upheld the Obamacare law as constitutional. This will undoubtedly have to be settled by the Supreme Court.

Commonwealth of Virginia v. Sibelius et al



Tags: obamacare

Judge Vinson. Florida

(5) Injunction

The last issue to be resolved is the plaintiffs' request for injunctive relief enjoining implementation of the Act, which can be disposed of very quickly.

Injunctive relief is an "extraordinary" [Weinberger v. Romero-Barcelo, 456 U.S. 305, 312, 102 S. Ct. 1798, 72 L. Ed. 2d 91 (1982)], and "drastic" remedy [Aaron v. S.E.C., 446 U.S. 680, 703, 100 S. Ct. 1945, 64 L. Ed. 2d 611 (1980) (Burger, J., concurring)]. It is even more so when the party to be enjoined is the federal government, for there is a long-standing presumption "that officials of the Executive Branch will adhere to the law as declared by the court. As a result, the declaratory judgment is the functional equivalent of an injunction." See Comm. on Judiciary of U.S. House of Representatives v. Miers, 542 F.3d 909, 911 (D.C. Cir. 2008); accord Sanchez-Espinoza v. Reagan, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) ("declaratory judgment is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as an injunction . . . since it must be presumed that federal officers will adhere to the law as declared by the court") (Scalia, J.) (emphasis added).

There is no reason to conclude that this presumption should not apply here. Thus, the award of declaratory relief is adequate and separate injunctive relief is not necessary.

CONCLUSION

The existing problems in our national health care system are recognized by everyone in this case. There is widespread sentiment for positive improvements that will reduce costs, improve the quality of care, and expand availability in a way that the nation can afford. This is obviously a very difficult task. Regardless of how laudable its attempts may have been to accomplish these goals in passing the Act, Congress must operate within the bounds established by the Constitution. Again, this case is not about whether the Act is wise or unwise legislation. It is about the

Constitutional role of the federal government.

For the reasons stated, I must reluctantly conclude that Congress exceeded the bounds of its authority in passing the Act with the individual mandate. That is not to say, of course, that Congress is without power to address the problems and inequities in our health care system. The health care market is more than one sixth of the national economy, and without doubt Congress has the power to reform and regulate this market. That has not been disputed in this case. The principal dispute has been about how Congress chose to exercise that power here.[30]

Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void. This has been a difficult decision to reach, and I am aware that it will have indeterminable implications. At a time when there is virtually unanimous agreement that health care reform is needed in this country, it is hard to invalidate and strike down a statute titled "The Patient Protection and Affordable Care Act." As Judge Luttig wrote for an en banc Fourth Circuit in

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[30] On this point, it should be emphasized that while the individual mandate was clearly "necessary and essential" to the Act as drafted, it is not "necessary and essential" to health care reform in general. It is undisputed that there are various other (Constitutional) ways to accomplish what Congress wanted to do. Indeed, I note that in 2008, then-Senator Obama supported a health care reform proposal that did not include an individual mandate because he was at that time strongly opposed to the idea, stating that "if a mandate was the solution, we can try that to solve homelessness by mandating everybody to buy a house." See Interview on CNN's American Morning, Feb. 5, 2008, transcript available at: http://transcripts.cnn.com/TRANSCRIPTS/0802/05/ltm.02.html. In fact, he pointed to the similar individual mandate in Massachusetts --- which was imposed under the state's police power, a power the federal government does not have --- and opined that the mandate there left some residents "worse off" than they had been before. See Christopher Lee, Simple Question Defines Complex Health Debate, Washington Post, Feb. 24, 2008, at A10 (quoting Senator Obama as saying: "In some cases, there are people [in Massachusetts] who are paying fines and still can't afford [health insurance], so now they're worse off than they were . . . They don't have health insurance, and they're paying a fine . . .").

striking down the "Violence Against Women Act" (before the case was appealed and the Supreme Court did the same):

> No less for judges than for politicians is the temptation to affirm any statute so decorously titled. We live in a time when the lines between law and politics have been purposefully blurred to serve the ends of the latter. And, when we, as courts, have not participated in this most perniciously machiavellian of enterprises ourselves, we have acquiesced in it by others, allowing opinions of law to be dismissed as but pronouncements of personal agreement or disagreement. The judicial decision making contemplated by the Constitution, however, unlike at least the politics of the moment, emphatically is not a function of labels. If it were, the Supreme Court assuredly would not have struck down the "Gun-Free School Zones Act," the "Religious Freedom Restoration Act," the "Civil Rights Act of 1871," or the "Civil Rights Act of 1875." And if it ever becomes such, we will have ceased to be a society of law, and all the codification of freedom in the world will be to little avail.

Brzonkala, supra, 169 F.3d at 889.

In closing, I will simply observe, once again, that my conclusion in this case is based on an application of the Commerce Clause law as it exists pursuant to the Supreme Court's current interpretation and definition. Only the Supreme Court (or a Constitutional amendment) can expand that.

For all the reasons stated above and pursuant to Rule 56 of the Federal Rules of Civil Procedure, the plaintiffs' motion for summary judgment (doc. 80) is hereby GRANTED as to its request for declaratory relief on Count I of the Second Amended Complaint, and DENIED as to its request for injunctive relief; and the defendants' motion for summary judgment (doc. 82) is hereby GRANTED on Count IV of the Second Amended Complaint. The respective cross-motions are each DENIED.

In accordance with Rule 57 of the Federal Rules of Civil Procedure and Title

28, United States Code, Section 2201(a), a Declaratory Judgment shall be entered separately, declaring "The Patient Protection and Affordable Care Act" unconstitutional.

DONE and ORDERED this 31st day of January, 2011.

/s/ Roger Vinson
ROGER VINSON
Senior United States District Judge

Kasper, Jim M.

From: Jim Kasper [jmkasper@amg-nd.com]
Sent: Thursday, January 13, 2011 11:51 PM
To: Kasper, Jim M.
Subject: FW: ALEC: Health Care Freedom Act Wins Big in OK, AZ

From: Kasper, Jim M. [mailto:jkasper@nd.gov]
Sent: Wednesday, November 10, 2010 6:20 PM
To: jmkasper@amg-nd.com
Subject: FW: ALEC: Health Care Freedom Act Wins Big in OK, AZ

From: Monica Mastracco [mmastracco@alec.org]
Sent: Wednesday, November 03, 2010 12:34 PM
Subject: ALEC: Health Care Freedom Act Wins Big in OK, AZ

Dear Sponsors and Friends of ALEC's *Freedom of Choice in Health Care Act*:

Among the many historic election results from last night, it's important to note that two of three *Freedom of Choice in Health Care Act* ballot measures were resoundingly approved by the voters.

Congratulations go to the great ALEC legislators in Oklahoma who brought ALEC's *Freedom of Choice in Health Care Act* (State Question 756) to a decisive 65-35 victory last night.

Congratulations are also in order for ALEC Senator-Elect Nancy Barto, Eric Novack, the Goldwater Institute, and other ALEC friends for bringing Proposition 106 to an amazing 55-45 win.

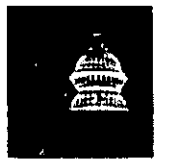
And of course, big thanks go to Colorado's Independence Institute for their hard-fought efforts with Amendment 63. Currently, with 88% of precincts reporting, the vote for Amendment 63 is 53% No; 47% Yes. This outcome is even more impressive considering Colorado's current political landscape, and the fact that the "Yes on 63" campaign was vastly outspent by labor unions and other left-leaning groups.

It's been a great year for health care freedom. 42 states have either introduced or announced ALEC's *Freedom of Choice in Health Care Act*. Six states (Virginia, Idaho, Arizona, Georgia, Louisiana, Missouri) passed the ALEC model as a statute, and two states (Arizona and Oklahoma) passed the model as a constitutional amendment. An active citizen initiative is also underway in Mississippi.

Because the federal individual mandate doesn't take effect until 2014, I urge you to continue the fight by filing ALEC's *Freedom of Choice in Health Care Act* in the 2011 session.

ALEC's *Freedom of Choice in Health Care Act* will continue to be an essential state legislative tool in fighting the federal requirement to purchase health insurance as prescribed in the *Patient Protection and Affordable Care Act*. If enacted as a statute, ALEC's *Freedom of Choice in Health Care Act* can provide standing to a state in current litigation against the federal individual mandate; will allow a state to launch additional, 10th Amendment-based litigation if the current lawsuits fail; and can empower an attorney general to litigate on behalf of individuals harmed by the mandate when it takes effect in 2014.

Most importantly, if passed as a constitutional amendment, ALEC's *Freedom of Choice in Health Care Act* will ensure—even if the federal individual mandate is found to be unconstitutional—that Massachusetts-style, state-level requirements to purchase health insurance are prohibited.



Tennessee Passes Health Care Freedom Act

March 13, 2011

 Written by: Lesley Swann

On Monday, the Tennessee Health Care Freedom Act cleared its last hurdle in the Tennessee General Assembly. The House voted 70 to 27 to pass the legislation following on the heels of the Senate passage of SB0079 on February 23. This bill provides vital protections to Tennesseans who choose not to comply with the Patient Protection and Affordable Care Act passed by Congress last year. The Tennessee Health Care Freedom Act states:

It is declared that the public policy of this state, consistent with our constitutionally recognized and inalienable right of liberty, is that every person within this state is and shall be free to choose or to decline to choose any mode of securing health care services without penalty or threat of penalty.

It is declared that the public policy of this state, consistent with our constitutionally recognized and inalienable right of liberty, is that every person within this state has the right to purchase health insurance or to refuse to purchase health insurance. The government may not interfere with a citizen's right to purchase health insurance or with a citizen's right to refuse to purchase health insurance. The government may not enact a law that would restrict these rights or that would impose a form of punishment for exercising either of these rights. Any law to the contrary shall be void ab initio.

The bill will be heading to Governor Bill Haslam's desk shortly.

It is crucial that we contact the governor's office to express our support for this bill. We are about to cross the finish line for the Tennessee Health Care Freedom Act, but we still need one last push to bring this victory to fruition here in Tennessee.

Gov. Bill Haslam
Phone: (615) 741-2001
E-Mail: bill.haslam@tn.gov

.....

CLICK HERE to view the Tenth Amendment Center's Health Care Freedom Act legislative tracking page

The Tenth Amendment Center has released the **Federal Health Care Nullification Act**, which directly nullifies the "Patient Protection and Affordable Care Act" on a state level. Click here to learn more about the bill. **CLICK HERE** to track the Nullification Act in states around the country.

Lesley Swann is the state coordinator for the Tennessee Tenth Amendment Center and founder of the East Tennessee 10th Amendment Group. She is a native of Anderson County, Tennessee.

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THE TENTHER GRAPEVINE: THE

THE HILL

Maine gets first state waiver from healthcare law provision

By Julian Pecquet - 03/08/11 04:26 PM ET

Maine health insurers are getting a temporary waiver from the health reform law's requirement that they spend at least 80 percent of premiums on care, federal regulators decided Tuesday.

Maine is the first state to get a waiver. Three other states — New Hampshire, Nevada and Kentucky — have pending waiver applications.

The law requires plans in the individual market to meet an 80 percent medical loss ratio threshold or offer rebates to enrollees for the difference. The Maine Bureau of Insurance in December asked to retain its existing 65 percent ratio, arguing that a higher ratio would disrupt its market.

The Department of Health and Human Services agreed with those arguments in a **letter** sent Tuesday to Superintendent of Insurance Mila Kofman, a supporter of the law. The waiver is good for three years, but the last year is conditional on getting 2012 data that shows a continued need for the waiver.

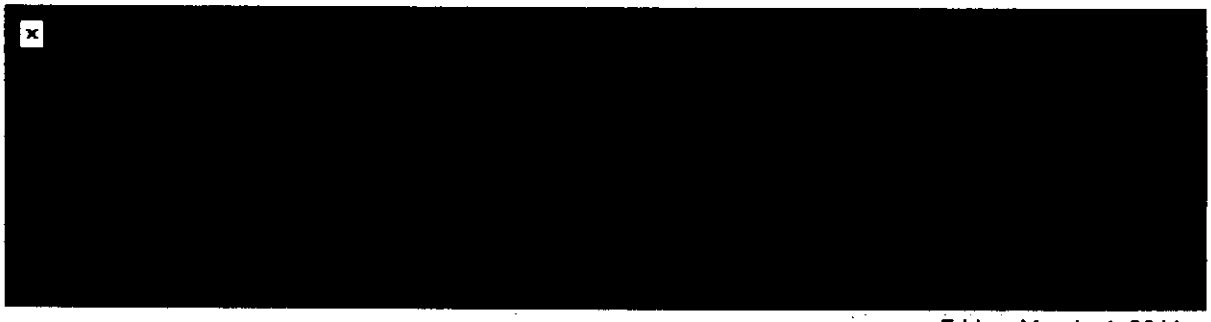
The decision is "rooted in the particular circumstances of the Maine insurance market," the letter reads.

Specifically, HHS points out that three insurers make up the bulk of Maine's individual insurance market: Anthem Blue Cross Blue Shield of Maine (49 percent), MEGA Life and Health Insurance Company (37 percent) and HPHC Insurance Company (13 percent). MEGA had told Maine during preliminary discussions that it "would probably need to withdraw from this market if the minimum loss ratio requirement were increased."

OVER 1000 WAIVERS

Kasper, Jim M.

From: Grace-Marie Turner [galen=galen.org@mcsv8.net] on behalf of Grace-Marie Turner [galen@galen.org]
Sent: Friday, March 04, 2011 12:35 PM
To: Kasper, Jim M.
Subject: What Judge Vinson Really Said -- Health Policy Matters



Friday, March, 4, 2011

What Judge Vinson Really Said

By Grace-Marie Turner

U.S. District Judge Rodger Vinson is a no-nonsense judge who clearly is annoyed with the Obama administration for ignoring his Jan. 31 decision saying it must halt implementation of ObamaCare after he declared the law unconstitutional.

The story about his latest decision yesterday is being widely misreported in the major media as a victory for the administration. *The Washington Post* wrote for example, "Judge clears way for implementation of health-law in states that are challenging it."

In fact, in a master stroke of jujitsu, Judge Vinson leapfrogged over the administration and said he was going to interpret the administration's request for him to "clarify" his ruling as a request for a temporary stay of his order. And he gave the administration seven days to appeal his ruling or stop all action to implement the law.

The judge said his Jan. 31 ruling was "plain and unambiguous" in its intent to bar the administration from moving forward with the law.

If the administration didn't think it could comply, it should have immediately filed a motion for a stay rather than choosing to "effectively ignore the order" for two and a half weeks "and only then file a belated motion to clarify," Judge Vinson said.

In his January decision, he ruled that the administration itself had said the individual mandate was central to the functioning of the whole law, and he "reluctantly" concluded that "Congress exceeded the bounds of its authority ... Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void."

In This Issue

Commentary by Grace-Marie Turner

Clip of the Week

Featured Articles

GALEN IN THE NEWS

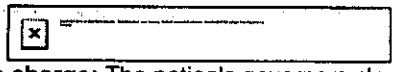
He said in January his decision was "the functional equivalent of an injunction" that would bar the administration from proceeding with implementing the law.

But the administration simply ignored him, causing significant confusion among the states.

"The sooner this issue is finally decided by the Supreme Court, the better off the entire nation will be," Vinson wrote in his latest ruling yesterday. "And yet, it has been more than one month from the entry of my order and judgment and still the defendants have not filed their notice of appeal." (We can only speculate that the administration wants to drag its feet as long as possible in order to sink its regulatory roots as deeply as possible into our health sector and economy.)

In order to avoid a further delay, the judge interpreted the administration's request for "clarification" as a request for a stay, which he granted for just seven days. If the government fails to file an appeal to his ruling, then all work to implement the law must stop.

Judge Vinson's latest 20-page decision provides a concise summary of his longer 78-page January ruling and is worth your time.



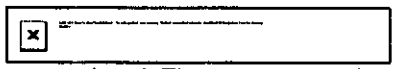
States are in charge: The nation's governors clearly showed who is in charge this week, as they flexed their muscle with the administration over Medicaid spending and implementation of the law. The White House needs them to begin setting up the infrastructure for the health overhaul, and the governors are pushing back in many, many ways.

President Obama's offer to give them "flexibility" to implement the law is nothing but rhetoric, but, once again, it was misreported in the media as telling the states that they could go their own way and not implement ObamaCare.

Nothing could be further from the truth! After the president met with the governors, his chief advisors got on a conference call with supporters and assured them that the "flexibility" the president gave them simply means the states could set up a government-controlled health system, including single-payer, sooner.

The states would have to meet all of the law's impossible tests of providing comprehensive coverage, making it "at least as affordable as it would have been through the exchanges," and provide coverage to just as many people, without adding to the deficit.

The administration won't be able to meet those goals with ObamaCare and there is no way the states could, either. So it is nothing more than an empty speech.



Congress charges ahead: There were a number of important developments on Capitol Hill this week:

- The Senate Finance Committee and House Energy & Commerce Committee released a study showing that

HEALTH REFORM

- ObamaCare in the Supreme Court
- Regulation hampers the very medical innovations we need
- Has ObamaCare's Chief Cabinet Member Even Read This Law?
- ObamaCare: Reducing Costs, Care On The Back End
- Solutions for the Ten Structural Flaws of ObamaCare

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- Fix competitive bidding, don't kill it
- Sustainability of Medicaid: Action Steps for Governors to Achieve Meaningful Reform
- Medicaid Expansion in the New Health Law: Costs to the States
- Estimating ObamaCare's Effect on State Medicaid Expenditure Growth: A Study of Five Most Populous U.S. States
- How States Can Survive the Medicaid Crisis
- Let states guide Medicaid reform

STATE ISSUES

- As Goes Massachusetts, So Goes the Nation? How Reform Is Impacting Health Care in the Bay State
- The Massachusetts Health-Reform Mess
- When Governors Say No to Federal Crack

PRESCRIPTION DRUGS

- Competitiveness and Regulation: The FDA And The Future of America's Biomedical Industry

Events

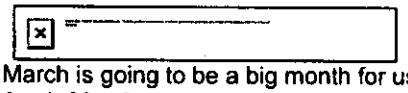
Living Well at the End of Life
National Journal Policy Summit Series
Tuesday, March 8, 2011
8:00am - 10:30am
Washington, DC

states face at least $118 billion in additional costs to comply with ObamaCare. The governors made it clear that there is simply no possible way they can afford that.

- The House Energy and Commerce Oversight Subcommittee released testimony by the Government Accountability Office showing that Medicare loses almost 10 percent of its spending, or $48 billion a year, to waste and fraud. That is an astonishing amount of money that no private company would possibly tolerate. So whenever someone tells you that Medicare's administrative costs are lower than private companies (which they aren't, by the way, when you count all costs), point out this reckless loss of taxpayer dollars.

- The House passed legislation introduced by Rep. Dan Lungren to repeal the despised 1099 provision in ObamaCare. Seventy-six Democrats joined in an overwhelming vote of 314 to112 to pass the measure. But it's different from the Senate-passed provision so the two sides will have to come to a compromise if this is going to be repealed for good in this Congress. Congrats to Rep. Lungren for leading the charge.

- And three governors testified before the House Energy & Commerce Committee, with Mississippi Gov. Haley Barbour and Utah Gov. Gary Herbert outlining in detail the challenges their states face with Medicaid spending and implementing ObamaCare.



Order now! March is going to be a big month for us with the release, on March 22, of our new book *Why ObamaCare Is Wrong for America* (HarperCollins). It will be in bookstores across the country, but you can pre-order your copy now at Amazon.com. I promise that you will find the book to be an invaluable resource as the debate continues to unfold.

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Electronic Health Records: The Impact at Home and Abroad
George Washington University Event
Tuesday, March 8, 2011
12:00pm - 1:30pm
Washington, DC

The Welfare State After the Crisis
Stockholm Network Event
Wednesday, March 9, 2011
London, England

Health Care Cost Summit
AHIP Conference
Wednesday, March 9, 2011
Washington, DC

The Budgetary Impact of Federal Health Care Reform
Pioneer Institute Hewitt Health Care Lecture
Wednesday, March 9, 2011
5:30pm - 8:00pm
Washington, DC

ObamaCare and the Challenges to Catholic Conscience
St. John Church Event
Friday, March 11, 2011
8:15pm
McLean, VA

Innovation in Healthcare: Perspectives on Access, Delivery and Development
University of California Haas School of Business Conference
Saturday, March 12, 2011
Berkeley, CA

The Innovation Revolution: How Genetic Testing is Improving Health & the Economy
The Hill Policy Briefing Breakfast
Thursday, March 17, 2011
7:45am - 9:45am
Washington, DC
For more information, contact events@thehill.com.

ObamaCare Anniversary Video Contest
Independent Women's Voice Contest
Deadline is March 19, 2011

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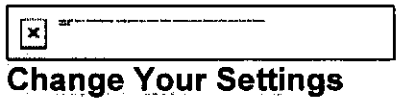

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Washington Whispers

By Paul Bedard

Healthcare Reform Law Requires New IRS Army Of 1,054

By PAUL BEDARD
Posted: February 15, 2011

The Internal Revenue Service says it will need an battalion of 1,054 new auditors and staffers and new facilities at a cost to taxpayers of more than $359 million in fiscal 2012 just to watch over the initial implementation of President Obama's healthcare reforms. Among the new corps will be 81 workers assigned to make sure tanning salons pay a new 10 percent excise tax. Their cost: $11.5 million.

[See a slide show of 10 ways the GOP can take down Obamacare.]

"The ACA [Affordable Care Act] will require additional resources to build new IT systems; modify existing tax processing systems; provide taxpayer outreach and assistance services; make enhancements to notices, collections, and case management systems to address and resolve taxpayer issues timely and accurately; and conduct focused examinations to encourage compliance," said the newly released IRS budget.

[See a slide show of 10 things that are, and aren't, in the healthcare law.]

In its request, the IRS explained that the tax changes associated with health reform are huge. "Implementation of the Affordable Care Act of 2010 presents a major challenge to the IRS. ACA represents the largest set of tax law changes in more than 20 years, with more than 40 provisions that amend the tax laws."

[redacted]said: The requests are just the beginning, since the new healthcare program is evolving and won't be fully implemented until about 2014.

The detailed IRS budget documents spell out exactly what most of the new workforce will be doing. For example, some 81 will be tasked just to handle the tax reporting of 25,000 tanning salons. They face a new 10 percent excise tax on indoor tanning services. Another 76 will be assigned to make sure businesses engaged in making and imported drugs pay their new fee which is expected to deliver $2.8 billion to the Treasury in 2012 and 2013. The new healthcare corps will also require new facilities and computers.

[See editorial cartoons about the healthcare law.]

The document gives the GOP a bright target to hit if they plan to make good on promises to defund the president's healthcare plan.

Wyoming Sen. John Barrasso, who's become a point man in the budget battle, told Whispers, "The president's irresponsible budget empowers the IRS to begin to audit Americans' healthcare. As the IRS says, Obamacare represents the largest set of tax changes in more than 20 years. Adding hundreds of new jobs and millions of dollars to the IRS isn't going to make care better or more available for anyone. I will continue to fight to repeal and replace Obamacare with patient centered reforms that help the private sector—not the IRS—create more jobs."

The Treasury Department, which oversees the IRS said: "The Affordable Care Act includes important tax credits that help small businesses provide health insurance for their employees and partially cover the cost of health insurance for Americans who do not have access to affordable coverage, and Treasury's Budget includes funding for the IRS to administer these tax provisions. The vast majority of this funding will be used to develop information technology systems and other support to implement the law and help taxpayers claim these important credits."

[redacted]IRS document also noted that other tax law changes related to the stimulus require more workers, estimated at about 215 new employees.

[See photos of healthcare reform protests.]

It's not all tough news for taxpayers. The IRS regularly pays for its enforcement team and more when they collect taxes that companies and individuals try to skip out on. According to the budget documents, the IRS plans to get a big return on investment worth about $279 million by fiscal 2014.

- *Check out our editorial cartoons on healthcare.*
- *See a slide show of 10 ways the GOP can take down Obamacare.*
- *See the 10 best cities in which to look for a job.*

Updated on 2/15/11

More Washington Whispers posts

Waivers from ObamaCare

Obama backs giving states leeway on health care

By Richard Wolf and David Jackson, USA TODAY Updated 3d 12h ago | 89 | 5 Share

Reprints & Permissions

WASHINGTON — President Obama's willingness to let states design their own health care systems while meeting key federal goals as early as 2014 represents a challenge to Republican governors and lawmakers opposed to the federal law.

Obama's endorsement of legislation Monday that would give states such freedom three years earlier than the 2010 law allows was panned by Republicans more interested in repealing the entire law or getting the U.S. Supreme Court to declare it unconstitutional.

On the other hand, the president's move was applauded by lawmakers in Vermont who want to go even further than the federal law, which is designed to cover 32 million more Americans with health insurance. The law will expand Medicaid and create a system of health exchanges, or marketplaces, in which insurers compete for customers.

Pool photo by Ron Sachs

President Obama said he would accept changes to health care.

THE OVAL: What else Obama told governors
INTERACTIVE: Road to health care legislation

"The president's embracing this proposal is good 'put up or shut up' politics," says Robert Laszewski, a private health care consultant. "He is challenging all of these Republican governors who have control of both houses of their legislatures to put a better idea on the table and show the country why it's better."

The law is being phased in, with the major provisions starting by 2014. States could not opt out entirely. Key requirements would remain, such as those prohibiting insurers from canceling coverage because of pre-existing conditions.

States can ask Washington for a waiver from other provisions, such as the law's mandate that all individuals get insurance — but they would have to cover as many people, provide the same level of benefits and not raise the federal deficit.

"A state may not like the way the (federal law) is providing that coverage and could argue that other ways would be more appropriate, but they still have to come up with a way to do those three things," says Laura Tobler of the National Conference of State Legislatures.

In his address to the governors, Obama quipped that many are not in the health law's "fan club." But he urged them to work together to put it into practice and offered faster state flexibility as an olive branch. Obama also has agreed to two other, less sweeping

By Charles Dharapak, AP

Louisiana's GOP Gov. Bobby Jindal, left, talks with Vermont Gov. Peter Shumlin, a Democrat, on Monday at the White House.

changes, including one that would ease tax reporting rules for small business.

"If your state can create a plan that covers as many people as affordably and comprehensively as the Affordable Care Act does — without increasing the deficit — you can implement that plan, and we'll work with you to do it," he said.

Most Republican governors have backed lawsuits that would declare the law unconstitutional. While lower court rulings have been split so far, cases in Florida and Virginia backed by GOP governors have won early rounds.

Alaska Gov. Sean Parnell told the Associated Press recently that he wants to avoid federal money and mandates "that create federal dependency and control."

Sen. John Barrasso, R-Wyo., criticized Obama's comments Monday and said states need more freedom. "States do not want and cannot afford to live with health plans that match Obamacare's burdensome requirements," he said.

Rep. Peter Welch, D-Vt., a sponsor of legislation that would allow states to opt out in 2014, said it would give states greater rights, an idea Republicans traditionally favor. Vermont is moving toward a single-payer system in which most residents get health care coverage from the government.

"At the end of the day, even if the Republicans repeal, they'd have to replace," Welch said. "So this is an option for them to have their states participate."

News from The Oval

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10:41 AM Obama aide: Economic policies creating conditions for job creation

8:37 AM Obama gets good jobs numbers

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Opinion

Examiner Editorial: Obamacare is even worse than critics thought

Examiner Editorial
September 22, 2010

Much more has been revealed about Obamacare since President Obama, Harry Reid and Nancy Pelosi pushed the bill on Americans six months ago. (J. Scott Applewhite/AP file)

Six months ago, President Obama, Senate Majority Leader Harry Reid and House Speaker Nancy Pelosi rammed Obamacare down the throats of an unwilling American public. Half a year removed from the unprecedented legislative chicanery and backroom dealing that characterized the bill's passage, we know much more about the bill than we did then. A few of the revelations:

» Obamacare won't decrease health care costs for the government. According to Medicare's actuary, it will increase costs. The same is likely to happen for privately funded health care.

» As written, Obamacare covers elective abortions, contrary to Obama's promise that it wouldn't. This means that tax dollars will be used to pay for a procedure millions of Americans across the political spectrum view as immoral. Supposedly, the Department of Health and Human Services will bar abortion coverage with new regulations but these will likely be tied up for years in litigation, and in the end may not survive the court challenge.

» Obamacare won't allow employees or most small businesses to keep the coverage they have and like. By Obama's estimates, as many as 69 percent of employees, 80 percent of small businesses, and 64 percent of large businesses will be forced to change coverage, probably to more expensive plans.

» Obamacare will increase insurance premiums -- in some places, it already has. Insurers, suddenly forced to cover clients' children until age 26, have little choice but to raise premiums, and they attribute to Obamacare's mandates a 1 to 9 percent increase. Obama's only method of preventing massive rate increases so far has been to threaten insurers.

» Obamacare will force seasonal employers -- especially the ski and amusement park industries -- to pay huge fines, cut hours, or lay off employees.

» Obamacare forces states to guarantee not only payment but also treatment for indigent Medicaid patients. With many doctors now refusing to take Medicaid (because they lose money doing so), cash-

strapped states could be sued and ordered to increase reimbursement rates beyond their means.

» Obamacare imposes a huge nonmedical tax compliance burden on small business. It will require them to mail IRS 1099 tax forms to every vendor from whom they make purchases of more than $600 in a year, with duplicate forms going to the Internal Revenue Service. Like so much else in the 2,500-page bill, our senators and representatives were apparently unaware of this when they passed the measure.

» Obamacare allows the IRS to confiscate part or all of your tax refund if you do not purchase a qualified insurance plan. The bill funds 16,000 new IRS agents to make sure Americans stay in line.

If you wonder why so many American voters are angry, and no longer give Obama the benefit of the doubt on a variety of issues, you need look no further than Obamacare, whose birthday gift to America might just be a GOP congressional majority.

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The Fact Checker

The Truth Behind The Rhetoric by Glenn Kessler

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ABOUT THE FACT CHECKER

In an award-winning journalism career spanning nearly three decades, Glenn Kessler has covered foreign policy, economic policy, the White House, Congress, politics, airline safety and Wall Street. He was The Washington Post's chief State Department reporter for nine years, traveling around the world with three different Secretaries of State. Before that, he covered tax and budget policy for The Washington Post and also served as the newspaper's national business editor. More »

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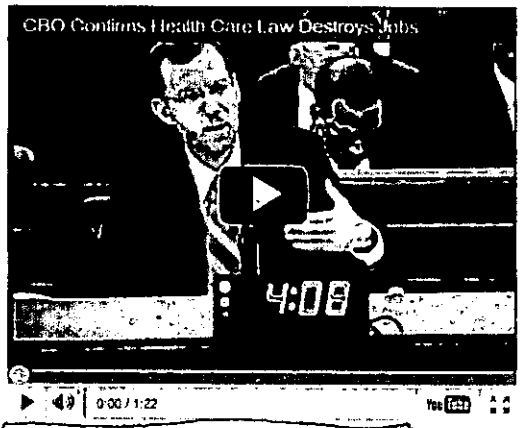
Posted at 3:00 PM ET, 02/11/2011

Playing games with CBO testimony on jobs and the health-care law

By Glenn Kessler



CBO Confirms Health Care Law Destroys Jobs
–headline over a House Budget Committee posting on You Tube

A long and rather dry discussion of nation's budget outlook at the House Budget Committee has exploded with a frenzy of politics after a brief exchange, highlighted in the video clip above, between Rep. John Campbell (R-Calif.) and Congressional Budget Office director Douglas W. Elmendorf. The CBO last August had estimated that the new health care law over the next decade would reduce the number of overall workers in the United States by one-half of one percent, and Campbell got Elmendorf to utter the words "800,000."

CAMPBELL: *"That means that, in your estimation, the health care law would reduce employment by 800,000 in '20-'21. Is that correct?"*

ELMENDORF: *"Yes. The way I would put it is that we do estimate, as you said, that the household employment will be about 160 million by the end of the decade. Half a percent of that is 800,000. That means that if the reduction in the labor used was workers working the average number of hours in the economy and earning the average wage, that there would be a reduction of 800,000 workers."*

House Republicans have spent weeks criticizing the CBO and its estimate that repealing the health care law would increase the deficit. But somehow this estimate–reached with the same assumptions the CBO has used before–met their approval.

Within hours, conservative publications such as the Weekly Standard and the National Review had posted commentaries lauding Elmendorf's statement. "Job Killing," declared the National Review. The National Republican Congressional Committee made it a campaign theme, sending out an email on Friday attacking Democrats: "Jay Inslee Doesn't Get It: ObamaCare Will Cost 800,000 Jobs: Washington Democrat Refuses to Repeal the Law the CBO Admits Will Destroy Jobs." The Washington Post's conservative blogger Jennifer Rubin approvingly linked to the youtube video.

So what's the truth? Did Elmendorf really say the new health care law

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FEATURED ITEM

The Battle over the Health Care Bill

GOP and Dems play games with CBO figures. Read on, weigh in »

would "destroy" jobs?

The Facts

Note that Elmendorf never said the words that the GOP has attributed to him, such as "destroy" or "kill." He used the phrase "reduction of labor." It doesn't quite roll off the tongue like "destroy" -- and it does not mean the same thing.

The CBO first discussed this issue, briefly, in a budget analysis last August. Boiled down to plain English, the CBO is essentially saying that some people who are now in the work force because they need health insurance would decide to stop working because the health care law guaranteed they would have access to health care.

Think of someone who is 63, a couple of years before retirement, who is still in a job only because they are waiting to get on Medicare when they turn 65. Or a single mother with children who is only working to make sure her kids have health insurance.

Now some might argue that despite these heartwarming stories, the overall impact of the health law on employment is bad because it would be encouraging people -- some 800,000 -- not to work. Moreover, the argument could go, this would hurt the nation's budget because 800,000 fewer people will pay taxes on their earnings. That's certainly an intellectually solid argument -- though others might counter that universal health care is worth a minimal reduction in overall employment -- but it's not at all the same as saying these jobs would be "destroyed."

We asked a spokesman for the House Budget Committee for a response, but have not heard one. If we get one, we will add it at the end.

The Pinocchio Test

This is the kind of political gamesmanship that gives politics a bad name. The House GOP has taken a a sliver of a phrase and twisted it beyond all meaning. Elmendorf never said 800,000 jobs would be destroyed, and he certainly did not mean to suggest that. Given that Republicans have routinely faulted the CBO for its estimates and assumptions on the health care bill, they should be ashamed of immediately embracing this particular aspect of the CBO's analysis.

Three Pinocchios

(About our rating scale).

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By Glenn Kessler | February 11, 2011; 3:00 PM ET
Categories: 3 Pinocchios, Economy, Health

Previous: Michele Bachmann's fuzzy tax math at CPAC
Next: Romney's haunting job loss claims at CPAC

Comments

It is also likely that any jobs lost through attrition this way would reduce the unemployment rolls with a similar number of replacement workers. I think the CBO should clarify their comments.

Posted by: Rudesan | February 11, 2011 4:16 PM | Report abuse

The Republicans are real bone heads on this one. Any idiot knows that fewer people working is not the same as fewer jobs available.

U.S. Constitution: Tenth Amendment

Effect of Provision on Federal Powers

Federal Taxing Power.--Not until after the Civil War was the idea that the reserved powers of the States comprise an independent qualification of otherwise constitutional acts of the Federal Government actually applied to nullify, in part, an act of Congress. This result was first reached in a tax case--Collector v. Day. 9 Holding that a national income tax, in itself valid, could not be constitutionally levied upon the official salaries of state officers, Justice Nelson made the sweeping statement that "the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the States." 10 In 1939, Collector v. Day was expressly overruled. 11 Nevertheless, the problem of reconciling state and national interest still confronts the Court occasionally, and was elaborately considered in New York v. United States, 12 where, by a vote of six-to-two, the Court upheld the right of the United States to tax the sale of mineral waters taken from property owned by a State. Speaking for four members of the Court, Chief Justice Stone justified the tax on the ground that "[t]he national taxing power would be unduly curtailed if the State, by extending its activities, could withdraw from it subjects of taxation traditionally within it." 13 Justices Frankfurter and Rutledge found in the Tenth Amendment "no restriction upon Congress to include the States in levying a tax exacted equally from private persons upon the same subject matter." 14 Justices Douglas and Black dissented, saying: "If the power of the federal government to tax the States is conceded, the reserved power of the States guaranteed by the Tenth Amendment does not give them the independence which they have always been assumed to have." 15

Federal Police Power.--A year before Collector v. Day was decided, the Court held invalid, except as applied in the District of Columbia and other areas over which Congress has exclusive authority, a federal statute penalizing the sale of dangerous illuminating oils. 16 The Court did not refer to the Tenth Amendment. Instead, it asserted that the "express grant of power to regulate commerce among the States has always been understood as limited by its terms; and as a virtual denial of any power to interfere with the internal trade and business of the separate States; except, indeed, as a necessary and proper means for carrying into execution some other power expressly granted or vested." 17 Similarly, in the Employers' Liability Cases, 18 an act of Congress making every carrier engaged in interstate commerce liable to "any" employee, including those whose activities related solely to intrastate activities, for injuries caused by negligence, was held unconstitutional by a closely divided Court, without explicit reliance on the Tenth Amendment. Not until it was confronted with the Child Labor Law, which prohibited the transportation in interstate commerce of goods produced in establishments in which child labor was employed, did the Court hold that the state police power was an obstacle to adoption of a measure which operated directly and immediately upon interstate commerce. In Hammer v. Dagenhart, 19 five members of the Court found in the Tenth Amendment a mandate to nullify this law as an unwarranted invasion of the reserved powers of the States. This decision was expressly overruled in United States v. Darby. 20

During the twenty years following Hammer v. Dagenhart, a variety of measures designed to regulate economic activities, directly or indirectly, were held void on similar grounds. Excise taxes on the profits of factories in which child labor was employed, 21 on the sale of grain futures on markets which failed to comply with federal regulations, 22 on the sale of coal produced by nonmembers of a coal code established as a part of a federal regulatory scheme, 23 and a tax on the processing of agricultural products, the proceeds of which were paid to farmers who complied with production limitations imposed by the Federal Government, 24 were all found to invade the reserved powers of the States. In Schechter Corp. v. United States, 25 the Court, after holding that the commerce power did not extend to local sales of poultry, cited the Tenth Amendment to refute the argument that the existence of an economic emergency justified the exercise of what Chief Justice Hughes called "extraconstitutional authority." 26

In 1941, the Court came full circle in its exposition of this Amendment. Having returned four years earlier to the position of John Marshall when it sustained the Social Security Act 27 and National Labor Relations Act, 28 it explicitly restated Marshall's thesis in upholding the Fair Labor Standards Act in United States v. Darby. 29 Speaking for a unanimous Court, Chief Justice Stone wrote: "The power of Congress over interstate commerce

'is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.' . . . That power can neither be enlarged nor diminished by the exercise or non-exercise of state power. . . . It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attended the exercise of the police power of the states. . . . Our conclusion is unaffected by the Tenth Amendment which . . . states but a truism that all is retained which has not been surrendered." 30

But even prior to 1937 not all measures taken to promote objectives which had traditionally been regarded as the responsibilities of the States had been held invalid. In Hamilton v. Kentucky Distilleries Co., 31 a unanimous Court, speaking by Justice Brandeis, upheld "War Prohibition," saying: "That the United States lacks the police power, and that this was reserved to the States by the Tenth Amendment, is true. But it is nonetheless true that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the exercise by a State of its police power." 32 And in a series of cases, which today seem irreconcilable with Hammer v. Dagenhart, it sustained federal laws penalizing the interstate transportation of lottery tickets, 33 of women for immoral purposes, 34 of stolen automobiles, 35 and of tick- infected cattle, 36 as well as a statute prohibiting the mailing of obscene matter. 37 It affirmed the power of Congress to punish the forgery of bills of lading purporting to cover interstate shipments of merchandise, 38 to subject prison-made goods moved from one State to another to the laws of the receiving State, 39 to regulate prescriptions for the medicinal use of liquor as an appropriate measure for the enforcement of the Eighteenth Amendment, 40 and to control extortionate means of collecting and attempting to collect payments on loans, even when all aspects of the credit transaction took place within one State's boundaries. 41 More recently, the Court upheld provisions of federal surface mining law that could be characterized as "land use regulation" traditionally subject to state police power regulation. 42

Notwithstanding these federal inroads into powers otherwise reserved to the States, the Court has held that Congress could not itself undertake to punish a violation of state law; in United States v. Constantine, 43 a grossly disproportionate excise tax imposed on retail liquor dealers carrying on business in violation of local law was held unconstitutional. More recently, the Court struck down a statute prohibiting possession of a gun at or near a school, rejecting an argument that possession of firearms in school zones can be punished under the Commerce Clause because it impairs the functioning of the national economy. Acceptance of this rationale, the Court said, would eliminate "a[ny] distinction between what is truly national and what is truly local," would convert Congress' commerce power into "a general police power of the sort retained by the States," and would undermine the "first principle" that the Federal Government is one of enumerated and limited powers. Supp.1 However, Congress does not contravene reserved state police powers when it levies an occupation tax on all persons engaged in the business of accepting wagers regardless of whether those persons are violating state law, and imposes severe penalties for failure to register and pay the tax. 44

Federal Regulations Affecting State Activities and Instrumentalities .--Since the mid-1970s, the Court has been closely divided over whether the Tenth Amendment or related constitutional doctrine constrains congressional authority to subject state activities and instrumentalities to generally applicable requirements enacted pursuant to the commerce power. 45 Under Garcia v. San Antonio Metropolitan Transit Authority, 46 the Court's most recent ruling directly on point, the Tenth Amendment imposes practically no judicially enforceable limit on generally applicable federal legislation, and states must look to the political process for redress. Garcia, however, like National League of Cities v. Usery, 47 the case it overruled, was a 5-4 decision, and there are recent indications that the Court may be ready to resurrect some form of Tenth Amendment constraint on Congress.

In National League of Cities v. Usery, the Court conceded that the legislation under attack, which regulated the wages and hours of certain state and local governmental employees, was "undoubtedly within the scope of the Commerce Clause," 48 but it cautioned that "there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner." 49 The Court approached but did not reach the conclusion that the Tenth Amendment was the prohibition here, not that it directly interdicted federal power because power which is delegated is not reserved, but that it implicitly embodied a policy against impairing the States' integrity or ability to function. 50 But, in the end, the Court held that the legislation was invalid, not because it violated a prohibition found in the Tenth Amendment or elsewhere, but because the law was "not within the authority granted Congress." 51 In subsequent cases applying or distinguishing National League of Cities, the Court and dissenters wrote as if the Tenth Amendment was the prohibition. 52 Whatever the source of the constraint, it was held not to limit the exercise of power under the Reconstruction Amendments. 53

The Court overruled National League of Cities in Garcia v. San Antonio Metropolitan Transit Auth. 54 Justice Blackmun's opinion for the Court in Garcia concluded that the National League of Cities test for "integral operations in areas of traditional governmental functions" had proven "both impractical and doctrinally barren," and that the Court in 1976 had "tried to repair what did not need repair." 55 With only passing reference to the Tenth Amendment the Court nonetheless clearly reverted to the Madisonian view of the Amendment reflected in Unites States v. Darby. 56 States retain a significant amount of sovereign authority "only to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government." 57 The principal restraints on congressional exercise of the Commerce power are to be found not in the Tenth Amendment or in the Commerce Clause itself, but in the structure of the Federal Government and in the political processes. 58 "Freestanding conceptions of state sovereignty" such as

the National League of Cities test subvert the federal system by "invit[ing] an unelected federal judiciary to make decisions about which state policies it favors and which ones it dislikes." 59 While continuing to recognize that "Congress' authority under the Commerce Clause must reflect [the] position . . . that the States occupy a special and specific position in our constitutional system," the Court held that application of Fair Labor Standards Act minimum wage and overtime provisions to state employment does not require identification of these "affirmative limits." 60 In sum, the Court in Garcia seems to have said that most but not necessarily all disputes over the effects on state sovereignty of federal commerce power legislation are to be considered political questions. What it would take for legislation to so threaten the "special and specific position" that states occupy in the constitutional system as to require judicial rather than political resolution was not delineated.

The first indication was that it would take a very unusual case indeed. In South Carolina v. Baker the Court expansively interpreted Garcia as meaning that there must be an allegation of "some extraordinary defects in the national political process" before the Court will apply substantive judicial review standards to claims that Congress has regulated state activities in violation of the Tenth Amendment. 61 A claim that Congress acted on incomplete information would not suffice, the Court noting that South Carolina had "not even alleged that it was deprived of any right to participate in the national political process or that it was singled out in a way that left it politically isolated and powerless." 62 Thus, the general rule was that "limits on Congress' authority to regulate state activities . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." 63

Later indications are that the Court may be looking for ways to back off from Garcia. One device is to apply a "clear statement" rule requiring unambiguous statement of congressional intent to displace state authority. After noting the serious constitutional issues that would be raised by interpreting the Age Discrimination in Employment Act to apply to appointed state judges, the Court in Gregory v. Ashcroft 64 explained that, because Garcia "constrained" consideration of "the limits that the state-federal balance places on Congress' powers," a plain statement rule was all the more necessary. "[I]nasmuch as this Court in Garcia has left primarily to the political process the protection of the States against intrusive exercises of Congress' Commerce Clause powers, we must be absolutely certain that Congress intended such an exercise."

The Court's 1992 decision in New York v. United States, 65 may portend a more direct retreat from Garcia. The holding in New York, that Congress may not "commandeer" state regulatory processes by ordering states to enact or administer a federal regulatory program, applied a limitation on congressional power previously recognized in dictum 66 and in no way inconsistent with the holding in Garcia. Language in the opinion, however, sounds more reminiscent of National League of Cities than of Garcia. First, the Court's opinion by Justice O'Connor declares that it makes no difference whether federalism constraints derive from limitations inherent in the Tenth Amendment, or instead from the absence of power delegated to Congress under Article I; "the Tenth Amendment thus directs us to determine . . . whether an incident of state sovereignty is protected by a limitation on an Article I power." 67 Second, the Court, without reference to Garcia, thoroughly repudiated Garcia's "structural" approach requiring states to look primarily to the political processes for protection. In rejecting arguments that New York's sovereignty could not have been infringed because its representatives had participated in developing the compromise legislation and had consented to its enactment, the Court declared that "[t]he Constitution does not protect the sovereignty of States for the benefit of the States or State governments, [but instead] for the protection of individuals." Consequently, "State officials cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution." 68 The stage appears to be set, therefore, for some relaxation of Garcia's obstacles to federalism-based challenges to legislation enacted pursuant to the commerce power.

Footnotes

[Footnote 9] 78 U.S. (11 Wall.) 113 (1871).

[Footnote 10] Id. at 124.

[Footnote 11] Graves v. New York ex rel. O'Keefe, 306 U.S 466 (1939). The Internal Revenue Service is authorized to sue a state auditor personally and recover from him an amount equal to the accrued salaries which, after having been served with notice of levy, he paid to state employees delinquent in their federal income tax. Sims v. United States, 359 U.S. 108 (1959).

[Footnote 12] 326 U.S. 572 (1946).

[Footnote 13] Id. at 589.

[Footnote 14] Id. at 584.

[Footnote 15] Id. at 595. Most recently, the issue was canvassed, but inconclusively, in Massachusetts v. United States, 435 U.S. 444 (1978).

[Footnote 16] United States v. Dewitt, 76 U.S. (9 Wall.) 41 (1870).*

[Footnote 17] Id. at 44.

[Footnote 18] 207 U.S. 463 (1908). See also Keller v. United States, 213 U.S. 138 (1909).

[Footnote 19] 247 U.S. 251 (1918).

[Footnote 20] 312 U.S. 100 (1941).

[Footnote 21] Child Labor Tax Case, 259 U.S. 20, 26 , 38 (1922).

[Footnote 22] Hill v. Wallace, 259 U.S. 44 (1922). See also Trusler v. Crooks, 269 U.S. 475 (1926).

[Footnote 23] Carter v. Carter Coal Co., 298 U.S. 238 (1936).

[Footnote 24] United States v. Butler, 297 U.S. 1 (1936).

[Footnote 25] 295 U.S. 495 (1935).

[Footnote 26] Id. at 529.

[Footnote 27] Steward Machine Co. v. Davis, 301 U.S. 548 (1937); Helvering v. Davis, 301 U.S. 619 (1937).

[Footnote 28] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

[Footnote 29] 312 U.S. 100 (1941). See also United States v. Carolene Products Co., 304 U.S. 144, 147 (1938); Case v. Bowles, 327 U.S. 92, 101 (1946).

[Footnote 30] 312 U.S. 100, 114 , 123, 124 (1941). See also Fernandez v. Wiener, 326 U.S. 340, 362 (1945).

[Footnote 31] 251 U.S. 146 (1919).

[Footnote 32] Id. at 156.

[Footnote 33] Lottery Case (Champion v. Ames), 188 U.S. 321 (1903).

[Footnote 34] Hoke v. United States, 227 U.S. 308 (1913).

[Footnote 35] Brooks v. United States, 267 U.S. 432 (1925).

[Footnote 36] Thornton v. United States, 271 U.S. 414 (1926).

[Footnote 37] Roth v. United States, 354 U.S. 476 (1957).

[Footnote 38] United States v. Ferger, 250 U.S. 199 (1919).

[Footnote 39] Kentucky Whip & Collar Co. v. Illinois C. R.R., 299 U.S. 334 (1937).

[Footnote 40] Everard's Breweries v. Day, 265 U.S. 545 (1924).

[Footnote 41] Perez v. United States, 402 U.S. 146 (1971).

[Footnote 42] Hodel v. Virginia Surface Mining & Recl. Ass'n, 452 U.S. 264 (1981).

[Footnote 43] 296 U.S. 287 (1935). The Civil Rights Act of 1875, which made it a crime for one person to deprive another of equal accommodations at inns, theaters or public conveyances was found to exceed the powers conferred on Congress by the Thirteenth and Fourteenth Amendments and hence to be an unlawful invasion of the powers reserved to the States by the Tenth Amendment. Civil Rights Cases, 109 U.S. 3, 15 (1883). Congress has now accomplished this end under its commerce powers, Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); Katzenbach v. McClung, 379 U.S. 294 (1964), but it is clear that the rationale of the Civil Rights Cases has been greatly modified if not severely impaired. Cf. Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968) (13th Amendment); Griffin v. Breckenridge, 403 U.S. 88 (1971) (13th Amendment); United States v. Guest, 383 U.S. 745 (1966) (14th Amendment).

[Footnote 1 (1996 Supplement)] United States v. Lopez, 115 S. Ct. 1624, 1633-34 (1995).

[Footnote 44] United States v. Kahriger, 345 U.S. 22, 25 -26 (1953); Lewis v. United States, 348 U.S. 419 (1955).

[Footnote 45] The matter is discussed more fully supra, pp.922-30.

[Footnote 46] 469 U.S. 528 (1985).

[Footnote 47] 426 U.S. 833 (1976).

[Footnote 48] Id. at 841.

[Footnote 49] Id. at 845.

[Footnote 50] Id. at 843.

[Footnote 51] Id. at 852.

[Footnote 52] E.g., FERC v. Mississippi, 456 U.S. 742, 771 (1982) (Justice Powell dissenting); id. at 775 (Justice O'Connor dissenting); EEOC v. Wyoming, 460 U.S. 226 (1983). The EEOC Court distinguished National League

of Cities, holding that application of the Age Discrimination in Employment Act to state fish and game wardens did not directly impair the state's ability to structure integral operations in areas of traditional governmental function, since the state remained free to assess each warden's fitness on an individualized basis and retire those found unfit for the job.

[Footnote 53] Fitzpatrick v. Bitzer, 427 U.S. 445 (1976); City of Rome v. United States, 446 U.S. 156 (1980); Fullilove v. Klutznick, 448 U.S. 448, 476 -78 (1980) (plurality opinion of Chief Justice Burger).

[Footnote 54] 469 U.S. 528 (1985). The issue was again decided by a 5 to 4 vote, Justice Blackmun's qualified acceptance of the National League of Cities approach having changed to complete rejection.

[Footnote 55] Id. at 557.

[Footnote 56] 312 U.S. 100, 124 (1941), supra p.1509; Madison's views were quoted by the Court in Garcia, 469 U.S. at 549 .

[Footnote 57] 469 U.S. at 549 .

[Footnote 58] "Apart from the limitation on federal authority inherent in the delegated nature of Congress' Article I powers, the principal means chosen by the Framers to ensure the role of the States in the federal system lies in the structure of the Federal Government itself." 469 U.S. at 550 . The Court cited the role of states in selecting the President, and the equal representation of states in the Senate. Id. at 551.

[Footnote 59] 469 U.S. at 550 , 546.

[Footnote 60] 469 U.S. at 556 .

[Footnote 61] 485 U.S. 505, 512 (1988). Justice Scalia, in a separate concurring opinion, objected to this language as departing from the Court's assertion in Garcia that the "constitutional structure" imposes some affirmative limits on congressional action. Id. at 528.

[Footnote 62] Id. at 513.

[Footnote 63] Id. at 512.

[Footnote 64] 501 U.S. 452, 464 (1991). The Court left no doubt that it considered the constitutional issue serious. "[T]he authority of the people of the States to determine the qualifications of their most important government officials . . . is an authority that lies at 'the heart of representative government' [and] is a power reserved to the States under the Tenth Amendment and guaranteed them by [the Guarantee Clause]." Id. at 463. In the latter context the Court's opinion by Justice O'Connor cited Merritt, The Guarantee Clause and State Autonomy: Federalism for a Third Century, 88 Colum. L. Rev. 1 (1988). See also McConnell, Federalism: Evaluating the Founders' Design, 54 U. Chi. L. Rev. 1484 (1987) (also cited by the Court); and Van Alystyne, The Second Death of Federalism, 83 Mich. L. Rev. 1709 (1985).

[Footnote 65] 112 S. Ct. 2408 (1992).

[Footnote 66] See, e.g., Hodel v. Virginia Surface Mining & Recl. Ass'n, 452 U.S. 264, 288 (1981); FERC v. Mississippi, 456 U.S. 742, 765 (1982); South Carolina v. Baker, 485 U.S. 505, 513 -15 (1988).

[Footnote 67] 112 S. Ct. at 2418.

[Footnote 68] Id. at 2431-32.

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Testimony 4

March 21, 2011 House IBL Committee Testimony of ND AFL-CIO: David L. Kemnitz;President

SB 2309

Question of constitutionality answered in part in Article 1—Section 8

Act for the Relief of Sick 7 Disabled Seamen, July, 1798 - attached

Signed by President John Adams, Thomas Jefferson was then President of the Senate, both men helped write the U.S. Constitution.

Also submitted: The Affordable Care Act: Immediate Benefits for North Dakota.

Copy of Letter to U.S. House of Representatives with rationale to keep Act.

12 Reasons to Support Health Care Act.

The Constitution of the United States: A Transcription

Note: *The following text is a transcription of the Constitution in its original form.*
Items that are hyperlinked have since been amended or superseded.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I. Section. 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

4 A

Wth July, 1798.

CHAP. [94.] An act for the relief of sick and disabled seamen.[1]

§ 1. *Be it enacted, Sfc.* That from and after the first day of September next, the master or owner of every ship or vessel of the United States, arriving from a foreign port into any port of the United States, shall, before such ship or vessel shall be admitted to an entry, render to the collector a true account of the number of seamen that shall have been employed on board such vessel since she was last entered at any port in the United States, and shall pay, to the said collector, at the rate of twenty cents per month for every seaman so employed ; which sum he is hereby authorized to retain out of the wages of such seamen.

§ 2. That from and after the first day of September next, no collector shall grant to any ship or vessel whose enrollment or license for carrying on the coasting trade has expired, a new enrollment or license, before the master of such ship or vessel shall first render a true account to the collector, of the number of seamen, and the time they have severally been employed on board such ship or vessel, during the continuance of the license which has so expired, and pay to such collector twenty cents per month for every month such seamen have been severally employed as aforesaid ; which sum the said master is hereby authorized to retain out of the wages of such seamen. And if any such master shall render a false account of the number of men, and the length of time they have severally been employed, as is herein required, he shall forfeit and pay one hundred dollars.

fee

fine

§ 3. That it shall be the duty of the several collectors to make a quarterly return of the sums collected by them, respectively, by virtue of this act, to the secretary of the treasury ; and the president of the United States is hereby authorized, out of the same, to provide for the temporary relief and maintenance of sick, or disabled seamen, in the hospitals or other proper institutions now established in the several ports of the United States, or in ports where no such institutions exist, then in such other manner as he shall direct: *Provided,* that the moneys collected in any one district, shall be expended within the same.

§4. That if any surplus shall remain of the moneys to be collected by virtue of this act, after defraying the expense of such temporary relief and support, that the same, together with such private donations as may be made for that purpose, (which the president is hereby authorized to receive,) shall be invested in the stock of the United States, under the direction of the president; and when, in his opinion, a sufficient fund shall be accumulated, he is hereby authorized to purchase or receive cessions or donations of ground or buildings, in the name of the United States, and to cause buildings, when necessary, to be erected as hospitals for the accommodation of sick and disabled seamen.

§ 5. That the president of the United States be, and he is hereby, authorized to nominate and appoint, in such ports of the United States as he may think proper, one or more persons, to be called directors of the marine hospital of the United States, whose duty it shall be to direct the expenditure of the fund assigned for their respective ports, according to the third section of this act; to provide for the accommodation of sick and disabled seamen, under such general

[1] Curtis, George Tickner. A Treatise on the Rights and Duties of Merchant Seamen, According to the General Maritime Law, and the Statutes of the United States. (Boston: Charles C. Little and James Brown, 1841), 407-409

instructions as shall be given by the president of the United States for that purpose, and also, subject to the like general instructions, to direct and govern such hospitals, as the president may direct to be built in the respective ports : and that the said directors shall hold their offices during the pleasure of the president, who is authorized to fill up all vacancies that may be occasioned by the death or removal of any of the persons so to be appointed. And the said directors shall render an account of the moneys received and expended by them, once in every quarter of a year, to the secretary of the treasury, or such other person as the president shall direct; but no other allowance or compensation shall be made to the said directors, except the payment of such expenses as they may incur in the actual discharge of the duties required by this act. *[Approved, July* 16, 1798.]

In 1798, the United States Congress passed an Act for Relief of Sick and Disabled Seaman. http://www.scribd.com/doc/29099806/Act-for-the-Relief-of-Sick-DisabledSeamen-July-1798

This law required all seamen who worked in the merchant marine (private companies) to pay a special tax to fund medical care and hospitals for seamen who were sick or injured. The government deemed that merchant seamen were necessary to the economic health of America and their hard labor jobs often produced injuries that if left untreated would result in an unnecessary loss of their labor and economic hardship for our country.

Thomas Jefferson was the Senate leader and John Adams the President. I dare say both of them were very familiar with our Constitution and it's restrictions, yet they both helped put in place this common sense law and never once considered it an affront to personal liberty.

There is very little difference between that act and compulsory health insurance other than one is a tax and the other a fine if one doesn't comply. Both require citizens to help fund their own health care. Both have the power to create a healthier workforce and consequently a healthier economy.

4-B

Compliments of
North Dakota AFL-CIO

January 26, 2011

Honorable Paul Ryan, Chairman
Honorable Chris Van Hollen, Ranking Member
U.S. House of Representatives
Committee on the Budget
Washington, DC 20515

Dear Chairman Ryan and Representative Van Hollen:

Congress this week is holding hearings on the economic impact of health care reform. We write to convey our strong conclusion that leaving in place the Patient Protection and Affordable Care Act of 2010 will significantly strengthen our nation's economy over the long haul and promote more rapid economic recovery in the immediate years ahead. Repealing the Affordable Care Act would cause needless economic harm and would set back efforts to create a more disciplined and more effective health care system.

Our conclusion is based on two economic principles. First, high medical spending harms our nation's workers, new job creation, and overall economic growth. Many studies demonstrate that employers respond to rising health insurance costs by reducing wages, hiring fewer workers, or some combination of the two. Lack of universal coverage impairs job mobility as well because many workers pass up opportunities for self-employment or positions working for small firms because they fear losing their health insurance or facing higher premiums.

Second, the Affordable Care Act contains essentially every cost-containment provision policy analysts have considered effective in reducing the rate of medical spending. These provisions include:

- *Payment innovations* such as greater reimbursement for patient-centered primary care; bundled payments for hospital care, physician care, and other medical services provided for a single episode of care; shared savings approaches or capitation payments that reward accountable provider groups that assume responsibility for the continuum of a patient's care; and pay-for-performance incentives for Medicare providers.
- *An Independent Payment Advisory Board* with authority to make recommendations to reduce cost growth and improve quality within both Medicare and the health system as a whole
- *A new Innovation Center within the Centers for Medicare and Medicaid Services* charged with streamlining the testing of demonstration and pilot projects in Medicare and rapidly expanding successful models across the program
- *Measures to inform patients and payers about the quality of medical care providers*, which provide relatively low-quality, high-cost providers financial incentives to improve their care
- *Increased funding for comparative effectiveness research*

- *Increased emphasis on wellness and prevention*

Taken together, these provisions are likely to reduce employer spending on health insurance. Estimates suggest spending reductions ranging from tens of billions of dollars to hundreds of billions of dollars. Because repealing our nation's new health reform law would eliminate the above provisions, it would increase business spending on health insurance, and hence reduce employment.

One study concludes that repealing the Affordable Care Act would produce job reductions of 250,000 to 400,000 annually over the next decade. Worker mobility would be impaired as well, as people remain locked into less productive jobs just to get health insurance.

The budgetary impact of repeal also would be severe. The Congressional Budget Office concludes that repealing the Affordable Care Act would increase the cumulative federal deficit by $230 billion over the next decade, and would further increase the deficit in later years. Other studies suggest that the budgetary impact of repeal is even greater. State and local governments would face even more serious fiscal challenges if the Affordable Care Act were repealed, as they would lose substantial resources provided under the new law while facing the burdens of caring for 32 million more uninsured people. Repeal, in short, would thus make a difficult budget situation even worse.

Rather than undermining health reform, Congress needs to make the Affordable Care Act as successful as it can be. This would be as good for our economy as it would be for the health of our citizens.

Sincerely,

Henry J. Aaron
Senior Fellow
The Brookings Institution

Jean Marie Abraham
Assistant Professor
University of Minnesota School of Public Health

Randy Albelda
Professor of Economics
University of Massachusetts, Boston

Sylvia A. Allegretto
Economist
University of California, Berkeley

Stuart Altman
Sol C. Chaikin Professor of National Health Policy
Brandeis University

200 Additional Signers

4-C

http://www.standupforhealthcare.org/learn-more/quick-facts/12-reasons-to-support-health-care?gclid=CIP5tMKr3aYCFcbsKgodJEEY1Q

Compliments of
North Dakota AFL-CIO

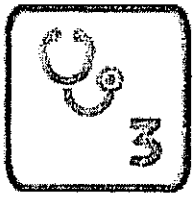
12 Reasons to Support Health Care

Our new health care law will have a profound impact on the health and economic well-being of American families, businesses, and the economy. Below are some of the key provisions of the new legislation. Click on each icon to read more!

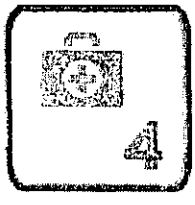
The new health care law will:

Ensure that all Americans have access to quality, affordable health care.

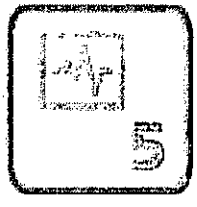
Create a new, regulated marketplace where consumers can purchase affordable health care.



Extend much needed relief to small businesses.



Improve Medicare by helping seniors and people with disabilities afford their prescription drugs.



Prohibit denials of coverage based on pre-existing conditions.

Limit out-of-pocket costs so that Americans have security and peace of mind.

Help young adults by requiring insurers to allow all dependents to remain on their parents plan until age 26.

Expand Medicaid to millions of low-income Americans.

Provide sliding-scale subsidies to make insurance premiums affordable.

Hold insurance companies accountable for how our health care dollars are spent.

Clamp down on insurance company abuses.

Invest in preventive care.

4-D

http://www.whitehouse.gov/healthreform/download#states

The Affordable Care Act: Immediate Benefits for North Dakota

Compliments of
North Dakota AFL-CIO

Support for seniors:

- **Closing the Medicare Part D donut hole.** Last year, roughly 9,050 Medicare beneficiaries in North Dakota hit the donut hole, or gap in Medicare Part D drug coverage, and received no additional help to defray the cost of their prescription drugs.[i] As of early August, 1,700 of seniors in North Dakota have already received their $250 tax free rebate for hitting the donut hole. These checks began being mailed out in mid-June and will continue to be mailed out monthly through the year as more beneficiaries hit the donut hole. The new law continues to provide additional discounts for seniors on Medicare in the years ahead and closes the donut hole by 2020.

- **Free preventive services for seniors.** All 106,000 of Medicare enrollees in North Dakota will get preventive services, like colorectal cancer screenings, mammograms, and an annual wellness visit without copayments, coinsurance, or deductibles.

Coverage expansions:

- **Affordable insurance for uninsured Americans with pre-existing conditions.** $7.9 million federal dollars are available to North Dakota starting July 1 to provide coverage for uninsured residents with pre-existing medical conditions through a new Pre-Existing Condition Insurance Plan program, funded entirely by the Federal government. The program is a bridge to 2014 when Americans will have access to affordable coverage options in the new health insurance Exchanges and insurance companies will be prohibited from denying coverage to Americans with pre-existing conditions.

- **Small business tax credits.** 17,700 small businesses in North Dakota may be eligible for the new small business tax credit that makes it easier for businesses to provide coverage to their workers and makes premiums more affordable.[ii] Small businesses pay, on average, 18 percent more than large businesses for the same coverage, and health insurance premiums have gone up three times faster than wages in the past 10 years. This tax credit is just the first step towards bringing those costs down and making coverage affordable for small businesses.

- **Extending coverage to young adults.** When families renew or purchase insurance on or after September 23, 2010, plans and issuers that offer coverage to children on their parents' policy must allow children to remain on their parents' policy until they turn 26, unless the adult child has another offer of job-based coverage in some cases. This provision will bring relief for roughly 2,630 individuals in North Dakota who could now have quality affordable coverage through their parents.[iii] Some employers and the vast majority of insurers have agreed to cover adult children immediately.

- **Support for health coverage for early retirees.** An estimated 6,320 people from North Dakota retired before they were eligible for Medicare and have health coverage through their former employers. Unfortunately, the number of firms that provide health coverage to their retirees have decreased over time.[iv] This year, a $5 billion temporary early retiree reinsurance program will help stabilize early retiree coverage and help ensure that firms continue to provide health coverage to their early retirees. Companies, unions, and State and local governments are eligible for these benefits.

- **New Medicaid options for States.** For the first time, North Dakota has the option of Federal Medicaid funding for coverage for all low-income populations, irrespective of age, disability, or family status.

Stronger Consumer protections:

- **New consumer protections in the insurance market when families renew or purchase coverage on or after September 23, 2010:**
    - Insurance companies will no longer be able to place lifetime limits on the coverage they provide, ensuring that the 403,000 residents with private insurance coverage never have to worry about their coverage running out and facing catastrophic out-of-pocket costs.
    - Insurance companies will be banned from dropping people from coverage when they get sick just because of a mistake in their paperwork, protecting the 63,000 individuals who purchase insurance in the individual market from dishonest insurance practices.
    - Insurance companies will not be able to exclude children from coverage because of a pre-existing condition, giving parents across North Dakota peace of mind.
    - Insurance plans' use of annual limits will be tightly regulated to ensure access to needed care. This will protect the 340,000 residents of North Dakota with health insurance from their employer, along with anyone who signs up for a new insurance plan in North Dakota.
    - Health insurers offering new plans will have to develop an appeals process to make it easy for enrollees to dispute the denial of a medical claim.
    - Consumers in new plans will have coverage for recommended preventive services – like colon cancer screening, mammograms, immunizations, and well-baby and well-child care – without having to pay a co-pay, coinsurance, or deductible.

Improved Access to Care:

- Patients' choice of doctors will be protected by allowing plan members in new plans to pick any participating primary care provider, prohibiting insurers from requiring prior authorization before a woman sees an ob-gyn, and ensuring access to emergency care.

- **Strengthening community health centers.** Beginning October 1, 2010, increased funding for Community Health Centers will help nearly double the number of patients seen by the centers over the next five years. The funding can go towards helping the 23 existing Community Health Centers in North Dakota and can also support the construction of new centers. This builds on a $2 billion investment in Community Health Centers in the American Recovery and Reinvestment Act, which has provided an unprecedented opportunity to serve more patients, stimulate new jobs, and meet the significant increase in demand for primary health care services

- **More doctors where people need them.** Beginning October 1, 2010, the Act will provide funding for the National Health Service Corps ($1.5 billion over five years) for scholarships and loan repayments for doctors, nurses and other health care providers who work in areas with a shortage of health professionals. And the Affordable Care Act invested $250 million dollars this year in programs that will boost the supply of primary care providers in this country – by creating new residency slots in primary care and supporting training for nurses, nurse practitioners, and physicians assistants. This will help the 22% of North Dakota's population who live in an underserved area.

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[i] Office of the Actuary. Centers for Medicare and Medicaid Services. Number represents only non-LIS seniors.

[ii] Internal Revenue Service, "Count per State for Special Post Card Notice," available at http://www.irs.gov/pub/newsroom/count_per_state_for_special_post_card_notice.pdf

[iii] U.S. Census Bureau, Current Population Survey. Annual Social and Economic Supplements, March 2009; and 45 CFR Parts 144, 146, and 147. http://www.hhs.gov/ociio/regulations/ora_omnibus_final.pdf

[iv] Kaiser Family Foundation. 2009 Employer Health Benefits Survey.

11.0742.03008

Sixty-second
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2309

Introduced by

Senators Sitte, Berry, Dever

Representatives Kasper, Keiser, Ruby

A BILL for an Act to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-03 of the North Dakota Century Code, relating to accident and health insurance coverage and federal health care reform legislation; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance coverage not required - Freedom to choose and provide medical services - Penalty.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer, under a plan sponsored by the state or federal government, or from any source, a person may not require the resident to obtain or maintain a policy of health coverage or penalize a resident for failure to obtain or maintain a policy of health coverage if that prohibited act is based on a federal law, rule, or regulation. This subsection does not apply to coverage that is required by a court or by the department of human services through a court or administrative proceeding.
2. Regardless of whether a resident of this state has or is eligible for health insurance coverage, a person may not take any action or inaction that would have the effect of:
   a. Preventing, attempting to prevent, interfering with, or withholding medical treatment from that resident if the prohibited act is based on a federal law, rule, or regulation that has not received specific statutory approval by the legislative assembly; or

b. Preventing, attempting to prevent, or interfering with that resident's choice or selection of medical treatment provider if the prohibited act is based on a federal law, rule, or regulation that has not received specific statutory approval by the legislative assembly.

3. A person may not prevent, attempt to prevent, or interfere with a medical treatment provider's provision of medical treatment to a resident of this state if the prohibited act is based on a federal law, rule, or regulation that has not received specific statutory approval by the legislative assembly.

4. This section does not apply to:

a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

c. An individual who is required by a religious institution to obtain and maintain health insurance.

5. This section does not impair the right of an individual to contract privately for health insurance coverage for family members or former family members or the right of an employer to contract voluntarily for health insurance coverage for employees.

6. Violation of this section is a class B misdemeanor.

SECTION 2. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Federal health care reform law.

1. The legislative assembly declares that the federal laws known as the Patient Protection and Affordable Care Act [Pub. L. 111-148] and the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] likely are not authorized by the United States Constitution and may violate its true meaning and intent as given by the founders and ratifiers.

2. The legislative assembly shall consider enacting any measure necessary to prevent the enforcement of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 within this state.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

POTENTIAL

11.0742.03009
Title.

Prepared by the Legislative Council staff for
Representative Kasper
March 29, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance coverage not required - Freedom to choose and provide medical services.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer, under a plan sponsored by the state or federal government, or from any source, a person may not require the resident to obtain or maintain a policy of health coverage or penalize a resident for failure to obtain or maintain a policy of health coverage. This subsection does not apply to coverage that is required by a court order or by the department of human services through a court or administrative proceeding.

2. Regardless of whether a resident of this state has or is eligible for health insurance coverage, a person may not take any action or inaction that would have the effect of:

   a. Preventing, attempting to prevent, interfering with, or withholding medical treatment from that resident; or

   b. Preventing, attempting to prevent, or interfering with that resident's choice or selection of a qualified medical treatment provider located in this state for the provision of legal medical treatment.

3. A person may not prevent, attempt to prevent, or interfere with the provision of legal medical treatment by a qualified medical treatment provider located in this state to a resident of this state.

4. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

   b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

   c. An individual who is required by a religious institution to obtain and maintain health insurance.

5. This section does not impair the right of an individual to contract privately for health insurance coverage for family members or former family members or the right of an employer to contract voluntarily for health insurance coverage for employees."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Renumber accordingly

11.0742.03010
Title.

Prepared by the Legislative Council staff for
Representative Kasper
April 1, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance coverage not required - Freedom to choose and provide medical services.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer, under a plan sponsored by the state or federal government, or from any source, a person may not require the resident to obtain or maintain a policy of health coverage or penalize a resident for failure to obtain or maintain a policy of health coverage if that prohibited act is based on a law that has not received specific statutory approval by the legislative assembly. This subsection does not apply to coverage that is required by a court order or by the department of human services through a court or administrative proceeding.

Added →

2. Regardless of whether a resident of this state has or is eligible for health insurance coverage, a person may not take any action or inaction that would have the effect of:

Added →

a. Preventing, attempting to prevent, interfering with, or withholding medical treatment from that resident if that prohibited act is based on a law that has not received specific statutory approval by the legislative assembly; or

Added →

b. Preventing, attempting to prevent, or interfering with that resident's choice or selection of a qualified medical treatment provider located in this state for the provision of legal medical treatment if that prohibited act is based on a law that has not received specific statutory approval by the legislative assembly.

3. A person may not prevent, attempt to prevent, or interfere with the provision of legal medical treatment by a qualified medical treatment provider located in this state to a resident of this state if that prohibited act is based on a law that has not received specific statutory approval by the legislative assembly.

Added →

4. This section does not apply to:

a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C.

1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

c. An individual who is required by a religious institution to obtain and maintain health insurance.

5. This section does not impair the right of an individual to contract privately for health insurance coverage for family members or former family members or the right of an employer to contract voluntarily for health insurance coverage for employees."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Renumber accordingly

Kasper, Jim M.

From: Clark, Jennifer S.
Sent: Friday, April 01, 2011 9:14 AM
To: Kasper, Jim M.
Subject: 2309

Representative-

The new language will add:

if that prohibited act is based on a law that has not received specific statutory approval by the legislative assembly.

I realize that's "more words" than we discussed, but it seems like we need to say it. . .

Jenn

Jennifer Clark
Counsel
ND Legislative Council
(701) 328-2916
clark@nd.gov

Gruchalla, Edmund A.

From: Clark, Jennifer S.
Sent: Friday, April 15, 2011 5:23 PM
To: Gruchalla, Edmund A.
Subject: SB 2309

Representative-

This email is in response to our telephone conversation today.

The NDCC provides the following 2 penalties for NDCC Chapter 26.1-36:

26.1-36-40. General penalty - License suspension or revocation.
Any person willfully violating any provision of this chapter or order of the commissioner made in accordance with this chapter is guilty of a class A misdemeanor. The commissioner may also suspend or revoke the license of an insurer or insurance producer for any such willful violation.

26.1-01-10. General penalty.
For a violation of any provision of this title, when no penalty is provided specifically, the offender is guilty of an infraction.

Additionally, criminal offenses are classified as follows:

12.1-32-01. Classification of offenses - Penalties.
Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that persons sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that persons admission to the penitentiary.

2. Class A felony, for which a maximum penalty of twenty years imprisonment, a fine of ten thousand dollars, or both, may be imposed.

3. Class B felony, for which a maximum penalty of ten years imprisonment, a fine of ten thousand dollars, or both, may be imposed.

4. Class C felony, for which a maximum penalty of five years imprisonment, a fine of five thousand dollars, or both, may be imposed.

5. Class A misdemeanor, for which a maximum penalty of one years imprisonment, a fine of two thousand dollars, or both, may be imposed.

6. Class B misdemeanor, for which a maximum penalty of thirty days imprisonment, a fine of one thousand dollars, or both, may be imposed.

7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

Finally, you had asked about criminal liability of a business entity. NDCC Chapter 12.1-03 addresses this issue. See http://www.legis.nd.gov/cencode/t121c03.pdf

I'll be in the office a good part of Saturday, so feel free to call if you have any questions-

Jenn

Jennifer Clark
Counsel
ND Legislative Council
(701) 328-2916
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11.0742.03014
Title.

Prepared by the Legislative Council staff for #1
Representative Kasper
April 15, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

That the House recede from its amendments as printed on pages 1289 and 1290 of the Senate Journal and pages 1450 and 1451 of the House Journal and that Engrossed Senate Bill No. 2309 be amended as follows:

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Freedom to choose and provide medical services.

1. An individual has the right to seek medical treatment and services from any properly licensed medical provider in this state. A person may not prevent or interfere with the right of any properly licensed medical provider in this state to provide medical treatment and services. A medical provider in this state has the right to provide or deny medical treatment and services, except as otherwise provided by law.

2. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

   b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

   c. An individual who is required by a religious institution to obtain and maintain health insurance.

   d. Health care benefits provided under the federal railroad system.

   e. The terms or conditions of any health insurance policy or health service contract or of any other contractual arrangement for the provision of health care services offered through a private health care system or accident and health insurance company administering accident and health insurance policies and certificates as permitted under the laws of this state, regardless of whether entered before or after the effective date of this Act.

   f. The right of a person to negotiate or enter a private contract for health insurance for an individual, family, business, or employee with an insurance company, third-party administrator, or other provider of health care services or health insurance permitted under the laws of this state.

g. The application of the federal Emergency Medical Treatment and Active Labor Act [42 U.S.C. 1395dd et seq.].

h. The powers and duties of a state board, commission, or entity to regulated an occupation or profession."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Renumber accordingly

#2

11.0742.03016
Title.

Prepared by the Legislative Council staff for
Representative Kasper
April 15, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

That the House recede from its amendments as printed on pages 1289 and 1290 of the Senate Journal and pages 1450 and 1451 of the House Journal and that Engrossed Senate Bill No. 2309 be amended as follows:

Page 1, line 1, after "chapter" insert "23-12 and a new section to chapter"

Page 1, line 2, after "to" insert "freedom to choose and provide medical services and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

Freedom to choose and provide medical services.

1. An individual has the right to seek medical treatment and services from any properly licensed medical provider in this state.

2. A medical provider in this state has the right to provide or deny medical treatment and services, except as otherwise provided by law.

3. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

   b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

   c. An individual who is required by a religious institution to obtain and maintain health insurance.

   d. Health care benefits provided under the federal railroad system.

   e. The terms or conditions of any health insurance policy or health service contract or of any other contractual arrangement for the provision of health care services offered through a private health care system or accident and health insurance company administering accident and health insurance policies and certificates as permitted under the laws of this state, regardless of whether entered before or after the effective date of this Act.

   f. The right of a person to negotiate or enter a private contract for health insurance for an individual, family, business, or employee with an insurance company, third-party administrator, or other provider of health care services or health insurance permitted under the laws of this state.

g. The application of the federal Emergency Medical Treatment and Active Labor Act [42 U.S.C. 1395dd et seq.].

h. The powers and duties of a state board, commission, or entity to regulate an occupation or profession."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Renumber accordingly

#3

SB 2309 Prepared by Senator Dever

An amendment to the 03000 version of SB 2309.

Motion that the House recede from its amendments and amend as follows:

On line 14, after "state." Insert:

3. No provision of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 may interfere with an individual's choice of medical provider or their choice of an insurance provider except as provided by North Dakota State law.

11.0742.03000

Sixty-second
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2309

Introduced by

Senators Sitte, Berry, Dever

Representatives Kasper, Keiser, Ruby

A BILL for an Act to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to federal health care reform legislation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Federal health care reform law.

1. The legislative assembly declares that the federal laws known as the Patient Protection and Affordable Care Act [Pub. L. 111-148] and the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] are not authorized by the United States Constitution and violate its true meaning and intent as given by the founders and ratifiers.
2. The legislative assembly shall consider enacting any measure necessary to prevent the enforcement of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 within this state.

MICROFILM DIVIDER

STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT
SFN 2053 (4-2002)

ROLL NUMBER

2309

DESCRIPTION

2011 SENATE HUMAN SERVICES

SB 2309

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2309
February 2, 2011
13860

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to nullification of federal health care reform legislation.

Minutes: See "attached testimony."

Chair Judy Lee opened the hearing on SB 2309; fiscal note attached.

Senator Margaret Sitte, District 35 introduced SB 2309 (Attachment #1 with three additional attachments cited: The Miami Herald article regarding their federal judge ruling that federal health care law unconstitutional; Nullification: Answering the Objections).

Senator Mathern: The issues raised are more what we handle in Judiciary committee, but this bill was sent to Human Services. If it passes and were to affect a nullification of the federal statute there would be a number of health care issues that would be pretty pressing on North Dakotans. We have eliminated pre-existing conditions and insurance of children; covering our young people until they are 26; payments to our hospitals at a more appropriate rate. Those kinds of things would be gone. Do you have a list of things you would want us to retain or to put into effect for the benefit of our citizens? **Senator Sitte:** Don't look at this as getting into those details; the US House has already repealed this law. Senate is voting on it soon; have this situation just stopped it two days ago. This is a third way of showing the will of the people: federal court decision, congress acting, and now the states acting. Think the last election made it extremely clear that the citizens of the US do not favor this bill; go back to the drawing board and renegotiate all of those details, but not the purpose of this bill. This bill is just that we stand together with other states to say that we want Congress to start over. **Senator Mathern:** But we're in the Human Service committee today about this bill, so that is the content of our committee concern—how do we address the needs of people with health care problems. **Senator Sitte:** If the federal judge has ruled that the federal bill is null and void and of no effect, that is already going to have federal ramifications that will affect each state. How that plays out is a guess.

Senator Dever: Curious if you've had any conversation regarding the judge's decision on Tuesday; seems that when these things were first filed and went to court some people said it doesn't matter, it is the law of the land and we have to move forward. Is it now the law of the land or not? **Senator Sitte:** Have to look to history and what happened when FDR put in that whole package of reforms that the Supreme Court overturned. Once the Supreme

Court overturns them they are null and void and of no effect. History has shown this to have happened before. If that happens Congress has to begin again. **Senator Dever:** Difficulty now as a state legislature working with federal health care bill. If we pass things, then that is the action of the state not federal government. **Senator Sitte:** Understand your position; not easy. This bill puts forward in very strong language that North Dakota will hold the line; we will follow the will of the people and join with other states to assert our control. One of the biggest reasons that she and George Keiser put this forward, is that she heard Representative Keiser speak and he talked about the cost to the state. A conservative estimate is that this health care plan will cost North Dakota 10 billion over next 10 years. Don't think North Dakotans want a tax increase that's a billion dollars a year more for health care.

Senator Judy Lee: Notes that the fiscal note indicates that this bill is an act that would make it a crime for state agencies and employees to enforce the federal health care reform law, which ties in with what Senator Dever is talking about. Anything we do is going to put our state employees in legal jeopardy as well.

Chris Stevens, Jamestown testified in favor of SB 2309 (#2 Testimony) Agree that the last election demonstrated what Senator Sitte said.

Senator Mathern: What is a punishment for a class C felony and how many people would it apply to? **Chris Stevens:** It wouldn't apply to anybody unless they violated the law as all other criminal code mandates. Don't know what the penalty is for a Class C felony. **Senator Dever:** Five years, $5000 fine. **Senator Mathern:** I assume you are asking for us to pass this bill? Do you know how many people it would apply to? **Chris Stevens:** It wouldn't apply to any unless they tried to enforce ObamaCare, which is unlikely if this bill is passed. Doubt anybody would actually be prosecuted under this because it wouldn't be implemented. **Chair Judy Lee:** You are talking about state employees whose job it is to do whatever directed to do as a state or federal employee. Putting them in the position of having to either tell their boss that they won't do what they've been assigned to do, or go to jail for five years and pay $5000 fine. Not a fan of the health care reform bill; there are issues that we needed to address, and should have some time ago. Not a fan of the bill, but struggle with the fact the bill would make felons out of people who are doing their job. What do you expect them to do? **Chris Stevens**: If the legislative assembly decides that North Dakota is not going to participate in the federal health care program, then no state agencies will be implementing it in North Dakota, unless some rogue agency acting on their own began the process of trying to implement it. In that case, it would make it illegal to do that. **Senator Dever:** Wondering if those penalties are necessary to the bill; bills come flying by and it's not always clear to us which ones are a results of the federal health care bill and which aren't. Once we enact legislation, we expect our employees to abide by what we pass, not by what Congress passes. **Chris Stevens:** Believe that if we are going to make law, have to have penalties. Actually provided the three house bills 1125, 1126, 1127 that are the for the purpose of implementing the federal health care reform bill in North Dakota. If we pass this bill, obviously the other bills wouldn't be passed to implement it.

Chair Judy Lee: There are far more places in which those requirements of the federal health care reform are involved. The department of insurance is involved in setting up a

health insurance exchange, and there are employees required to do that. Isn't as simple as killing those three house bills. There are provisions in many other budget bills as well as other places where the implementation of what is moving forward. This is way more complicated than what you are saying. Important to recognize that we can as a state object to the way something has been handled on the federal level without making felons of people in various government positions. **Chris Stevens:** The Real ID act, the resolution was just that—there are 25 states that passed resolutions; about two dozen passed binding laws. North Dakota was a little "weak kneed" in the area, and only passed a resolution crying "uncle". That is not sufficient; thinks we've reached a point in our country where the states have to stand up and insist that we're not going to tolerate these federal unfunded mandates. Not going to implement this system that is going to cost the North Dakota taxpayers millions of dollars.

Senator Dever: Don't like the federal health care bill either; in the last session considered 1021 bills, the federal health care bill was about 2700-2800 pages. We passed 630 of those bills and killed the rest. He went through and counted the bills and number of pages came up to 2880. There are some good things and bad things in the federal health care bill. His name is on this bill and agrees with the intent of it. Section 1 subsection 2 says the legislative assembly shall enact any measure necessary—we shouldn't pass one measure here that says this is our position on all measures. May need to amendment that. **Chris Stevens:** Believe this bill stands by itself alone and should be passed as is, and the state should take up measures to address health care at a state level. It is a state issue, not federal. Should nullify the federal takeover of healthcare. **Chair Judy Lee:** Does this mean that you think the state should fully fund heath care? We get a lot of money back from the federal government; gets that somebody paid it in there first. If we are going to do all of our own work, means we pay all our own costs. Not quite sure taxpayers are ready for that either. Or do you think they are? Are you saying we don't need any federal money for heath care? **Chris Stevens**: Believe the solution to our health care problem is the free market and the government should get out of the way and allow the market to operate the way it was supposed to, the way our country has proven markets operate. Believe if we re-implemented free enterprise that we would again prosper; better products and services at lower prices. Believe the state can do that. **Senator Dever:** The 10th Amendment (his view) was not to say that power should be vested in the legislature rather than the Congress, but the key phrase is "to the people". In the state we have initiative and referendum which we are only able to exercise at the federal level at the ballot box. Do you agree with that? **Chris Stevens**: Yes

Lynn Bergman, Bismarck: (#3 attachment) Has been closely following the judge's decision; most good analysts does not have to accompanied by an injunction; it is indeed an injunction on its own. His ruling stops implementation of this in its tracks, until a higher court changes that. As a taxpayer, he's here to request the state to get with the Attorney General and stop needless spending on this measure that is shortly to be struck down. (Handout) Strongly support this bill; would agree that perhaps should eliminate that part of the bill making it a felony. Also agree shouldn't put state employees in the position of facing 5 years in jail. Federal law does not trump state law; federal law that is not in compliance with the US Constitution doesn't trump anything, and eventually goes away. State Constitution states that North Dakota must be in full compliance with the Constitution and the laws of the United States—whether constitutional or not. His opinion that needs to

be taken up in Judiciary. This puts anyone trying to enforce the felony charge in a tenable position because the North Dakota Constitution tells them to abide by all federal law.

Senator Mathern: Noted that the people "in the know" say that the ruling is an injunction, and that all of health care reform has stopped. What would you say to parents who have 23 year olds on their health insurance now—are they not insured now? **Lynn Bergman:** Whatever the law said before this was found unconstitutional, that's the law we should be following (his opinion). Feels the attorney general should decide that. They should do what we have always done in America; go to hospital/doctor and get "fixed". Several years ago passed federal law that said we cannot deny people care. Anyone disagree? **Chair Judy Lee:** Some cannot deny care due to funding of facilities, but some can—although she doubts there would be few that do. That is much higher priced care if someone goes into the emergency care setting rather than early intervention—walk-in clinic, wellness visits, etc. **Lynn Bergman:** His position is that we do not deny care; we do refer care often. Lesser institution, cheaper place, done all the time. Can only say he doesn't think it is the taxpayer's responsibility to provide insurance for anyone. Think it is the responsibility of Americans to take care of people at minimal standards for health care. To provide health care is important, to provide health insurance is a whole different ball game.

Senator Mathern: What does that 23 year old do; what should that do tomorrow. **Lynn Bergman:** Go to a health insurance office, get a high deductible insurance policy. When catastrophe happens, you can get cured and it may cost $5000 in deductible. Small incidents should pay out of pocket. Problem that bothers him—the folks that wrote it aren't even covered by it.

Senator Berry: Also am on this bill; have reservations about the penalty aspects. As a physician he is familiar with the challenges that have been thrust upon the system. What he finds interesting about the federal health care bill passed is the process that was used to pass it and the product also. There are some good things, and some not so good. The one thing he takes from the bill that is important for everyone in America is that it is finally drawing our attention to a matter needed to have focus. Times do change; 18 year olds could go out and make a decent living. Can't be done anymore—except the oil field. Force us as a country to say "what do we do?". What do we want to do—cover up to 26 years old, pre-existing conditions, etc. Thinks the states should have more say; just because the federal government hands it down, doesn't make it constitutional. Would you modify this legislation in any way? **Lynn Bergman:** Send it through with taking out the enforcement.

(No neutral or opposing testimony; continue with favorable testimony)

Sebastian Ertelt, Oriska, testified in support of SB 2309 (#5 Testimony & #4 map of health care system)

Senator Berry: You stated you do not carry health insurance, is that by choice? **Sebastian Ertelt:** That is correct. **Senator Berry:** In the event that you would be in a motor vehicle accident, were injured and required care, what would do you think would and should happen at that point—if seriously injured? **Sebastian Ertelt:** If seriously, his responsibility to pay the debt incurred. If that means he has to work the rest of his life to pay it, so be it. His decision not to carry insurance, so will deal with amplifications.

Radomysl Twardowski, M.D., polish born person & now American citizen, resident of North Dakota: Want to endorse the speakers and Senator Sitte. Perspective bringing—he left (then communist) Poland in late 1970's; part of reason was that the federal government took over everything and thinks medical care ground to big halt. There was a big disconnect between reality, prices, and delivery, etc. Sometimes it may take years for the history to come full circle, people get used to new situations. If ObamaCare is introduced, medical care may not collapse immediately but it may take some time. There is a precedent in the former Soviet Union and Eastern Europe about overreaching government, and he is sensitive to that. As a physician, the free practice of medicine and individual responsibility of clients/patients is important.

Senator Mathern: If a person had an accident and didn't have insurance, ended up with catastrophic health care bills, person became disabled and could not pay the bills. If he came to your hospital and to you to provide care, who would pay for that? **Dr. Twardowski:** As it was before if the person had previous savings, family input, believe the medical profession should be generous in writing off as much as possible for truly unfortunate circumstances or cases.

Chair Judy Lee: As she recalls, between charitable care and uncompensated care, a couple of years ago in her community was about $17 million at the largest health care provider. That is a lot for a health care provider to eat. Very much respect your position; has family members whose family came from the Czech Republic around the same time. What do we do; because of the sophistication of care and treatment available, they are also very costly. We do get beyond the ability of a person to be able to afford those costs. Any thoughts about what the **state** responsibility in assisting someone with excessive medical costs? **Dr. Twardowski:** Great questions; way beyond his capacity to even touch that. As a human being, likes things to be simple. Anticipate problems before they come; knows that only answers part of it. **Chair Judy Lee:** We'll all work together to try and figure out if there is more than one direction and what the directions might be.

John Ertelt, Oriska, want to comment on the concern about the person implementing this health care as it is now being subject to criminal penalties. If the boss is ordering them to enforce federal law, the boss would also be subject to penalties. **Chair Judy Lee:** Knows that but if one is trying to feed their family and the job requires certain actions . . . There are certain areas of the federal legislation that do need to be addresses for the benefit of the people who are our neighbors in the state as well. Having said that, it is one thing to be really pure about the philosophy here, and another to figure out how to take care of our neighbors in the state. This is SO complex; that becomes a very important part of committee discussion as they move forward. Not just black and white here; there's a lot of gray that affects a lot of people—important to keep this in mind! **John Ertelt:** North Dakota health care system is one of the best in the nation. The federal government's meddling is one reason the costs medical costs are skyrocketing. Need to put a stop to the federal government meddling in private sector.

Chair Judy Lee: Need to keep in mind thrust of this bill, not evaluating what's good and bad about the health care reform law. The thrust is what is the state's relationship is with the federal government. Not called upon to evaluate health care; bill calls upon us to evaluate our relationship with the federal government. Hearing closed.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

Committee Work on SB 2309
February 16, 2011
14618

☐ Conference Committee

Committee Clerk Signature

Minutes: See "attached amendments."

Chair Judy Lee opened the committee work on SB 2309; shared a copy of a resolution from the house that is somewhat similar to the bill. Was told that this bill could be turned into a resolution; she went to check on that and was told by legislative council that they can't do that. She was misled that it could be done; it could not be amended into a resolution. Certain amount of discomfort with the bill the way written; looking at amending it into something different and what Mr. Bjornson found in discussion is this resolution from the house that is very similar and could be worked with. Sharing for information only right now. Look at other solutions for this bill.

Senator Mathern: Got the impression from testimony that it is more related to the issue of state's rights with the federal government. That is an on-going thing; almost Judiciary or GVA issue. The specific topic happens to be health care but it could be any other thing. Now may be the time to defeat this bill and take up debate on the House bill when it comes over; would imagine it will come over for sure.

Senator Dever: See the resolution as being a little different than the bill in that the resolution asks for action on the part of Congress; the bill requires action on the part of the state. Was thinking could do to the bill is delete subsections 3 & 4, and in subsection 2 say the legislative assembly shall consider enacting any measure necessary. **Chair Judy Lee:** You would be talking about eliminating under Section 1, subsections 3 & 4 & 5? **Senator Dever:** Yes, 5 also. **Senator Uglem:** Not comfortable putting this into state law, is in agreement with the goal, but don't feel comfortable with it in law. Like the idea of having it in resolution or something similar.

Senator Dever: Should consider those amendments because a Do Not Pass doesn't mean it won't pass. Motion to delete sections 3-4-5, and would change "shall consider any measure . . . so line 15 add "consider". Second by **Senator Uglem.**

Senator Dever: Thinks Senator Uglem had valid concerns about language in subsection 1; probably after the word "ratifiers" on line 12? **Chair Judy Lee:** Has a little problem with declaring it invalid in the state not be recognized, are specifically rejected and considered to be null. Agree with Senator Uglem's concern about these and should fix it up so if it does pass it isn't as bad as it starts. This doesn't help us anyway; really is a resolution issue. Let's look at Section 1 separately then. Motion carried 4-0-1 (Vote 1)

Senator Uglem: For sake of discussion, should we end it after ratifiers on line 12? Does that satisfy the committee's needs? **Chair Judy Lee:** Would be better than all the language following it. **Senator Uglem:** Motion to further amend Section 1; line 12 place a period after "ratifiers" and delete the remainder of line 12, 13 and 14. Second by **Senator Dever**; motion carried 4-0-1 (Vote 2)

Chair Judy Lee: Amended bill before us.

Senator Dever: Motion for Do Pass as amended to SB 2309; second by **Senator Mathern** (will second for sake of discussion, but will vote against it as he doesn't feel it should be in law). Motion failed 1-3-1 (Vote 3)

Senator Uglem: Motion Do Not Pass as amended to SB 2309; second by **Senator Mathern.** Motion carried 3-1-1 Carried by **Senator Uglem.**

FISCAL NOTE

Requested by Legislative Council
04/19/2011

Amendment to: Engrossed SB 2309

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The engrossed bill provides that the federal law known as PPACA may violate the US constitution and that the legislative assembly shall consider enacting any measure to prevent enforcment of the law and that the law may not interfere with an inviduals choice of a medical or insurance provider.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the first engrossment with the conference committee amendments to engrossed senate bill provides that the legislative assembly shall consider enacting any measure necessary to prevent the enforcement of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. The fiscal impact of future legislation considered to prevent the enforcement of the federal law cannot be determined at this time.

Section 1 also provides that no provision of the Patient Protection and Affordable Care Act or the Health Care and Education Reconciliation Act of 2010 may interfere with an individual's choice of a medical or insurance provider except as otherwise provided by the laws of this state. There is no fiscal affect to the Insurance Department for this provision.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The first engrossment with the conference committee amendments to engrossed senate bill will not affect revenues. The fiscal impact of future legislation considered to prevent the enforcement of the federal law cannot be determined at this time.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The first engrossment with the conference committee amendments to engrossed senate bill will not affect expenditures. The fiscal impact of future legislation considered to prevent the enforcement of the federal law cannot

be determined at this time.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The first engrossment with the conference committee amendments to engrossed senate bill will not affect appropriations. The fiscal impact of future legislation considered to prevent the enforcement of the federal law cannot be determined at this time.

Name:	Larry J. Martin	**Agency:**	Insurance Department
Phone Number:	701-328-2930	**Date Prepared:**	04/20/2011

FISCAL NOTE

Requested by Legislative Council
04/08/2011

Amendment to: Engrossed SB 2309

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The engrossed bill provides that a North Dakota resident has the right to seek medical treatment and services from any properly licensed medical provider in this state and that no person may prevent or interfere with the right of any properly licensed medical provider.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the amended bill provides that a North Dakota resident has the right to seek medical treatment and services from any properly licensed medical provider in this state; a person may not prevent or interfere with the right of any properly licensed medical provider in this state to provide to that resident medical treatment and services within that medical provider's scope of practice; and a medical provider in this state has the right to provide or deny medical treatment and services to that resident as provided by law.

The Department is uncertain as to the meaning of the language contained in amendment 11.0742.03013 and is unable to determine its fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The engrossed bill provides that a North Dakota resident has the right to seek medical treatment and services from any properly licensed medical provider in this state and that no person may prevent or interfere with the right of any properly licensed medical provider in this state to provide to that resident medical treatment and services. It further provides that a medical provider in this state has the right to provide or deny medical treatment and services as provided by law.

The Department is uncertain as to the meaning of the language contained in amendment 11.0742.03013 and is unable to determine its fiscal impact.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*

item, and fund affected and the number of FTE positions affected.

If enacted as amended, this bill will not affect current expenditure levels.

The Insurance Department has estimated a combined total of $35,759,539 in expenditures for the 2011-2013 biennium in the original versions of HB 1126 and SB 2010 related to implementing the provisions of the federal health care reform law. $34,000,000 of these expenditures would be paid for from federal grants and $1,759,539 would be paid out of the state Insurance Regulatory Trust fund.

The Department is uncertain as to the meaning of the language contained in amendment 11.0742.03013 and is unable to determine its fiscal impact.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

If enacted as amended, this bill will not affect current appropriation levels but could negate the need for the Department to request additional appropriation authority in the future to implement the provisions of the federal health care reform law if legislation preventing the enforcement of the federal health care reform law is enacted.

The Insurance Department has requested a combined total of $35,759,539 in additional appropriation authority for the 2011-2013 biennium in the original versions of HB 1126 and SB 2010 related to implementing the provisions of the federal healthcare reform law. The funding breakdown for the estimated appropriation is $34,000,000 of federal funds and $1,759,539 of special funds.

The Department is uncertain as to the meaning of the language contained in amendment 11.0742.03013 and is unable to determine its fiscal impact.

Name:	Larry Martin	**Agency:**	Insurance Department
Phone Number:	328-2930	**Date Prepared:**	04/12/2011

FISCAL NOTE

Requested by Legislative Council
04/01/2011

Amendment to: Engrossed SB 2309

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The engrossed bill provides that a North Dakota resident has the right to seek medical treatment and services from any properly licensed medical provider in this state and that no person may prevent or interfere with the right of any properly licensed medical provider in this state.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the amended bill provides that a North Dakota resident has the right to seek medical treatment and services from any properly licensed medical provider in this state; a person may not prevent or interfere with the right of any properly licensed medical provider in this state to provide to that resident medical treatment and services within that medical provider's scope of practice; and a medical provider in this state has the right to provide or deny medical treatment and services to that resident as provided by law.

The Department is uncertain as to the meaning of the language contained in amendment 11.0742.03009 and is unable to determine its fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted as amended, this bill will not affect current revenue levels but could negate the need for the Insurance Department to receive federal funding in the future to implement the provisions of the federal healthcare reform law if legislation preventing the enforcement of the federal health care reform law is enacted.

The Insurance Department has estimated a combined total of $34,000,000 in federal grant revenue for the 2011-2013 biennium in the original versions of HB 1126 and SB 2010 related to implementing the provisions of the federal health care reform law.

The Department is uncertain as to the meaning of the language contained in amendment 11.0742.03009 and is unable to determine its fiscal impact.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

If enacted as amended, this bill will not affect current expenditure levels.

The Insurance Department has estimated a combined total of $35,759,539 in expenditures for the 2011-2013 biennium in the original versions of HB 1126 and SB 2010 related to implementing the provisions of the federal health care reform law. $34,000,000 of these expenditures would be paid for from federal grants and $1,759,539 would be paid out of the state Insurance Regulatory Trust fund.

The Department is uncertain as to the meaning of the language contained in amendment 11.0742.03009 and is unable to determine its fiscal impact.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

If enacted as amended, this bill will not affect current appropriation levels but could negate the need for the Department to request additional appropriation authority in the future to implement the provisions of the federal health care reform law if legislation preventing the enforcement of the federal health care reform law is enacted.

The Insurance Department has requested a combined total of $35,759,539 in additional appropriation authority for the 2011-2013 biennium in the original versions of HB 1126 and SB 2010 related to implementing the provisions of the federal healthcare reform law. The funding breakdown for the estimated appropriation is $34,000,000 of federal funds and $1,759,539 of special funds.

The Department is uncertain as to the meaning of the language contained in amendment 11.0742.03009 and is unable to determine its fiscal impact.

Name:	Larry Martin	**Agency:**	Insurance Department
Phone Number:	328-2930	**Date Prepared:**	04/12/2011

FISCAL NOTE

Requested by Legislative Council
02/18/2011

Amendment to: SB 2309

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill, as amended, declares that the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 violates the US Constitution.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the amended bill declares that the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 violates the US Constitution and allows that the legislature shall consider enacting legislation to prevent the enforcement of the federal health care reform law.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted as amended, this bill will not affect current revenue levels but could negate the need for the Insurance Department to receive federal funding in the future to implement the provisions of the federal healthcare reform law if legislation preventing the enforcement of the federal health care reform law is enacted.

The Insurance Department has estimated a combined total of $34,000,000 in federal grant revenue for the 2011-2013 biennium in the original versions of HB 1126 and SB 2010 related to implementing the provisions of the federal health care reform law.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

If enacted as amended, this bill will not affect current expenditure levels.

The Insurance Department has estimated a combined total of $35,759,539 in expenditures for the 2011-2013 biennium in the original versions of HB 1126 and SB 2010 related to implementing the provisions of the federal health care reform law. $34,000,000 of these expenpenditures would be paid for from federal grants and $1,759,539 would be paid out of the state Insurance Regulatory Trust fund.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

If enacted as amended, this bill will not affect current appropriation levels but could negate the need for the Department to request additional appropriation authority in the future to implement the provisions of the federal health care reform law if legislation preventing the enforcement of the federal health care reform law is enacted.

The Insurance Department has requested a combined total of $35,759,539 in additional appropriation authority for the 2011-2013 biennium in the original versions of HB 1126 and SB 2010 related to implementing the provisions of the federal healthcare reform law. The funding breakdown for the estimated appropriation is $34,000,000 of federal funds and $1,759,539 of special funds.

Name:	Larry Martin	**Agency:**	Insurance Department
Phone Number:	328-2930	**Date Prepared:**	02/22/2011

FISCAL NOTE

Requested by Legislative Council
01/25/2011

Bill/Resolution No.: SB 2309

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill, if enacted, would make it a crime for state agencies and employees to enforce the federal health care reform law.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill nullifies the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 as it pertains to North Dakota and provides a penalty for violation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, this bill will not affect current revenue levels but would negate the need for the Insurance Department to receive federal funding in the future to implement the provisions of the federal healthcare reform law.

The Insurance Department has estimated a combined total of $34,000,000 in federal revenue for the 2011-2013 biennium in HB 1126 and SB 2010 related to implementing the provisions of the federal health care reform law.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

If enacted, this bill will not affect current expenditure levels.

The Insurance Department has estimated a combined total of $35,759,539 in expenditures for the 2011-2013 biennium in HB 1126 and SB 2010 related to implementing the provisions of the federal health care reform law.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

continuing appropriation.

If enacted, this bill will not affect current appropriation levels but would negate the need for the Department to request additional appropriation authority in the future to implement the provisions of the federal health care reform legislation.

The Insurance Department has requested a combined total of $35,759,539 in additional appropriation authority for the 2011-2013 biennium in HB 1126 and SB 2010 related to implementing the provisions of the federal healthcare reform law.

Name:	Larry Martin	**Agency:**	ND Insurance Department
Phone Number:	328-2930	**Date Prepared:**	01/31/2011

Date: 2-16-11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Sen. Dever's amendments

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Dever Seconded By **Sen.** Uglem

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		**Sen. Tim Mathern**	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry					

Total (Yes) 4 No 0

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2-16-11

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Period after "ratifiers" delete remainder of line 12, 13 & 14

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Uglem Seconded By **Sen.** Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		**Sen. Tim Mathern**	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry					

Total (Yes) 4 No 0

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2-16-11

Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Dever Seconded By **Sen.** Mathern

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman		✓	**Sen. Tim Mathern**		✓
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair		✓			
Sen. Spencer Berry					

Total (Yes) 1 No 3

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Failed

11.0742.02001
Title.03000

Adopted by the Human Services Committee

February 16, 2011

2-16-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2309

Page 1, line 2, remove "nullification of"

Page 1, line 2, remove "; and to provide a"

Page 1, line 3, remove "penalty"

Page 1, line 7, replace "**Nullification of federal**" with "**Federal**"

Page 1, line 12, replace "and are declared to be invalid in this state, may not be" with an underscored period

Page 1, remove lines 13 and 14

Page 1, line 15, after "shall" insert "consider"

Page 1, line 15, replace "enact" with "enacting"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 and 2

Renumber accordingly

Date: 2-16-11

Roll Call Vote # 4

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0742.02001 Title 03000

Action Taken: ☐ Do Pass ☒ Do Not Pass ☑ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Uglem Seconded By **Sen.** Mathern

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		**Sen. Tim Mathern**	✓	
Sen. Dick Dever		✓			
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry					

Total (Yes) 3 No 1

Absent 1

Floor Assignment Sen. Uglem

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2309: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (3 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2309 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "nullification of"

Page 1, line 2, remove "; and to provide a"

Page 1, line 3, remove "penalty"

Page 1, line 7, replace "**Nullification of federal**" with "**Federal**"

Page 1, line 12, replace "and are declared to be invalid in this state, may not be" with an underscored period

Page 1, remove lines 13 and 14

Page 1, line 15, after "shall" insert "consider"

Page 1, line 15, replace "enact" with "enacting"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 and 2

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2309

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2309
March 21, 2011
15754

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Federal health care reform legislation

Minutes:

Chairman Keiser: Opens the hearing on SB 2306.

Margaret Sitte~Senator Distraict 35 in Bismarck: (See attached testimony 1).

Chairman Keiser: Your bill has been engrossed but on line 7, you say the legislative assembly declares, can we do that or is it for the court to decide.

Senator Sitte: This is from the 10th Amendment Center, Thomas Woods and you can Google it, so it's the eleven states that have adopted this language. We are using the whole idea of state's nullification, that states have the authority to nullify an act of congress if congress have done something to overstep it's boundaries.

Vice Chairman Kasper: In order for us to join the other states, do we have to pass similar legislation or could we have some other type of legislation that we think we should nullify?

Senator Sitte: I did call the 10 Amendment Center after my bill was modified in the Senate, I know it's still going to count in your movement and they said, oh yes, we are still counting it as part of that nullification movement.

Senator Dever~District 32-Bismarck: I would address some of the changes that the Senate Human Services made on the bill. The second said the legislative assembly shall enact any measure necessary and we changed that to "we shall consider enacting. The reason we did that was, we are elected by the people to come and vote on the bills as they come forward. Subsection 3, referred to federal employees that they cannot do anything in support of the health care bill and if they do it, it's a Class C felony. Section 4 applied to state employees and said that it would be a Class A misdemeanor. It's important and appropriate for the legislative assembly to make that declaration, our attorney general has entered into a law suit and this will ratify his action. Congress passed a 27 or 28 hundred pages in one bill. We are trying to figure out what they did. They don't know what they did. I am here in support to SB 2309.

Chris Stevens~Jamestown: (See attached testimony 2).

Chairman Keiser: Is there anyone else here to testify in support of SB 2309.

Vice Chairman Kasper~District 26-Fargo: I was to address some of the areas that they amended out. I have some amendment to be considered to add. (See attached testimony 3). I tried to soften the language a little bit on page 1, line 9, we add the word "likely" and page 1, line 10, the word added is "may". I wanted to make this piece of legislation a little easier to get this passed by not coming out and declaring it is unconstitutional because we don't know for sure if it is or not until the US Supreme Court rules. I do have some handouts (see attached handout 3 A).

Representative Amerman: In your amendment, the section that does not apply to in B & C, page 2, can you give me an example that a student who is required by a higher institution and an individual who is required by a religious institution to have health insurance?

Vice Chairman Kasper: Under Item B, there are some colleges that for a requirement of registration, that the student needs some form of insurance, we are going to allow it. On Item C, requirement under religious institutions, it's a protection for religious institutions to have their right.

Chairman Keiser: When Representative Kreidt had his bill before us, the Catholic Diocese requires their priests are required to have health insurance package.

Representative Ruby: You talk about the penalties and it's basically prohibiting a person from requiring, so this is going to come from the agencies or federal agencies, would the penalty be directed at the individual who tried regulate or enforce these provisions that are being prohibited?

Vice Chairman Kasper: In visiting with Jennifer Representative Clark, the word person is specifically to cover all areas of entities that could try to interfere with the individuals rights in North Dakota to be protected under these amendments in the bill.

Representative Nathe: Can you explain the reason for the emergency clause?

Vice Chairman Kasper: I don't think we should wait for this to become law until August 1. We talked about the area of standing for the citizen of North Dakota to be protected. Attorney General has all the power in the world to join in the Florida Law suit as he did. He joined in that lawsuit and he has standing in that lawsuit. If the law suit is rejected or if it's partially correct, coming back to North Dakota, if we want standing for the people of our state, we need a bill like with this language in it, so our citizens have standing the law as well as so as possible.

Chairman Keiser: Did Senator Sitte see the amendments and what is her position on your amendments?

Vice Chairman Kasper: Yes, I gave her a copy of the amendments and she was very concerned that her language stays in the bill, which I have by adding the two words. I don't think she will have heartburn with the two amendments and I would like to visit with her on that. I want to make it palatable enough for some people who may not like parts of the bill.

Chairman Keiser: We have passed Representative Kreidt's bill, how close do the amendments reflect Representative Kreidt's bill?

Vice Chairman Kasper: It's substantially different because Representative Kreidt's bill deals with the individual mandate and does not have some of the other areas on that this bill adds to.

Representative M Nelson: Number 2, line 12 on the bill, the legislative body shall consider, what does number 2 actually do, don't we by law have to consider anything that comes before us?

Vice Chairman Kasper: In trying to honor Senator Sitte's request that her bill survives as closely as possible as to the way it was presented to our committee. The amendments to the bill, enhances what paragraph 2 does.

Representative Vigesaa: We had a bill in the first half, what is the difference if we adopted the amendments between the two?

Vice Chairman Kasper: There is nothing in here about a compact. I considered an additional amendment to this bill, a compact, but was decided not to bring the compact forward and have something more easily passed.

Representative Vigesaa: What would have been the major differences?

Vice Chairman Kasper: If the compact were adopted, if this bill as written and my amendments adopted, what the compact says is that if the Governor of North Dakota wishes to join in a compact with any other governors, who has passed almost identical to the compact language, the governors can join together to protect their citizens and enforce their law in the area of health care. Without a compact, the governors can cooperate together, but they can t join a compact. A compact can supersede federal law both prior and current.

Chairman Keiser: Representative Carlson, Vice Chairman Kasper and I did meet with the Attorney General and we had a nice discussion about this entire issue. The Attorney General believes he has all the legal standing he needs to represent the state of North Dakota in any legal action that might occur. With the two states, Florida and Alaska, in those two cases the governor, using the executive branch of government has weight in on this and in the case of Florida, he has directed every administrative department to immediately cease any action relative to the federal health care law. In other states, the third branch of government, the legislature has also taken action, what we successfully argued with was that the legislature have every right as one of the branches of government to stand and take a position on any issue regardless of what the executive or judicial branch may do. What we have before us in the forms of both the bill and the amendment is

the opportunity for the legislative branch to make a decision on policy question from our perspective.

Chairman Keiser: Further questions? Anyone here to testify in opposition to SB 2309.

David Keminitz~President of the AFL-CIO: (See attached testimony 4). Went over attachment 4-A, 4-B, 4-C, 4-D.

Vice Chairman Kasper: In your research of the relief of sick and disabled seamen, who was the collector?

David Keminitz: It was the president set up as the government the collectors.

Vice Chairman Kasper: I'm assuming that the collector was an employee of the federal government, a tax collector. This appears as a precursor to income tax. Was that part of the US Navy?

David Keminitz: I would lean towards it because it was the commerce of the day, they are private enterprises. How the fees were collected, but is says that "render to the collector the true account of the number of seamen that have been employed and pay at the said collector, 20 cents" and further it said that the President had the authority to then institute this legislation to make it affective.

Representative Kreun: Who is the master?

David Keminitz: The ship's captain.

Chairman Keiser: Anyone else here to testify in opposition, in the neutral position to SB 2309?

Dan Ulmer~Blue Cross-Blue Shield: One of the questions we had, we have a requirement at Blue Cross that we have to have some sort of health insurance, our employer requires it as a portion of being employed. We also have minimum participation laws in the small group market that a percentage amount of the employed group has to pick up insurance before we accept them. I don't know how that language fits back in that paragraph but otherwise we are going to crossover in some of the existing law and practices.

Vice Chairman Kasper: Could you come up with some suggested language that would solve your heartburn, that I could get back to Jennifer?

Dan Ulmer: Something to the extent, on subsection 2, a & b and subsection 3 needs to be reinserted into the paragraph.

Chairman Keiser: Anyone else here to testify in the neutral position to SB 2309.

David Keminitz: Under the act of relief the third item, says that it shall be the duty of several private collectors or port authorities to make a quarterly report to the sums collected

by them respectively by virtue of this act to the Secretary of the Treasury. The Secretary of the Treasury controlled the collection, the records of those collections, how much and where they came from.

Chairman Keiser: Anyone else here that wants to testify on SB 2309? Closes the hearing on SB 2309.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2309
March 28, 2011
16054

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Federal health care reform legislation

Work Session Committee Minutes:

Chairman Keiser: Opens the work session on SB 2309.

Vice Chairman Kasper: We did adopt most of this amendment and then BCBS expressed a concern about not being prohibited from having minimum requirements for their group health insurance plans. Somewhat a hog house. Reads the amendment (see attach amendment).

Vice Chairman Kasper: Moves to adopt amendment 03008.

Representative Ruby: Second.

Representative N Johnson: We have already passed that Representative Kreidt brought forward, how does this differ from what we passed already in the assembly?

Vice Chairman Kasper: There are a number of differences. The Kreidt bill 1165 generally on the mark up is only number one on our amendment. It does not provide the protection for the medical treatment, medical providers, group insurance and does not have the criminal penalty or emergency on it. This is an enhancement of HB 1165.

Representative Kreun: If I'm not mistaken, in HB 1165, part of number two and it seems to be a lot of duplication. It doesn't have the penalty or the emergency clause and other than that they are pretty close, aren't they?

Vice Chairman Kasper: No, there is quite a bit of difference.

Representative Kreun: It does have the other health insurance options, religious...

Vice Chairman Kasper: It has section four, but it doesn't have two, three and five on the back.

Representative Kreun: Didn't we have some information from the Attorney General and I looked up standing and what we needed for standing with that bill. I thought that was the indication that we had all the standing we needed from the Attorney General office in that bill to do whatever we are trying to accomplish. I personally agree what we are trying to accomplish, I don't know all this duplicating will be more beneficial.

Vice Chairman Kasper: This expands protection and it goes beyond HB 1165. The last bill passed is law.

Chairman Keiser: Vice Chairman Kasper, Representative Carlson and myself did have a meeting with the Attorney General and from my perspective there are three ways to approach the federal health care law, executive, judicial and legislative. (Explained the three ways to approach the federal health care law).

Representative Gruchalla: I was concerned about the emergency clause on the penalty section also. Theoretically, if we start putting people in jail as soon as this is passed by the governor, prior to us getting together in November, to try to figure out how we are going to implement that. I don't know if that part should be in there.

Chairman Keiser: You all know that in November we are going to more directly address the health care reform act. Hopefully a lot of decisions will be made. That is a point.

Vice Chairman Kasper: The Supreme Court is certainly not going to have ruled in anything by August 1 or when the bill is signed by the governor. The concern you have is a mute point. This is sitting here to see what the Supreme Court does. What this does is provides the protection for the people of North Dakota.

Representative Amerman: It could possibly be the case but what about the part that is already taken effect in regards of the lawsuits of children that are up to 26 years old? Is that a penalty for them?

Representative Ruby: I would think that answer would be no, those health insurance companies have chosen to go ahead and implement those on their own.

Representative Frantsvog: Was your discussion with the Attorney General about this specific bill?

Chairman Keiser: Relative to all of the bills on this tract that are in opposition to the federal health care reform.

Representative Frantsvog: His comment once again, was that he had all he needed, is that correct?

Chairman Keiser: From his perspective his judicial branch, he has everything he needs to take whatever action he believes is appropriate for the state of North Dakota.

Vice Chairman Kasper: What Chairman Keiser has said is absolutely correct. This bill does not deal with the standing as much as the protection of the citizen of the state of North

Dakota. It further enhances his standing. I recall he certainly wants a bill like HB 1165 to be passed.

Representative Nathe: Does HB 1165 have the emergency clause?

Vice Chairman Kasper: No.

Chairman Keiser: On page 1, on subsection 1, line 15, if that prohibited act is based on a federal law, rule or regulation, until the courts reverse it, isn't the federal law the law of the land? If it is the law, how can we says it's a violation.

Vice Chairman Kasper: This bill if passed, will be in conflict with federal statute, which would then create an opportunity for a law suit like Florida or Virginia if your Attorney General chooses to do so.

Representative Nathe: In regards to the emergency clasue, why have the emergency clause if nothing is going to happen?

Vice Chairman Kasper: In the event the Supreme Court would rule between now and then, which is highly unlikely, it's a safe guard if something happens.

Chairman Keiser: Further discussion?

Roll call was taken on the amendment 03008 with 5 yeas, 8 nays, 1 absent, motion fails.

Chairman Keiser: We have the original bill before us, what are the wishes of the committee relative to SB 2309?

Representative N Johnson: Moves a Do Not Pass.

Representative Gruchalla: Second.

Chairman Keiser: Without amendments I could support, it's problematic.

Representative N Johnson: We already have Kriedt's and it has passed both chambers.

Roll call was taken for a Do Not Pass on SB 2309 with 9 yeas, 4 nays, 1 absent and Representative Sukut is the carrier.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2309
March 30, 2011
161883

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Federal health care reform legislation

Minutes:

Chairman Keiser: There was a motion to rerefer SB 2309. It went out of committee as a Do Not Pass and Vice Chairman Kasper made an attempt to put a significant amendment on there. There are some important issues in the concept of the amendment that Vice Chairman Kasper brought forward. I will ask the committee to reconsider our actions first to bring the committee.

Representative Ruby: Moves to reconsider SB 2309.

Representative Vigesaa: Second.

Roll call was taken on SB 2309 for reconsideration with 10 yeas, 4 nays, 0 absent, motion carries.

Vice Chairman Kasper: (see attached amendments). After the amendment was defeated, I talked to some people and found three concerns that the committee members had. The first one was the reference to federal law and the concern that we should not be talking about federal law in an amendment. The other was in the areas of the emergency clause and the last was in the penalty clause. (walks through the amendments)

Item number 1: (reads the amendment), there was reference to federal government and it's gone. Deals with the protection for the health insurance mandate that our Attorney General has joined in with Florida, says that part health reform act is unconstitutional, this gives North Dakota the same as to what HB 1165 has.

Item number 2: Are the additional protections that are not in HB 1165. (reads item number 2). We add the protection that the individual cannot be prevented from seeking medical treatment and the choice of providers will be there. That to me goes beyond where SB 1165 does.

Item number 4: (reads amendment). It is the same as HB 1165 and the section doesn't apply to certain areas and that exempts medical assistant, Social Security, children health

insurance, student required by an institute of high learning to participate in academic institution and individuals required by religious institute to obtain and maintain health insurance.

Item number 5: (reads amendment). Blue Cross wanted to be sure that their group rules could not be interfered with their requirement that they have a 70% participation rate. Also, it allows the individuals to purchase insurance privately if they so choose or through a group plan.

The other two amendments are still there. (hands out a copy of SB 2309 with the amendment on it).

Representative Ruby: On page two, subsection five, define former family member.

Vice Chairman Kasper: It would refer to a divorce.

Chairman Keiser: I think that's correct.

Chairman Keiser: On page 1, item 3, what does that do to abortion?

Vice Chairman Kasper: That was an area that we talked about and it's silent. Jennifer said we shouldn't get into that area, it's not appropriate to the amendment and we have other law that deals with abortions.

Chairman Keiser: This is a strategy and I support the strategy, there are parts relatively close to the Kriet bill. You do that occasionally just in case one bill dies, it still stays intact and until it's signed, it's not law.

Vice Chairman Kasper: In the Kriedt bill, there are some differences? (reads paragraph 1).

Chairman Keiser: On line 4, "or from any source" you're covering the entire waterfront now, it there is something.

Representative N Johnson: Does that mean any government entity, individual or corporation?

Chairman Keiser: That is correct.

Vice Chairman Kasper: Moves to adopt amendment 03009.

Representative Ruby: Second.

Chairman Keiser: Further discussion on the amendments?

Chairman Keiser: On a policy standpoint, we have developed two avenues relative to health care reform. One, direct what the state of North Dakota should do given that the federal health care act is law and the work will be done in the special session. We have a

second track, which was to say, "if it rules unconstitutional, what would we want the policy of North Dakota to be", this bill is being presented as part of that.

Chairman Keiser: Further discussion.

Roll call was taken on amendment 03009 with 11 yeas, 3 nays, 0 absent, motion carries.

Chairman Keiser: We have SB 2309 before us again as amended, what are the wishes of the committee?

Chairman Keiser: Further discussions?

Representative Amerman: We have had good discussion and I counted up the bills and resolutions dealing with the new federal health care act and basically there are10-12 of them. I will still resist it.

Vice Chairman Kasper: I agree there are a lot of bills out there and many hours of discussion. What this bill is addressing is to provide as much protection as possible to the citizens, providers, and the medical treatment people of North Dakota based upon the uncertainty of the future. It is an expansion of HB 1165 above the individual mandate and have everything to gain and nothing to lose.

Chairman Keiser: Further discussion?

Roll call was taken for a Do Pass as Amended on SB 2309 with 9 yeas, 5 nays, 0 absent and Vice Chairman Kasper is the carrier.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2309
April 1, 2011
16272

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Federal health care reform legislation

Work Session Committee Minutes:

Chairman Keiser: Opens the work session on SB 2309. We will have Vice Chairman Kasper explain what has transpired and why the bill is back before us before we have a motion to reconsider.

Vice Chairman Kasper: After we passed out the .03009 amendment, the discussion on the floor seems to goes around standing for the state of North Dakota and the Attorney General's office. I asked Representatives Carlson, Keiser and Koppelman if they would go to a meeting at the Attorney's General's office about the amendments we put on this bill about the changes. We had a meeting with Tom Trenbeath, we had an overall discussion on the definition of standing, and how it relates to this bill and what the amendments might do. After that discussion, we had some amiable words and Tom Trenbeath agreed to review the .03009 amendment. We asked for his observations. He and I met a number of times and what the Attorney General pointed out, the way we left the amendment, we had on the bill there is potential unintended consequences in the area of providers.

(passes out the bill and amendment .03009-see attached amendment)

The concern from the Attorney General's office and Jennifer Clark agreed, again, the way we left the bill, the unintended consequences, is in the example of 2 b of the bill. The one item in 2-b is preventing, attempting to prevent, or interfering with that resident's choice or selection of a qualified medical treatment provider located in the state for the provision of legal medical treatment. The other one is number 3, the person may not prevent, attempt to prevent, or interfering with the provision of legal medical treatment by a qualified medical treatment provider located in this state to a resident of this state. BCBS have expressed that this was a concern before and we had language in there along the area of the federal law. The concern is that with the language, as we have it right now in the bill, the unintended consequences that could be interpreted that the medical provider would have to provide medical services to anyone by just walking in the door, whether they had medical insurance or not. They could say with this new law, "you have to provide it for me" and they can demand it. The same thing goes in 1, 2 a & b, and 3. The suggestion was that we add the words in the four areas to be "if that prohibited act is based on a law that has not

received specific statutory approval by the legislative assembly". The unintended would be opening things up too openly for citizens who demand medical services and providers to be able to require to provide them. When we bring the law back in, now we have that protection and that the Attorney General agrees we need to have.

(Passes out the new amendment .03010)

Chairman Keiser: Can you point out what they are?

Vice Chairman Kasper: Goes over amendment .03010-see attached amendment. That is the amendment and they are simple words but the Attorney General's office and Jennifer agreed that to try to avoid unintended consequences. We should add those words to the bill.

Chairman Keiser: This is not a formal hearing, is there any response from the audience in the room by adding that language? We have some concern; we don't want to sent something out that would have a negative impact. We can hold the bill.

Rob St Aubyn~BCBS of North Dakota: I assuming that the intent of this is just saying that some government entity can't have these restrictions unless the state has adopted those restrictions correct? I think that's what it's really meaning?

Chairman Keiser: Do you want Jennifer Representative Clark to come down here?

Rob St Aubyn: I do think it does take care of many concerns we have because it does say that unless statutory approval by the legislative assembly based on the law that is not perceived as statutory, these things would not be permissible. I think that would take care of the problems but as it was before; the unintended consequences would be pretty significant. I think what you are saying is, such as PPACA, you can't have something that would be restrictive on this unless the state has adopted PPACA.

Dan Ulmer~BCBS: Is the intent in subsection 1, lets says that the only was the individual mandate would apply in North Dakota would be that act was based on the law that this legislative assembly would approved, am I tracking that right? So if PPACA held, this Legislative Assembly would have to agree or disagree whether or not it would hold in North Dakota. Is that what we are shooting at?

Chairman Keiser: What we did share with the Attorney General's office is that if the federal health care reform act is upheld, it is the law and we will have to live with and work with it. However, if it's not, if the courts deemed that it is not constitution, then we want to be able to take whatever action or authority we can to put into law now, until 2013, the protections for the state of North Dakota so that we in effect would be grandfathered in. Subject to after the special session, if the courts uphold it unconstitutional and congress goes back does something, the President signs it and it becomes law, we want to make sure that we are in the position that we have ourselves grandfathered in with our law. We are not trying to argue that that if it's held constitutional, we would be in violation of the federal law. That's what we are trying to achieve.

Dan Ulmer: I think the question we had on the bill previously that we thought should address in a similar fashion was, we have many employers that we take up insurance as a condition of employment, I don't know how this effect it. I assume it's takes us back to where you were about the federal law.

Chairman Keiser: Did you look at five on the back page?

Dan Ulmer: Yes, is that part of the existing statute? Is it already in?

Chairman Keiser: That is part of what was passed. This amendment has 40% of what was in the other amendment exactly and adds those words.

Dan Ulmer: Our consensus is maybe now, which is better than what you were on the bill you had before.

Courtney Koebele~North Dakota Medical Association: I just received the amendment right now, if I have a problem, I will get to you on Monday. I don't think we have a problem with it. We were alerted to by Blue Cross.

Chairman Keiser: What I would like to suggest is that we will hold this bill until Monday. The problem is we don't have a schedule when we can meet. I want to make sure we do this the best we can and I hope you can understand what we are trying to achieve here. I don't know if it's unconstitutional or not but if it is, is there something we should be doing to position North Dakota better than what we currently have?

Courtney Koebel: We will take a look at it.

Chairman Keiser: Adjourns the work session.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2309
April 4, 2011
Job #16311

☐ Conference Committee

Committee Clerk Signature Pat Mae Kuehn

Explanation or reason for introduction of bill/resolution:

Committee Work
Relating to accident and health insurance coverage and federal health care reform legislation.

Minutes:

Chairman Keiser: We handed out amendments and asked various parties to look at them.

EMTALA (Emergency Medical Treatment and Active Labor Act) is the federal legislation dealing with emergency room management. If you bill through Medicare, if anyone presents to an emergency room, they must be treated. There must be an examination and if treatment is needed, it must be provided regardless of ability to pay. Their interpretation of part 2, "regardless of whether a resident of this state has or is eligible . . . ." and parts a and b, is the same as EMTALA. The North Dakota Hospital Association has a lot of concerns about that because they don't know who they can say "no" to. Representative Kasper tried to approach it from the perspective of granting people rights.

Rod St. Aubyn~Representative BCBS: While it makes some marked improvements from the original bill as amended, there are still several unintended consequences if this amendment is adopted. Aside from constitutional questions related to separation of powers, the supremacy clause, etc., our fear is these amendments could put us between a rock and a hard spot.

Here are some examples:

1. If the feds adopt a new federal mandate which has some limits (like limiting the number of physical therapy sessions), does that mean as an insurer we could not comply with the federal law because of the new state law which says you can't put limits on health treatment unless it has been adopted by the legislative assembly. It appears we would either violate the federal law or the state law until the state would elect to statutorily approve it by the legislative assembly.
2. Essential benefits within PPACA are broadly defined and they list categories but they don't go into the specifics yet. Those are still being worked on at the federal level. One of the last things they talk about under the essential benefits is "and pediatric, dental, and vision services." What does that mean? Is it 16, 18, or 21? Pediatric and dental, is it preventive; is it just the exam, caps for dental? That isn't defined by the federal

government yet. We assume there will be some limits on it. If it is just the way it is, no one could afford health insurance if it as broad as it is right now. The Legislative Assembly did not approve these limits. So do we comply with the federal requirements or with this new state law? If we limit the services, can the member sue us based on the state law for denying legal medical treatment? Does this apply to new or current federal requirements? There are quite a few provisions that we have to comply with based on federal law that the state has not adopted yet. The state has adopted things like GLB, Gramm–Leach–Bliley, the notification requirements. There are some other notification requirements that I don't think the state has adopted. We still do those. Do we comply with the federal or state? We are not sure if these apply after this law is passed or does it also apply to previous things that already happened. There are many other examples that we could provide.

As written now, we strongly oppose this bill with amendments. With the new amendments, we still have major concerns of some unintended consequences.

Vice Chairman Kasper: You have given us your concerns. How do you solve your concerns?

Rod St. Aubyn: I don't know. I just got this on Saturday. We think there will be some constitutional issues just with the Supremacy clause.

Vice Chairman Kasper: How do you fix the bill?

Rod St. Aubyn: You may say to not worry about that issue. But as a company we are obligated to abide by the federal law.

Vice Chairman Kasper: Is there no way to fix the language to give you the wiggle room that you need?

Rod St Aubyn: We don't see where we have a problem now. We know what we have to comply with.

Chairman Keiser: I understand the dilemma. The legislature should have 3 partners that I sometimes struggle seeing as partners. I wished they were. The North Dakota Medical Assn. and the ND Hospital Assn. endorse PPACA. They really endorse the frontier provision. There are a lot of providers that are not going to be happy if PPACA is implemented. It's going to be very problematic for the insurance companies to implement. This has been transformed into an attempt to say "what happens the day they declare it unconstitutional?" We are out of session and we have nothing prepared. In November we have our special session and then the following February they pass a refined PPACA and we can't be grandfathered in stating what North Dakota's position would have been ideally. I know the providers would like us to position ourselves so we do the best job for them. I don't see the insurance department here. We do have the option to go to November.

Rod St. Aubyn: It is frustrating for us also. The rules aren't even done. We are under the gun to do it and it is increasing our costs. There are a lot of things that are problematic with the current law. This bill is going way beyond what the intent is. It may even enter into the

issue of the "any willing provider provision" as well because you can't limit someone from going to any other provider. No one knows if it is going to be ruled unconstitutional. If they do rule the individual mandate unconstitutional, then it puts us in a much worse position than right now. You get rid of the individual mandate, there is still guaranteed issue. So then why does anyone take insurance until you need it. There are other mechanisms they could do to alleviate that adverse selection issue. If we had a preference, we would much rather have that law changed significantly than what we have right now. Doing what we have here, I don't know where you start and stop. It seems simple if you say the federal government can't require that anyone has to have insurance coverage. This goes way beyond that. Our attorneys mentioned under EMTALA, you have to stabilize a patient first. The way this is written, there is no limitation of just stabilizing it. You cannot prevent any legal medical treatment.

Vice Chairman Kasper: The intent from my perspective in drafting these amendments is to assure that person that they will not be prohibited from seeking medical treatment from providers that they want to go to. My intent is to not force the provider to provide them treatment if they don't want to. The intent from the provider's side is to guarantee the providers of North Dakota the right to practice medicine the way they choose. To allow them to treat patients as they choose and not let the federal government interfere with their right to do that. That is what the goal has been in drafting these amendments. Our residents can seek medical treatment and our providers can provide medical treatment and the federal government cannot interfere with their rights.

Rod St. Aubyn: That is what is problematic. You said you don't want anything to restrict a citizen to be able to go anywhere they want to. That's one of the issues we have a concern with because if you are a member of a network product, like a PPO, you choose a particular network. You don't have that freedom to go outside that network. If you do there is a penalty. It almost sounds like you would be limiting that ability to have PPOs. The reasons the PPOs exist are that the providers are willing to take more of a discount so the member sees the benefit of a cheaper premium. They also see cheaper cost sharing when they stay within their network.

Vice Chairman Kasper: You are going beyond where my intent was. My intent is not to disrupt the PPO network. My intent is not to disrupt the contract of insurance. Right now if I walked down to St. Alexius emergency room they are going to treat me. If I go to a physician in north Bismarck and say I want to be treated, I have the freedom to do that. They may bill me extra, I may be in the network or I may not be. That is not the intent to get involved in networks. It is to maintain the freedom of our citizens to seek medical care. The same is for the providers to be able to practice medicine without federal interference.

Rod St. Aubyn: We would agree with that concept. The problem is with the way it is defined. How do you define interfering or preventing? A higher cost share—is that preventing a person from going somewhere else. That's where you run into problems with this.

Vice Chairman Kasper: Now we are getting into some areas where you are saying, if we had this it might work. That is what I have been asking. What language will help solve the concern of your company? The language may need to be changed to simply say, "prohibit

a resident from seeking medical service from medical providers in North Dakota." It does not have to go as far as this language does. But to show some type of intent legislatively is the purpose of this. If we need to strip this language to the bare bones minimum, I'm fine with that. I want a sentence or two to protect the citizens, the providers, and protect insurance companies.

Rod St. Aubyn: We can see if there is a simple solution. It's not as simple as we are trying to make this. With existing PPACA and the example of essential benefits, that hasn't been adopted and approved by the Legislative Assembly.

Vice Chairman Kasper: We are trying to get statements in here to protect people, providers, and insurance companies in as broad a sense as possible without tying your hands based upon the dilemma we are in today.

Chairman Keiser: I would be happy to talk to my people.

Jerry Jurena, President of North Dakota Hospital Association: The EMTALA laws that were created in 1985 are the standards that we have to live by. Anybody who presents themselves to a hospital, we have to evaluate and treat. If we are able to treat them at our facility we have to treat them. If the injury or illness is beyond our capabilities we have to send them to a facility that is capable of treating or dealing with them. We can't just dump them. My concern when I read through this, I didn't understand what the intent was and what was supposed to be done. But I have a federal law that was created in 1985 that says anybody that walks into my facility, I have to take care of regardless of their ability to pay.

Chairman Keiser: Looking through the amendment, Number 2, when it says "regardless of whether a resident of the state has or is eligible for health insurance coverage", that is just about everybody. You then can't take action against them. If they don't have health insurance coverage and can't pay for it . . . .

Jerry Jurena: They come into the emergency room. When we don't have people with health insurance or means to pay for their health care and go to a clinic they end up coming to a hospital. We cannot do a billfold biopsy before we treat them. We do have to treat them first.

Representative M Nelson: What federal laws would require hospitals to withhold medical treatment or prevent you from treating patients?

Jerry Jurena: There aren't any laws that would prevent me from providing care to anybody. In fact it is the other way around, I have to. If they present themselves to a hospital, I have to evaluate and treat.

Representative M Nelson: Those are the laws this bill seems to be written against. You say there are no laws that require that?

Jerry Jurena: There are no laws that say I don't have to treat. I have to treat to the ability of my facility.

Vice Chairman Kasper: Is there any language that you suggest that doesn't interfere with EMTALA or how you currently do business but gives a statement that protects you the provider so you can practice medicine the way you would like to or cannot be prevented from practicing medicine based on future potential laws. This is looking at trying to protect and have a position in the legislation in the event of what congress might do in the future?

Jerry Jurena: Not at this point. With EMTALA, it's an open door. We have to take care of them. There are no criteria. I'm not sure there is anything outside of EMTALA. We are governed by that federal law.

Vice Chairman Kasper: I'm trying to have a legislative statement to protect providers from practicing medicine, to allow you to continue to practice medicine without undue potential interference by the federal government. Maybe that's impossible.

Chairman Keiser: I do have a concern that this is complicated. We have to be careful how the courts look at it. We have an option. We can hold on to it and try to find some language. We are not going to have a chance to have a big hearing on those words.
HB 1252 will pass in some form and the bill forming an interim committee that is going to study the impact of health care. This issue will be one of those issues. I'm getting anxious. If we take this language on the floor it will not pass. It will get shot down. I do think we can get our partners involved, the health insurance companies, the hospital association, the medical association, and the insurance department.

Vice Chairman Kasper: Let me suggest that we give Mr. St. Aubyn a day to talk to his people. If they can't come up with something, we have to reamend this bill.

Chairman Keiser: We could send it out in a Do Not Pass.

Jerry Jurena: With EMTALA, we are an open door. Why are hospitals so costly? It is because the federal government regulates my life from the time I get up until I go to bed. Any doctor that is working in that facility is regulated from the mandate of 1985.

Chairman Keiser: When EMTALA gets implied, it doesn't mean literally to go to the emergency room. If you are on the footprint of the hospital and you collapse, you are at their emergency room.

Representative Vigesaa: There are regulars that keep coming in the ER.

Chairman Keiser: Closes the hearing on SB 2309

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2309
April 6, 2011
16411

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Work Session Committee Minutes:

Chairman Keiser: Opened the work session on SB 2309. We have been holding SB 2309 to try and find some amendments that are agreeable to all parties. Vice Chairman Kasper, will you go over the amendments.

Vice Chairman Kasper: We will be going over amendments 03012. The amendment has been run by the Doctor Association, Health Care Association, which is the hospitals and Blue Cross. I just spent a few minutes with Tom Trenbeth and he said talked with Attorney General Stenehjem and they have looked at the amendments and they have no problems with them. He is happy that we fixed to two words on the back, "likely" and "may". Goes over the amendments **(see attached amendment 03012).**

Section 1, 1 a, b, c. What we are trying to do is give additional status and protection for our citizens to be able to go to providers and providers to be able to practice medicine they choose within the law.

Representative Frantsvog: In the last day or two, we hear comments, if something happens, you have to be provided medical care if you go to a hospital. How does this affect that?

Vice Chairman Kasper: On the back page of the amendment under item g, we cover that and that was the EMTALA. We are now saying that this bill does not pertain or apply to the EMTALA services, so we exempted it. The providers are happy with that.

Chairman Keiser: On a & b, the wording is addressing the individual and provider but notice on c, we say "as provided by law". Do we want that on c because that would mean federal law? We didn't included it on a & b.

Vice Chairman Kasper: In talking with Jennifer Representative Clark, we were concerned that the provider would be able to practice under current law as they so desired, she said we should have "as provide by law". The implication is North Dakota law but it doesn't say that. I'm going by what she suggested that we put in there.

Representative Ruby: When you talk about the right to deny medical treatment and services, you would almost have to say "provided by law" because in some instances they can't deny according to law, right?

Chairman Keiser: I just noticed it, is that a problem in the one or is a problem in the other two?

Vice Chairman Kasper: I think when we say "any properly licensed medical provider in the state", they are licensed and that allows their scope of practice. As far as the individual, anyone of us has the right to walk into any Doctor office or hospital, any place in the state right now and say "I would like to have service". That provider has the right to say "no" unless it's the emergency with the EMTALA and c, that is required by law.

Representative Boe: What does section 1 get us that we don't have already?

Vice Chairman Kasper: What we are attempting to do with section 1 is to statutorily say, what we are already able to do. The question is why and the answer is because we do not know what may be coming down the pipe with federal legislation that we want protection for our citizens to be able to seek medical care and our providers to be able to provide it. This may, if the federal legislation come down and say, all doctors and health care provider from Bismarck to the west, can only provide medical treatment to people in that western part of the state. On the eastern part of the state, those people have to go there. That is a far-reaching example but that may occur. This is to enhance in statute our legislative statement of the freedoms and protections of our citizens and providers.

Chairman Keiser: Any other questions on subsection 1?

Vice Chairman Kasper: This subsection does not apply to, so whatever we set up there does not apply to... **(reads amendment-refer to attached amendment).**

Chairman Keiser: Any questions on Section 2. Any comments from the audience?

Rod St Aubyn~BBCBS of North Dakota: The more it's amended, the language changes and the longer we look at this, we see more potential issues that could occur. Our attorneys have reviewed this, while it's greatly improved from the original, we worry that there are still unintended consequences that could occur if this passes. Vice Chairman Kasper has respectively made every effort to address the issues as identified. I understand where he is coming from but we still fear that might be some unintended consequences that I'll explain. Look how the bill was introduced to start with from the Senate and now where we are with the bill as it is now. I worry in terms of how the public will know, this has significantly changed and how are people keeping track of it? Are there other entities that may be have a concern, I don't know if there is or isn't. Some of the most recent amendments, I will give you some issues. I'm not sure if it's a problem or not but it usually been in the Human Service committee. For a while, we were having this bill come up about chelation therapy and there was a doctor that was ultimately suspended and lost his license for practicing chelation therapy for other issues than what it was intended in the medical people's opinion. I worried about how this is worded, "a person may not prevent or interfere with the right of any properly licensed medical provider in this state provide to that

resident medical treatment and services within that medical provider's scope of practice". I will use that as the example, chelation therapy isn't approved treatment for some medical conditions. If someone is going to be doing it for something other than what is recognized, can the board of medical examiners actually take action on this person? It says right here you can't prevent or interfere with that. That's just one example. Another one that concerns me, under PPACA the accountable care organizations, it's very similar to what we have, like a medical home. What they are trying to do is bring patients and focus the care on the individual to insure that there is appropriate care given, don't over utilize services, in doing that it's focusing a person into a particular physician or group. I'm wondering if that contradicts with the intent is here that "the resident has a right to seek medical treatment and services from any properly licensed medical provider in this state". This would be similar to what we have when you have a PPO, granted, our issues are taken care of on 2-e, but I do wonder where you have a system, a medical home or the accountable care association, is that going to run afoul to that? The other issues I'm not sure how it works in terms of federal preemption but federal health benefit plan, will this apply this to those products for the federal employees? They may have a PPO, do they fit under terms of 2-e. While I appreciate Vice Chairman Kasper willingness to address the issues that we grazed, I really feel it's too late in the process to change everything in this bill. I do worry about the unintended consequences.

Chairman Keiser: Any questions? Anyone else who wants to comment?

Ron Huff~Representing the Brotherhood of Locomotive Engineers: Just one simple thing under 2-d, if you could strike the word retirement. It will clean that up because our health care system is not under the retirement system.

Chairman Keiser: Any other comments?

Jerry Jurena~President of the North Dakota Hospital Association: I have reviewed the changes and I agree with what Vice Chairman Kasper said that in section 1-a, b & c, is putting in statute what we already are required to do.

Chairman Keiser: Any other comments, Insurance Department?

Vice Chairman Kasper: Moves to reconsider action and bring back SB 2309 as amended.

Representative Ruby: Second.

Representative Boe: What happens if the motion failed.

Chairman Keiser: It would be sent back with the recommendation that is currently on the bill which is a Do Pass as Amended. Further discussion on the motion?

Roll call was taken to reconsider action on SB 2309 with 13 yeas, 1 nay, 0 absent. Motion carries.

Vice Chairman Kasper: Moves to adopt amendment 03012 and strike retirement in part d.

Representative Ruby: Second.

Roll call was take to adopt amendment 03012 on SB 2309 with 14 yeas, 1 nay, 0 absent.

Chairman Keiser: We have SB 2309 before us as a Do Pass as Amended, what are the wishes of the committee?

Vice Chairman Kasper: Moves a Do Pass as Amended.

Representative Ruby: Second.

Chairman Keiser: Further discussion?

Representative Nathe: If subsection 1, a, b & c, we are already required to do this, then why are we doing this?

Vice Chairman Kasper: It is all over the statute; this is simply reaffirming the right of the citizens of North Dakota and the providers to do as it says in one place. It's a reaffirmation of the position of the North Dakota Legislature.

Chairman Keiser: I do want to compliment Vice Chairman Kasper and that he worked very hard. Passage of this at this time, I do agree in part, that I wished we had more opportunities for everyone to have more time to look at it. If we are to adopt this and send it out and it passes, we still have the special session to make some correction if it needs some. The biggest problem I have is in subsection 2, that there may be some more exclusions that some people will come out of the woodwork and say, we should have been included.

Representative Vigesaa: If this bill passes, how does this effect HB 1165?

Chairman Keiser: The basic rule is the last bill passed is the bill that counts. This bill compliment the other bill and this bill will take precedence over the other bill.

Vice Chairman Kasper: If you recall HB 1165 deals with the mandate that no citizens in North Dakota can be required to purchase health insurance. We took that part out of it; this doesn't supplant or change HB 1165.

Chairman Keiser: Further discussion?

Roll call was taken for a Do Pass as Amended on SB 2309 with 9 yeas, 5 nays, 0 absent and Vice Chairman Kasper is the carrier.

11.0742.03008
Title.

Prepared by the Legislative Council staff for
Representative Kasper
March 21, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, line 2, after "legislation" insert "; to provide a penalty; and to declare an emergency"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance coverage not required - Freedom to choose and provide medical services - Penalty.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer, under a plan sponsored by the state or federal government, or from any source, a person may not require the resident to obtain or maintain a policy of health coverage or penalize a resident for failure to obtain or maintain a policy of health coverage if that prohibited act is based on a federal law, rule, or regulation. This subsection does not apply to coverage that is required by a court or by the department of human services through a court or administrative proceeding.

red the →

2. Regardless of whether a resident of this state has or is eligible for health insurance coverage, a person may not take any action or inaction that would have the effect of:

   a. Preventing, attempting to prevent, interfering with, or withholding medical treatment from that resident if the prohibited act is based on a federal law, rule, or regulation that has not received specific statutory approval by the legislative assembly; or

   b. Preventing, attempting to prevent, or interfering with that resident's choice or selection of medical treatment provider if the prohibited act is based on a federal law, rule, or regulation that has not received specific statutory approval by the legislative assembly.

3. A person may not prevent, attempt to prevent, or interfere with a medical treatment provider's provision of medical treatment to a resident of this state if the prohibited act is based on a federal law, rule, or regulation that has not received specific statutory approval by the legislative assembly.

4. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C.

1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

c. An individual who is required by a religious institution to obtain and maintain health insurance.

Protecting our employers

5. This section does not impair the right of an individual to contract privately for health insurance coverage for family members or former family members or the right of an employer to contract voluntarily for health insurance coverage for employees.

6. Violation of this section is a class B misdemeanor."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

they are Const

Sen Sitte agreed

Page 1, after line 14, insert:

"**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: March 28, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 03008

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe	AB	
Representative Clark	✓		Representative Gruchalla		✓
Representative Frantsvog		✓	Representative M Nelson		✓
Representative N Johnson		✓			
Representative Kreun		✓			
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut		✓			
Representative Vigesaa		✓			

Total Yes 5 No 8

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

motion failed

Date: March 28, 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Johnson Seconded By Rep Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper		✓	Representative Boe	Ab	
Representative Clark		✓	Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe		✓			
Representative Ruby		✓			
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 9 No 4

Absent 1

Floor Assignment Rep Sukut

If the vote is on an amendment, briefly indicate intent:

Back to original bill

Date: March 29, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla		✓
Representative Frantsvog	✓		Representative M Nelson		✓
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 10 No 4

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

reconsider SB 2309

11.0742.03009
Title.04000

Prepared by the Legislative Council staff for
Representative Kasper
March 29, 2011

VR
3/30/11
1082

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance coverage not required - Freedom to choose and provide medical services.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer, under a plan sponsored by the state or federal government, or from any source, a person may not require the resident to obtain or maintain a policy of health coverage or penalize a resident for failure to obtain or maintain a policy of health coverage. This subsection does not apply to coverage that is required by a court order or by the department of human services through a court or administrative proceeding.

2. Regardless of whether a resident of this state has or is eligible for health insurance coverage, a person may not take any action or inaction that would have the effect of:

   a. Preventing, attempting to prevent, interfering with, or withholding medical treatment from that resident; or

   b. Preventing, attempting to prevent, or interfering with that resident's choice or selection of a qualified medical treatment provider located in this state for the provision of legal medical treatment.

3. A person may not prevent, attempt to prevent, or interfere with the provision of legal medical treatment by a qualified medical treatment provider located in this state to a resident of this state.

4. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

   b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

   c. An individual who is required by a religious institution to obtain and maintain health insurance.

5. This section does not impair the right of an individual to contract privately for health insurance coverage for family members or former family members or the right of an employer to contract voluntarily for health insurance coverage for employees."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Renumber accordingly

Date: March 29, 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 03009

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla		✓
Representative Frantsvog	✓		Representative M Nelson		✓
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 11 No 3

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: April 6-2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Ruby

Roll Call	Representatives	Yes	No	Representatives	Yes	No	Roll Call
✓	Chairman Keiser	✓		Representative Amerman	✓		✓
✓	Vice Chairman Kasper	✓		Representative Boe		✓	✓
✓	Representative Clark	✓		Representative Gruchalla	✓		✓
✓	Representative Frantsvog	✓		Representative M Nelson	✓		✓
✓	Representative N Johnson	✓					
✓	Representative Kreun	✓					
✓	Representative Nathe	✓					
✓	Representative Ruby	✓					
✓	Representative Sukut	✓					
✓	Representative Vigesaa	✓					

Total Yes 13 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Reconsider action

11.0742.03012
Title.

Prepared by the Legislative Council staff for
Representative Kasper
April 6, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Freedom to choose and provide medical services.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage: It doesn't say that the provider has to provide A: it says you have the right to seek.
   a. That resident has the right to seek medical treatment and services from any properly licensed medical provider in this state;
   b. A person may not prevent or interfere with the right of any properly licensed medical provider in this state to provide to that resident medical treatment and services within that medical provider's scope of practice; and B: The provider has the right to provide services, the person has the right to seek them
   c. A medical provider in this state has the right to provide or deny medical treatment and services to that resident as provided by law. we are not saying any provider has to do anything except what the law currently provides that they must do.
2. This section does not apply to:
   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].
   b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.
   c. An individual who is required by a religious institution to obtain and maintain health insurance.
   d. Health care benefits provided under the federal railroad retirement system. We put this in there to solve the problem we hadn't thought about
   e. The terms or conditions of any health insurance policy or health service contract or of any other contractual arrangement for the provision of health care services offered through a private health care system or accident and health insurance company administering accident and health insurance policies and certificates as permitted under the laws of this state, regardless of whether entered before or after the effective date of this Act.

BCBS indicated they were concerned about the wording. Mr St Aubyn emailed this same exact language.

11.0742.03012
Title.

Prepared by the Legislative Council staff for
Representative Kasper
April 6, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Freedom to choose and provide medical services.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage:

   a. That resident has the right to seek medical treatment and services from any properly licensed medical provider in this state;

   b. A person may not prevent or interfere with the right of any properly licensed medical provider in this state to provide to that resident medical treatment and services within that medical provider's scope of practice; and

   c. A medical provider in this state has the right to provide or deny medical treatment and services to that resident as provided by law.

2. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

   b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

   c. An individual who is required by a religious institution to obtain and maintain health insurance.

   d. Health care benefits provided under the federal railroad retirement system.

   e. The terms or conditions of any health insurance policy or health service contract or of any other contractual arrangement for the provision of health care services offered through a private health care system or accident and health insurance company administering accident and health insurance policies and certificates as permitted under the laws of this state, regardless of whether entered before or after the effective date of this Act.

right to seek, it does not say provide.

Person has a right to seek

not have to do anything

P St Aubyn emailed this to me

Date: April 6 - 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 03012

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

03012
retirement struck from language

11.0742.03013
Title.05000

Adopted by the Industry, Business and Labor Committee

April 6, 2011

VR 4/7/11 1082

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2309

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Freedom to choose and provide medical services.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage:

   a. That resident has the right to seek medical treatment and services from any properly licensed medical provider in this state;

   b. A person may not prevent or interfere with the right of any properly licensed medical provider in this state to provide to that resident medical treatment and services within that medical provider's scope of practice; and

   c. A medical provider in this state has the right to provide or deny medical treatment and services to that resident as provided by law.

2. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

   b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

   c. An individual who is required by a religious institution to obtain and maintain health insurance.

   d. Health care benefits provided under the federal railroad system.

   e. The terms or conditions of any health insurance policy or health service contract or of any other contractual arrangement for the provision of health care services offered through a private health care system or accident and health insurance company administering accident and health insurance policies and certificates as permitted under the laws of this state, regardless of whether entered before or after the effective date of this Act.

   f. The right of a person to negotiate or enter a private contract for health insurance for an individual, family, business, or employee with an

insurance company, third-party administrator, or other provider of health care services or health insurance permitted under the laws of this state.

g. The application of the federal Emergency Medical Treatment and Active Labor Act [42 U.S.C. 1395dd et seq.]."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Renumber accordingly

Date: Apr 6, 2011

Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2309

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla		✓
Representative Frantsvog	✓		Representative M Nelson		✓
Representative N Johnson		✓			
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 9 No 5

Absent 0

Floor Assignment Rep Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2309, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO NOT PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2309 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2309, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2309 was placed on the Sixth order on the calendar.

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance coverage not required - Freedom to choose and provide medical services.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer, under a plan sponsored by the state or federal government, or from any source, a person may not require the resident to obtain or maintain a policy of health coverage or penalize a resident for failure to obtain or maintain a policy of health coverage. This subsection does not apply to coverage that is required by a court order or by the department of human services through a court or administrative proceeding.

2. Regardless of whether a resident of this state has or is eligible for health insurance coverage, a person may not take any action or inaction that would have the effect of:

   a. Preventing, attempting to prevent, interfering with, or withholding medical treatment from that resident; or

   b. Preventing, attempting to prevent, or interfering with that resident's choice or selection of a qualified medical treatment provider located in this state for the provision of legal medical treatment.

3. A person may not prevent, attempt to prevent, or interfere with the provision of legal medical treatment by a qualified medical treatment provider located in this state to a resident of this state.

4. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

   b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

   c. An individual who is required by a religious institution to obtain and maintain health insurance.

5. This section does not impair the right of an individual to contract privately for health insurance coverage for family members or former family

members or the right of an employer to contract voluntarily for health insurance coverage for employees."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2309, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2309 was placed on the Sixth order on the calendar.

Page 1, line 1, after "chapter" insert "26.1-36 and a new section to chapter"

Page 1, line 2, after "to" insert "accident and health insurance coverage and"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Freedom to choose and provide medical services.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage:

   a. That resident has the right to seek medical treatment and services from any properly licensed medical provider in this state;

   b. A person may not prevent or interfere with the right of any properly licensed medical provider in this state to provide to that resident medical treatment and services within that medical provider's scope of practice; and

   c. A medical provider in this state has the right to provide or deny medical treatment and services to that resident as provided by law.

2. This section does not apply to:

   a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

   b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

   c. An individual who is required by a religious institution to obtain and maintain health insurance.

   d. Health care benefits provided under the federal railroad system.

   e. The terms or conditions of any health insurance policy or health service contract or of any other contractual arrangement for the provision of health care services offered through a private health care system or accident and health insurance company administering accident and health insurance policies and certificates as permitted under the laws of this state, regardless of whether entered before or after the effective date of this Act.

   f. The right of a person to negotiate or enter a private contract for health insurance for an individual, family, business, or employee with an insurance company, third-party administrator, or other provider of health care services or health insurance permitted under the laws of this state.

g. The application of the federal Emergency Medical Treatment and Active Labor Act [42 U.S.C. 1395dd et seq.]."

Page 1, line 9, after the underscored closing bracket insert "likely"

Page 1, line 10, after the first "and" insert "may"

Renumber accordingly