

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HCR 3014

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HCR 3014
January 31, 2011
13670

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Chairman Keiser: Opens the hearing on HCR 3014.

Vice Chairman Kasper~District #46-Fargo: We have a constitutional amendment. If this bill were to pass, the people will be able to vote and this deals with the freedom to choose their health insurance and health care provider. PPACA is now the law of the land. I believe PPACA goes too far into the constitution. What the resolution does, if you go to section 1, it creates a new of article 11 of the constitution of the State of North Dakota. On lines 15-17, so our constitution would guarantee the right of our citizens under the North Dakota Constitution if this were passed to have the freedom to choose whether or not to purchase health insurance and where to go as far as their health care needs are. On lines 17-19, there are some who believe that the reaches of Obama Care as the rules and regulations unwind, it could require that individual go a certain health care providers and if they do not do so, may face a fine. On lines 19-21, there again the freedom of the providers is to provide the services for the individuals, under their medical care and for them to bill that person direct and accept payment direct. There is fear from by many scholars that under PPACA that could be prohibited in the future. On lines 22-24, there is the great potential under the federal law that that could occur if it goes to its extreme. Now line 25, that it does not apply to the following items on top of page 2, it does not affect which health care services a health care provider is required to perform or provide, we are not interfering with a doctor or a hospital wished to perform, it does not affect which health care services permitted by law. So this legislature has all the authority that we have now and will continue to have in the future. This section does not prohibit care under worker's compensation laws, so that stays out of the scope of the bill. Line 6, we are protecting the rights of the individual and providers. Then we have some definitions. As you know, there are lawsuits going on as we speak throughout the US on the individual mandate. If you think logically what Obama care has done, that we the people of the US must own or be covered by health insurance. You must buy it yourself, through an exchange, employer or a combination there of. When our founding fathers drafted our constitution, tell me where in the constitution is allowed for the federal government demand that we buy anything. Any government that intrudes on the rights, privileges and freedoms of their sovereign people, has gone too far. What this bill does says, we are going to give the people of North Dakota the right to vote on whether or not they want to be forced or required to purchase health insurance. There is other issues from people who don't support this bill such as in order for

our health insurance system to work properly, under Obama care, we have to have the individual mandate. That is a very shallow argument, the question is "what is our right under the constitution of the US?" not whether or not the health care bill does the right thing. It's my opinion that it does the wrong thing for all the wrong reasons and it was done in the wrong way. I would hope that you look to the concept of this resolution, which is the constitutional rights of the people of North Dakota and not be persuaded by any other arguments you might need to do or don't need to do to protect the health insurance and care system. The bigger issue is the Constitution of the US.

Representative M Nelson: I have the privilege to drive in North Dakota and as the condition of that the state of North Dakota required me to buy coverage insurance. Are you opposed to that?

Vice Chairman Kasper: The idea of the state requiring you to buy auto insurance is a totally separate issue. You have the choice to buy an auto.

Representative M Nelson: You say may not compel any individual to purchase any individual or group policy. I am an individual; this would cover it and eliminate any health coverage on our auto insurance.

Vice Chairman Kasper: You are misinterpreting what the bill says, on line 15; a law may not compel any individual to purchase any individual or group health insurance policy. The writer under an auto insurance contract is not a health insurance policy. It's apples and oranges.

Representative Amerman: If this passes, goes to the people and the people passes this constitutional amendment, would our attorney general withdraw the lawsuit?

Vice Chairman Kasper: I can't speak for the attorney general, but he can choose what he pleases.

Representative Boe: What is the effective date?

Vice Chairman Kasper: The vote would be in the primary election of 2012 and I don't know when it would go into effect immediately upon the vote? I could check with Legislative Council.

Representative M Nelson: Would you agree that the court ordering a father to buy health insurance in support of his child?

Vice Chairman Kasper: There again that's a separate issue.

Representative M Nelson: If the court rules that Obama care is was ok, we would all be covered?

Vice Chairman Kasper: Let's not jump to that big of a conclusion. The potential with this bill is that we, the State of North Dakota, would be in court against the federal government.

The constitutional issues are the key of the right of the citizens of North Dakota and US under state and federal constitution.

Chairman Keiser: Anyone here to testify in support, in opposition to HCR3014?

Dave Kemnitz~President of the NFL-CIO: We support the health care reform. The options are many and the option to either go to a public sector provision in conjunction with collaboration with the private sector is in our estimation one of the best. Virtually every part of congress mixes the socialization of commerce and the public. There isn't much of an option change there but there is in a resolution to ask the people to put in the constitution, something that is limited as HCR 3014. I have some questions and concerns. The constitution as I look at, article 1, section 8, says that the congress shall have power to lay and collect taxes, duties, impost and excises to pay the debts, to provide the common defense and "general welfare" of the US. To me, general welfare means the populace is being taken care of. Governing through the constitutional instrument like HCR 3014, take away the now constitutional right of the people, the simple majority rule. That's why we elect you. I watch the debate on C-Span and Congressman Rick Berg and the discussion went both ways. The bill can come before you with very flawed mechanisms to make it work and that you work on those things together to make the language fit and to make it work for this state. If this goes to the ballot, millions of dollars spend, to discuss debate try to convince the general public the judgment of it, when we spend money to elect you. We are a representative democracy. If we lock in such statements as I have read here, only the courts decide what you meant. When you leave here, put it into constitution, you no longer represent us only the courts. It could limit even what you meant to have. This limits us to make it right. Vice Chairman Kasper talked about lines 15-17, on line 16 the word "individual", if a benefit is part of pay, would an individual, if they choose, receive cash instead? If enough people did that, would the state have a higher burden of expense? On line 22 on page 1, who makes the rules and enforces these rules? The courts will have a whole different aspect. On page 2, line 4, which now you make, so the decisions in my mind, this statement creates sovereign immunity to one entity that is a monopoly that you must purchase from and no other. It's unchallengeable. Line 7 on page 2, all economists write about their materials and they all agree on this, anything limiting gain or profit in effect punishes the free market or burdens it. Punishing could be read almost anything and especially once it's in the constitution. If page 1, lines 15-23, could be viewed as punishing the group through higher premiums and we will go everywhere with this, that's how laws is and constitution. People read it differently and it becomes a lawsuit because it has to be. You have to go to court to decide, but today it's a vote. One the very bottom of page 2, lines 23-26, the penalty or fine is a definition now, so it means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge. Any person can go this constitution say that this is a burden. Last line 26, page 2 "discourage", you take that word and give it to 3 people and you will get 6 different interpretations and applications. I understand the intent, I believe in you as representations of what you do but to put something in the constitution that takes away from you and me, the ability to adjust to differing situations, transfers it to all courts. Only one way to go and that's to the courts.

Vice Chairman Kasper: Look at line 4, page 1 of the bill, this measure would prohibit any law from compelling any individual to purchase health insurance or compelling any individual, employer, or health care provider to participate in any health care system. The

constitution amendment says is these people can't be compelled to do that and it specifically outlines what they cannot be compelled to do. If you look at your definition on page 2, compelling means, including, imposes a penalty or fine. What the statute says, individuals or these other entities cannot be compelled to do this and they can't impose a fine. We are protecting the rights of the people. I wanted to give you assurance, you're ok. Under the current federal law, you talk about freedom and rights; I agree with you, what does the current federal law say as far as owning and purchasing health insurance for individuals in our country and our state?

Dave Kemnitz: Currently it doesn't speak a lot to any of it.

Vice Chairman Kasper: What it does do is it does compel and require individuals to own and purchase health insurance. We are being compelled by the federal law to do certain thing which is taking away our rights. The question is, if this bill were passes by the people, where would our people have more freedom and rights under the current federal law that compels them to do something or under this bill which says you are free to do it or not to do it.

Dave Kemnitz: I read the oath that a citizen takes to become a US citizen but under that oath, it compels those who take the oath, to honor any call to action of any military direction. Also to serve civil function, this is compelling. In the eyes of many, health care is part of; it's vital to life. The word compel can be used variously on different situations and applications. If this HCR 3014 says what I read into it, line 4-6, page 1, what happens when our global network of commerce works, to do business in Canada to work with their health care system and provide for those workers, yet they are based in US. Are they compelled to use a universal mash of single payer health care system of a different country?

Vice Chairman Kasper: I would encourage you to take your mind away from the "what if's questions" that are not germane to the bill at all. We are dealing with the rights of North Dakota citizens to be able to do something or not do something. Your concerns are way out there; the bill just doesn't go there. What we are dealing with here is constitutional right of the people of North Dakota to either have freedom or have the government say we must buy health insurance. Would you support the government requiring everyone to be a member of the union?

Dave Kemintz: I plead the 5th. I want to know if you want to limit the people.

Representative Gruchalla: Your limited knowledge and mine, it seem like those 3 words, on line 4 of the 1st page, "prohibit any law" isn't that just telling the state, isn't the 3 words that will end up in court? Setting up a debate, those 3 words?

Dave Kemintz: That is probably the essences, but prohibits any law from any individual to purchase health insurance is the essence.

Chairman Keiser: Is there anyone else here to testify in opposition, neutral HB 3014.

Closes the hearing on HCR 3014.

2011 HOUSE CONSTITUTIONAL REVISION

HCR 3014

2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee Prairie Room, State Capitol

HCR 3014
February 9, 2011
Job #14294

☐ Conference Committee

Committee Clerk Signature

Mary Mair

Explanation or reason for introduction of bill/resolution:

Relating to freedom of choice in health care.

Minutes:

Chairman Koppelman: We will open the hearing on HCR 3014.

Representative Kasper, District 46: We have two Constitutions that we work under, the Constitution of the United States and the Constitution of North Dakota. The Constitution of the United States requires separation of powers in the Executive Branch, the Judiciary and Legislative Branch. It also delegates and enumerates certain powers to the United States. It says that those powers not specifically delegated to the United States are reserved to the States or the people respectively. We all know that last year, the United States Congress passed, in the dark of night, without a vote in either chamber, through a procedural method that I believe was unconstitutional. Congress didn't because it was controlled by a party who, in my observation, the leadership did not want to pay attention to the Constitution of the United States. The President signed the bill which we call, in the IBL committee, PPACA. I can't tell you the full name of it but it has to do with the health care that was passed. I call it Obama care. What that bill requires is that we have an individual mandate and it says that every one of us in the United States, at one point in time, must own health insurance. I believe that has gone beyond the Constitution. We've had numerous lawsuits filed. In Virginia, the Attorney General filed a lawsuit and Judge Hudson recently ruled that the individual mandate was unconstitutional in the State of Virginia. That has yet to go to the Supreme Court. Just last week, the lawsuit in the State of Florida where the Attorney General and 25 other Attorney Generals in the United States joined in that lawsuit to sue the Federal Government to say that PPACA was unconstitutional. Judge Vincent recently ruled that in fact not only the individual mandate is unconstitutional, but the entire law is. The States are trying to get those judgments moved forward to the Supreme Court because the Supreme Court is going to be ultimate arbitrator and determinate where the constitutionality of that action will lie. As I thought about and began to study what could be done and how the States could fire back at the United States Government and the Constitution for what they've done, I came up with the concept of a Constitutional Amendment. We have companion bills like HCR 3014. We just passed out of the IBL committee which has not come to the floor yet, HCR 3016 which is similar to the Constitutional Amendment but it's in resolution form. We also passed out of the IBL committee, which is also not on the floor, HB 1291. This bill authorizes the Governor to

enter into an interstate compact which I will not get into because it's not germane to this bill. I just want you to know that there are companion bill coming besides this Constitutional amendment. The importance of this Constitutional amendment is that if this committee and the House passes it and the Senate concurs, we will allow the people of North Dakota in the next election whether or not they want to put in the North Dakota Constitution that we have certain rights in our Constitution. I believe that is important for the people of North Dakota to have that opportunity to make that decision. I'd like to walk through the bill.

Representative Kasper reviewed HCR 3014.

As we know, a concurrent resolution does not have the force of law. If we pass this out, we will let the citizens of North Dakota decide if they want to amend our Constitution which as we discussed today in some of our floor debate. I think the ultimate local control is our citizens and their right to determine the laws and the Constitution of our State.

Chairman Koppelman: Testimony in support of HCR 3014?

Dustin Gawrylow, Executive Director of the North Dakota Taxpayers Assoc: (See attachment #1). The debate over health care nationally was never about cost containment though it was pitched as being so. It was always about who cut the check, the Government or the individual. Somehow Congress compromised by having the government force the individual to cut the check. Somehow this was viewed as a compromise. Congress ignored the cost containment side of the debate completely and they also ignored the possibility that there might be other solutions. While the folks that proposed and passed this law that is pending in the court system called those of us who opposed it, the party of 'no'. In reality, it was they who refused to open the debates who were the closed minded ones. It was their way or the highway. I passed around this sheet. It's what we proposed back in Sept. of 2009 which was when the health care debate started heating up. (See attachment #1) I acted as the opposition leader in North Dakota to this law federally. NDTA worked with groups such as North Dakota Chamber of Commerce, United States Chamber, Associated Builders and Contractors, and others. We said that this law would be found unconstitutional and it's working its way through the lower courts and will eventually find its way to the Supreme Court. We're pretty confident that it will be found unconstitutional. We still need to look at way that here in the State, we can protect our citizens from an over bearing government. We cannot have the Federal Government endangering our economy in any way. It should not be infringing on the rights of our citizens. We've gone through some of the things that can be done at the State level. Many would also need to be done at the Federal level or the State would have to encourage the Federal Government to allow the State to fix the problem themselves. In order for this path to occur, States must also protect their citizens in the first place. If there's not a protection for the citizens it makes it very difficult for the State to look at fixing the problem. The Taxpayers Assoc. supports this HCR fully and wants to see the State do what it can to fix these other issues and keep this movement to protecting the citizenry from an overbearing Federal Government moving.

Representative Holman: Do you support Medicare?

Dustin Gawrylow: I support the idea of providing benefits for those that truly need them that truly cannot provide for themselves and that need a safety net. There is a difference between a safety net and an entitlement hammock. We need to get in, at the Federal level, an area where the ways that we help the poor and the needy and the elderly in a way that actually benefits them and is cost constructive to the tax payer.

Representative Kasper: This bill does not deal with Medicare does it? Or Medicaid?

Dustin Gawrylow: No it does not.

Chairman Koppelman: I have one question? After the fact of the Federal legislation and as you pointed out that's moving through the courts and we'll see what the final disposition of that is. If a state were to adopt a Constitution amendment like this, say a year from now, do you have any sense or have any of the scholars you've read or consulted with given any indication as to what effect it would have?

Dustin Gawrylow: I think that it would definitely create a debate and what we're really concerned about is the potential, whether it's on this law federally or any other law, part of this law was that the IRS would be empowered to enforce the law with a \$7500 fine for those who do not follow it. There's no reason that a State should open its citizens up to that and it gets back to the issue of protection. If the IRS is designed to collect tax revenue, it should not be enforcing fines if you don't do X, Y, and Z. That's not a revenue process to begin with. As far as what would happen, that's anybody's guess. They could go 12 different ways. The principal of the matter is that State should be in the business of protecting their citizens from an overbearing government.

Chairman Koppelman: Other testimony in support of HCR 3014? This Concurrent Resolution actually had another hearing in the IBL committee. In your books, you have a copy of the minutes from that hearing. Testimony in opposition of HCR 3014?

Robert Lengenfelder: I'm not in support but I'm not opposed either.

Chairman Koppelman: We'll note you as neutral.

Robert Lengenfelder: I don't believe the Federal Government can pass a single bill and represent all 50 states. We have different values and needs in North Dakota from California. As members of the legislature, you're aware that we pass many laws and there are many books on laws and we do that for a reason, because we are a modern industrial society. We are in close contact with one another and what everybody else does affects everybody else. I believe it's logical to assume that the State of North Dakota would want to provide affordable health care coverage for all its citizens. I don't know what the politics of this is of it passing here in the legislature but if you're trying to get past the people, you'd probably want to include something that would say if you have freedom of choice, you have freedom of choice to a health care program that will help you out in all areas of your life. To say to somebody you have access to health care system because you have an emergency room is not health care. You have a right to a debt with your hospital is not acceptable. The reason that the Federal Government got involved in this issue is because of legislatures in the States refused to act. The Blue Cross / Blue Shield along with the

Federal Government has a monopoly on health care in North Dakota. With reforming these two institutions, the State has a compelling interest to ensure the 55,000 people in North Dakota that don't have insurance. This is a big issue for business owners that want to start a business. For those of you that are Republicans and you believe in business, and you want to encourage new businesses in North Dakota, these people have to go out and buy a thousand dollar health insurance premiums for a family. It can be a detriment to people wanting to start their own business. This cuts through any ideology that anybody in the legislature might have. To cover the people in the state of North Dakota, as we only account for only 1/4 of 1% of the total population in the United States, I think we can come up with a way through an amendment to the Constitution or an amendment to this amendment to cover people and see beyond our own ideologies and open up our minds and look at those that don't have health care, recognize they are suffering, and do what's right. We can choose to do what's right and we can choose to do what's wrong and we can realize what is right and wrong and do what's right. That's obvious. You don't need a study from an institution. You don't need any kind of other research. It should be obvious what needs to be done in the Legislature, just recognize it and do it.

Dave Kemnitz, President of North Dakota AFL-CIO: Refer to testimony from IBL Committee from Jan. 31, 2011. I'd like to make sure that you have copies of attachments that were handed out at that committee. (See handouts - attachments #2, #3, and #4) Someone brought to my attention last week, an Act that was passed in 1798. (See handout - attachment #5) My point is that in 1798, Congress and the Government thought this was proper for the United States of America, to insure that the biggest part of our nations commerce had health care provided, because they needed to protect commerce and their citizenry.

Representative Louser: I own a company that has independent contractors, not employees. We do not provide health insurance at our company. Some of the people that work for me may buy their own insurance, some may be covered by their spouse, some may choose not to buy insurance at all. I don't really know what they have. Under the PPACA would I, as a small business owner, be required to provide insurance for those people or pay a fine?

Dave Kemnitz: That is a question I can't answer. Under the understanding of it, if you are a direct employer of those individuals, you probably would be. Since you called them independent contractors and they're under contract to do a service under their own direction, what would be the definition of that? Under the State of North Dakota, I think the definition is they are truly independent. I couldn't answer for sure either way.

Chairman Koppelman: Further testimony in opposition of HCR 3014? Any neutral testimony on 3014?

Barbara Siegel, Child Enforcement Div. of the Dept. of Human Services: (See attachment #6 - proposed amendment).

Representative Kasper: Can you read through your amendment and tell me in easier language what it does to accomplish your concern?

Barbara Siegel: This would add another 'does not' so that this would not apply. What this would say is – read section f of amendment. What I can tell you is, it is Federal law and has been pre health care reform for some time. In State law and Federal law, it's been a requirement that any order for child support, which is ordered in paternity and in divorce cases also contain a provision for medical support which includes health insurance coverage for the child. What that means is, when we're talking about an order for support of a child, that's language used in our state law to talk about a child support order. Medical support provisions may be health insurance coverage for the child or other medical support such as cash medical support. We also wanted to be sure because just establishing an order for medical support or health insurance coverage for a child doesn't mean it occurs. We also have a lot of enforcement remedies that we can use and do use to ensure that the ordered parent provides the coverage so we want to make sure that's in place as well. There are underlying laws, and in the future will be rules supporting those courts orders as well.

Representative Kasper: Your amendment says 'prohibit the establishment of an order'. I would be very comfortable if you would define where the order comes from. Is it definable? Is it court order? Is it Medicare or Medicaid order? What type of an order are we dealing with here?

Barbara Siegel: What we're talking about is court order. The only reason that we hesitated to include that is we are involved in interstate cases. Some other States establish their orders administratively. We are a judicial based State. In North Dakota, we establish them through the Judiciary, so we would agree that that could be added. With regards to the enforcement of it, we would ask that it be more general so that we could enforce another States order that's done administratively.

Representative Kasper: So you would be comfortable if we added 'court order'? That would not disrupt what you're trying to do?

Barbara Siegel: In the first part, regarding establishment, yes, that would be fine.

Chairman Koppelman: Further testimony in a neutral position on HCR 3014?

Representative Kasper: Could I have one more clarification from Ms. Siegel? Are these orders all from State court, there not Federal court orders are they?

Barbara Siegel: That's correct. That's District Court.

Representative Kasper: So we could put the words 'State Court' in there without causing any consternation for you?

Barbara Siegel: Yes. If you wish, I can redraft something to be specific about which court in North Dakota.

Chairman Koppelman: We'll close the hearing on HCR 3014.

2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee Prairie Room, State Capitol

HCR 3014
March 16, 2011
Job #15546

☐ Conference Committee

Committee Clerk Signature

Maye Main

Minutes:

Attachment #1

Chairman Koppelman: HCR 3014 deals with the freedom of choice in health insurance.

Representative Kasper: HCR 3014 would amend the North Dakota Constitution to protect the right of the North Dakota citizens to purchase or not purchase health insurance and put it in our Constitution. It has some areas that it does not apply to such as areas of Medicare, Medicaid, Workers' Comp., court orders where there's a divorce where the spouse is required to have health insurance, and some other areas. This one may not have the religious exemption. There was a lot of discussion early on in the session about the constitutionality of certain measures. Being this is a constitutional amendment, it would be constitutional in North Dakota if it were passed but is it constitutional federally. I have a handout for the committees review. This is an opinion on HCR 3014 from a gentleman named Clint Bolick who is a constitutional attorney and with the Goldwater Institute and worked for some other think tanks. (See attachment #1). He analyzed 3014 as far as the constitutionality of it. He has appeared before the United States Supreme Court and is preparing for another appearance before the United States Supreme Court. This does not list his credentials but I can get them for the committee. We have had a lot of talk about the health reform act. There are a number of states who have already passed this constitutional amendment, I believe Oklahoma, Missouri, and I think Arizona as well. There are numerous states considering this type of amendment during this session and I would hope that we would support the ability to put this on the Constitution and let the people of North Dakota say for themselves whether or not they want this protection.

Chairman Koppelman: You talked about the religious exemption. Did you wish to have more time to amend the resolution with that? We can wait if you prefer.

Representative Kasper: I really don't know if that's a concern.

Chairman Koppelman: Since we are nearing our deadline would you rather pursue that on the Senate side if you think it's important?

Representative Kasper: Let's just move forward and get it over to the Senate and I will talk to Legislative Counsel if we need to look at an amendment over there.

Chairman Koppelman: What are the wishes of the committee?

Representative Kasper: I move a do pass on 3014.

Representative Schatz: Second.

The legislative intern reminded the committee of a proposed amendment to HCR 3014.

Chairman Koppelman: There was a proposed amendment from the Department of Human Services. Did the committee want to look at that.

Representative Owens: Could somebody could refresh my memory as why we have a proposed amendment for section 'f'.

Chairman Koppelman: I have a note on my copy instead of 'an order' it would say 'a state court order'. I don't recall why we made that note. I just happened to write that and I don't recall if that was discussed.

Representative Kasper: This is what I thought we already had in 3014 so I will withdraw my motion and discuss the amendment.

Chairman Koppelman: Withdraw a second?

Representative Schatz: Yes.

Chairman Koppelman: Motion withdrawn.

Representative Kasper: This is one of the items that I would like to have in there because it does address the Dept. of Human Services concern about the child support and things like that and it clarifies what the Constitutional amendment would allow and not allow.

Chairman Koppelman: Do you remember a discussion as to why I have instead of 'an order' on the top line I have inserted 'a state court order'? Do you remember that discussion during the hearing?

Representative Kasper: I do not.

Chairman Koppelman: Let's ask our intern if she can refresh our memories.

Jessica, Intern: I thought that you had asked if you could put that in there.

Chairman Koppelman: 'A state court order'.

Representative Kasper: That's right because I don't want the federal government to come and mess with our Constitution.

Chairman Koppelman: Are you moving the amendment Representative Kasper?

Representative Kasper: Yes

Representative Schatz: Second.

Chairman Koppelman: On the first line, delete the word 'an' and insert 'a state court' so it would read 'prohibit the establishment of a state court order for support' etc. Is there any discussion on the amendment? We'll take a voice vote on the amendment.

Voice vote carries.

We now have the amendment resolution before us.

Representative Kasper: I'd now move a do pass as amended.

Representative Schatz: Second.

Chairman Koppelman: Any discussion?

Representative Holman: It seems like this is an unnecessary move since this is being played out in the federal courts. Are we wasting a lot of time with this type of action since its being played out at the federal level and it will be determined at the federal level so once that's decided, this seems like a mute action but correct me if I'm wrong?

Representative Kasper: We don't know at this point what the federal courts are going to do or not do. They could rule partially in favor of the Florida lawsuit totally or not at all and the same way with the Virginia lawsuit. We still have the Constitution which has a separation of powers and I believe that if we have a Constitutional amendment that says one thing for the people of our State and the Federal government through a congressional action says another thing, now we would have a totally different cause of action with the federal government Constitution to Constitution and separation of powers under the sovereignty separation clauses and so on. I think it would be different and it would be helpful if the people of our State decided that's what they'd like to have in our Constitution.

Chairman Koppelman: A lot of us have wondered the same thing and we all keep thinking about the federal law that's on the books now that's the subject of so much controversy. What about other things? Representative Kasper in your research, did you inquire if that issue is decided one way or the other, how this Constitutional provision might play out otherwise in the future? Would it prevent other types of laws we haven't even thought of from being proposed?

Representative Kasper: We never know what Congress is going to do and what they are going to come up with next which could be interpreted by some as a violation of separation of powers under the Constitution. If we have this in our Constitution 5 or 10 years from now and something different or new comes up that addresses that issue, we still have a constitutional challenge. Because our people will vote, if we pass this through the House and the Senate, let our people speak. It also is a very good barometer for us as legislators to let the people tell us what they are thinking on this issue. We have a lot of polls and we have a lot of discussion but this is a way for the people to tell us what they think so I think there's a whole lot of good that can come out of it and I can't think of to much bad.

Chairman Koppelman: As I read it, we also prohibit the state legislature someday from passing something that would require the purchase of health insurance. There are a lot of things to consider for the members of the committee.

Representative Holman: Initially, the United States was set up as a federation of independent states. Over time, that was changed and so we no longer are a federation of independent states; we are united states with united laws that apply to everyone. Our Constitution has evolved to that status so for that status and so for that reason I think we are wasting our time and the time of the people of North Dakota by proceeding with this action.

Representative Kasper: If you read some of the papers that are written by Madison and Jefferson back when the Constitution was being drafted. A lot of these states at that time were very suspicious of the potential power and overtaking of powers by the federal government. They were very specific in the fact that the 13 states were setting up a federal government that they wanted with limited power and that's why the Constitution enumerates the power of the federal government and says under article X that all the rest of the items are left to the states and to the people. This is an issue that our founding fathers were very careful of and you will read some writings where they imply that the United States is a government formed by the states and we give the power to the federal government; it doesn't come from the top down it comes from the bottom up. They very clearly felt and were suspicious of a powerful federal government. Over the years we have seen what happens when the Congress forgets what the Constitution says and the courts, in my opinion, and try to read things into it that aren't there. I think anything we can do to strengthen the right of the people of North Dakota to have rights and have protections in our Constitution is a good thing.

Representative Holman: We fought a civil war which established the power of the united government to determine states rights because that was what it was about. That was about 80 years after we did our Constitution. That proved a point of the central power and probably that's where we have evolved to this time too.

Chairman Koppelman: In the South, they don't call it the Civil War. If they're very pleasant they call it the War Between the States. My brother in Houston says they call it the War of Northern Aggression. A friend from Virginia says there they call it The Recent Unpleasantness so I guess it depends on where you're from.

Representative Kasper: From my perspective, the Civil Wars stopped succession so it didn't say we don't have a separation of powers it just said that you states when you join you can't get back out. We still have a Constitution that says there are definitely powers separated between the federal government and the state governments. I agree, the Civil War did something but it certainly did not do anything to change the separation of powers under the Constitution from my perspective.

Vice Chairman Kretschmar: I got my start in elected politics by running to be a delegate to the North Dakota Constitutional Convention back in 1970's. When we were trying to devise a new Constitution for North Dakota, some of the guidelines we followed were that the Constitution should be the skeleton of our legal system and the statutes that we enact

were kind of the flesh and muscle of that system. I kind of object to this resolution because of its length and it looks to me like it's a statute. It would seem to me if we just passed the very first sentence of section 1 that we'd have enough. That's my reason for voting against the motion for a do pass.

Chairman Koppelman: The Senate will have another look and we could certainly amend it to that if we thought that the proponents felt that that satisfied the purpose. Further discussion? I share the concern but I don't know what is necessary in terms of structure.

Representative Kasper: Let me share why that is there. To me it is not the most important part of the resolution. I agree with Vice Chairman Kretschmar that section 1 is the most important part but the rest of the resolution is there because there is the possibility that under PPACA, the health reform act that is now past, because there is so many things that are coming out that we still don't know about and there's so many rules to be written and there's so many agencies to be created, that we don't know what they're going to try to do. One of the fears of a lot of people, myself included, is that the federal government could someday say to us and to our kids and our parents that you can go see the doctor in Fargo but you are going to have to see the doctor in Bismarck. Neither one of you can go to the Mayo clinic because that's prohibited because of the way we set up our health system. The rest of the section of the law says 'the right for our citizens to use the health care provider of their choice can also not be interfered with by the government. I think it adds to what the resolution does for the protection of our citizens.

Chairman Koppelman: Further discussion? Seeing none, we'll take the roll on a do pass motion on HCR 3014.

7 Yes, 4 No, 0 Absent

Do Pass

Carrier: Representative Kasper

March 16, 2011

VR
3/17/11

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3014

Page 2, after line 10, insert:

- "f. Prohibit the establishment of a state court order for support of a child which includes health insurance coverage or other medical support provisions, or the enforcement of that order, and does not affect or prohibit any law or rule relating to that order."

Renumber accordingly

Date: March 16, 2011
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3014

House Constitutional Revision 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 Rep. Kasper Seconded By Rep. Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Conklin		
Vice Chairman Kretschmar			Representative Holman		
Representative Kasper			Representative Winrich		
Representative Louser					
Representative Meier					
Representative Owens					
Representative Schatz					
Representative Streyle					

Total (Yes) 10 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote carries

Date: March 16 2011
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3014

House Constitutional Revision 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 Rep. Kasper Seconded By Rep. Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Representative Conklin		✓
Vice Chairman Kretschmar		✓	Representative Holman		✓
Representative Kasper	✓		Representative Winrich		✓
Representative Louser	✓				
Representative Meier	✓				
Representative Owens	✓				
Representative Schatz	✓				
Representative Streyle	✓				

Total (Yes) 7 No 4

Absent 0

Floor Assignment Rep. Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3014: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (7 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HCR 3014 was
placed on the Sixth order on the calendar.

Page 2, after line 10, insert:

"f. Prohibit the establishment of a state court order for support of a child
which includes health insurance coverage or other medical support
provisions, or the enforcement of that order, and does not affect or
prohibit any law or rule relating to that order."

Renumber accordingly

2011 TESTIMONY

HCR 3014



Seven Point Plan to Avoid Government-Run and Government Mandated Healthcare

(originally published late-September 2009 in various newspapers around North Dakota)

1. Up-front Pricing – enable easy consumer choice.
2. Employer Matched HSAs – give employers tax incentives to match employee contributions to HSAs.
3. Billing Rate Liability Write-Off – incentivize doctors to donate time to community free-clinics by letting them write donated time off their federal tax liability at their typical hourly rate.
4. Student Loan Payments In Lieu of Tax Liability – reduce tax liability of nurses and other support staff by the amount paid toward student loans in a given year.
5. Premium Deductibility - allow individual purchasers of insurance to deduct their annual premium from their taxable income.
6. Eliminate State Mandates – allow insurance companies to offer pure “ala carte” coverage
7. Cross-Border Compatibility – encourage states to develop agreements to allow companies to sell across state lines without creating new federal regulation.

<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!

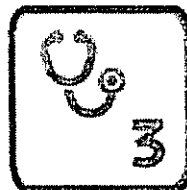
The new health care law will:



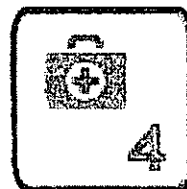
Ensure that all Americans have access to quality, affordable health care.



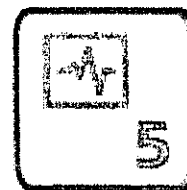
Create a new, regulated marketplace where consumers can purchase affordable health care.



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.



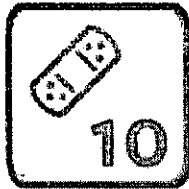
Help young adults by requiring insurers to allow all dependents to remain on their parents plan until age 26.



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.

- Privacy Policy
- Contact
- A project of Families USA
- © 2010 Stand Up for Health Care

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 Addition of signers

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

The Affordable Care Act: Immediate Benefits for North Dakota

Support for seniors:

Compliments of
North Dakota AFL-CIO

- 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.

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/pa_omnibus_final.pdf

^{iv} Kaiser Family Foundation. 2009 Employer Health Benefits Survey.

Attachment #5
Act for the Relief of Sick & Disabled Seamen, July
at for Free

<http://www.scribd.com/doc/29099806/Act-for-the-Relief-of-Sick-Disabled-Seamen-July-1798> 2/5/2011

With 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.

§ 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.

**Testimony
HCR 3014 - Department of Human Services
House Constitutional Revision Committee
Representative Kim Koppelman, Chairman
February 9, 2011**

Chairman Koppelman, members of the House Constitutional Revision Committee, I am Barbara Siegel, Policy Analyst with the Child Support Enforcement Division of the Department of Human Services. I am here to ask the Committee to consider a proposed amendment to HCR 3014.

The attached amendment would specifically allow an exception for the long-standing practice of ordering parents to provide health insurance coverage for children, when certain criteria are met, and when children are not part of an intact family. For example, the court may order a parent in a divorce to provide health insurance coverage for the child because that parent has the coverage available through an employer. In addition, the amendment clarifies that enforcement of those orders would also continue to be allowed.

To disrupt this practice would not only inevitably lead to more children being uninsured, but would also place the Child Support Enforcement program at risk for noncompliance with federal medical support laws and regulations thus leading to the possibility of significant federal penalties.

Although language on page 1, line 15, provides that a law or rule may not compel any individual to purchase health insurance coverage, and it may be argued that a court may still do so, provisions affecting the courts' orders in such matters are, and may be in the future, addressed in state law.

Thank you for considering this proposed amendment. I would be happy to answer any questions you may have.

Prepared by the North Dakota
Department of Human Services
02/09/11

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3014

Page 2, after line 10, insert:

- f. Prohibit the establishment of an order for support of a child that includes health insurance coverage or other medical support provisions, or the enforcement of such order, and does not affect or prohibit any law or rule relating to such order.

Renumber accordingly

GOLDWATER

I N S T I T U T E
in defense of liberty

CENTER FOR CONSTITUTIONAL LITIGATION

MEMORANDUM ON THE CONSTITUTIONALITY OF
HOUSE CONCURRENT RESOLUTION NO. 3014

by Clint Bolick
Litigation Director, Goldwater Institute

Questions have been raised concerning the constitutionality of H.C.R. 3014, which would amend the state constitution to protect the health-care freedom of North Dakota residents. Similar protections are proposed as a statute in Engrossed House Bill No. 1165. Similar measures, referred to the "Health Care Freedom Act" (HCFA), have been enacted as constitutional amendments or statutes in several states, including Arizona. We helped author model HCFA legislation. Such measures are a proper and permissible exercise of state authority.

All versions of the Health Care Freedom Act protect two basic rights: (1) the right of individuals to choose whether or not to participate in a health-care system, free from fines or coercion; and (2) the right to directly purchase lawful medical services.

In Letter Opinion 2011-L-01 (Feb. 3, 2011), North Dakota Attorney General Wayne Stenehjem concluded that House Bill 1286, which is much broader than the Health Care Freedom Act, would preempt federal law and thus violate the Supremacy Clause of the U.S. Constitution. The Attorney General's conclusion is not applicable to the Health Care Freedom Act.

The protection of the right of individuals to choose whether or not to participate in a health-care system may conflict with the so-called "individual mandate" provision of the federal health-care law. However, the conflict between the state protection and the federal law does not necessarily mean that the former must yield to the latter. The conflict begins the legal analysis but does not end it.

States are free to provide greater protection to individual rights than provided by the federal constitution. U.S. Supreme Court decisions have generally recognized a right to medical self-determination. See, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Doe v. Bolton*, 410 U.S. 179 (1973). The Health Care Freedom Act builds upon that federal constitutional right.

A conflict between the federal law and the state law would weigh the respective interests. In recent years, the U.S. Supreme Court has sustained on multiple occasions state laws that were

Clint Bolick | DIRECTOR

challenged on grounds that they were preempted by federal law. See, e.g., *Horne v. Flores*, 129 S. Ct. 2579 (2009) (upholding Arizona's English-only statute against a preemption challenge); *Northwest Austin Municipal Utility District No. 1 v. Holder*, 129 S. Ct. 2504 (2009) (narrowly construing the Voting Rights Act so as to allow a local district to "bail out" from certain requirements).

The closest case on point is *Gonzales v. Oregon*, 546 U.S. 243 (2006), in which the Court sustained the state's "right to die" law against a federal preemption challenge. The Court concluded that a broad reading of federal law that would preempt the Oregon measure would "effect a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality." *Id.* at 275. Health insurance regulation likewise is traditionally a matter of state rather than federal law, so the principles of federalism militate against a broad reading of federal regulatory authority.

Of course, a federal law cannot preempt state law if it exceeds the constitutional boundaries of congressional power. So far, two federal district courts have struck down the individual mandate of the federal health-care law because it exceeds congressional power to regulate interstate commerce. *Florida v. United States Department of Health and Human Services*, 2011 WL 285683 (N.D. Fla. Jan. 31, 2011); *Virginia v. Sebelius*, 728 F. Supp. 2d 768 (E.D. Va. 2010).

Attorney General Stenehjem notes that North Dakota is a party to the multi-state challenge to the individual mandate in the Florida case. It is noteworthy that both courts that have struck down the individual mandate have found that states have standing to represent the rights of their citizens to challenge the individual mandate because they have enacted the Health Care Freedom Act. *Florida v. United States Department of Health and Human Services*, 2011 WL 285683, at *7; *Virginia v. Sebelius*, 702 F. Supp. 2d 598, 607 (E.D. Va. 2010). It is possible that North Dakota will be found in a subsequent appeal to lack standing to prosecute its challenge to the individual mandate if it does not enact a Health Care Freedom Act.

In sum, the Health Care Freedom Act lies within North Dakota's authority to enact. It will strengthen the right of North Dakotans to control their own lawful medical decisions and buttress the state's authority to protect that right.

1, pg 3
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<http://www.policynd.org>

For Immediate Release

Stenehjem's opinion does not cover Health Care Freedom Act, says Constitutional Attorney

Bismarck - Today, the North Dakota Policy Council released a response to Attorney General Wayne Stenehjem's February 3, 2011 opinion about health care freedom laws being in violation of the U.S. Constitution (Letter Opinion 2011-L-01). The response was written by Clint Bolick, Litigation Director of the Goldwater Institute in Phoenix, Arizona.

While the Attorney General's opinion did not mention the Health Care Freedom Act, a proposed state constitutional amendment that would protect North Dakotans from individual health insurance mandates, he did generalize about the theory behind such a proposal.

"Wayne Stenehjem concluded that House Bill 1286, which is much broader than the Health Care Freedom Act, would preempt federal law and thus violate the Supremacy Clause of the U.S. Constitution," wrote Bolick. "The Attorney General's conclusion is not applicable to the Health Care Freedom Act... in sum, the Health Care Freedom Act lies within North Dakota's authority to enact."

The Health Care Freedom Act, HCR3014, is a state constitutional measure that would, "prohibit any law from compelling any individual to purchase health insurance or compelling any individual, employer, or health care provider to participate in any health care system, would allow an individual or employer to pay directly for health care service, and would allow a health care provider to accept direct payment for health care services."

"I asked Mr. Bolick to prepare a written response to Mr. Stenehjem because we did not want the Attorney General's official opinion to confuse people. The opinion is written sufficiently vague to imply that it would cover the Health Care Freedom Act. Mr. Bolick showed that it does not," said North Dakota Policy Council Executive Director Brett Narloch.

Similar constitutional amendments have passed in Arizona and Oklahoma and have not been challenged.

According to Bolick, North Dakota may need a law or amendment similar to the Health Care Freedom Act to remain part of a lawsuit in a federal court.

"Attorney General Wayne Stenehjem notes that North Dakota is a party to the multi-state challenge to the individual mandate in the Florida case. It is noteworthy that both courts that have struck down the individual mandate have found that states have standing to represent the rights of their citizens to challenge the individual mandate because they have enacted the Health Care Freedom Act... It is possible that North Dakota will be found in a subsequent appeal to lack standing to prosecute its challenge to the individual mandate if it does not enact a Health Care Freedom Act," wrote Bolick.

Clint Bolick has argued and won cases in the Supreme Court, the Arizona Supreme Court, and state and federal courts from coast to coast. To read his entire bio, click HERE.

To read Bolick's entire response, click HERE.

The Health Care Freedom Act is an idea being promoted by the NDPC and is featured in Moving Forward, the group's policy guide.

To read more about the Health Care Freedom Act, click HERE.

March 16, 2011

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3014

Page 2, after line 10, insert:

"f. Prohibit the establishment of a state court order for support of a child that includes health insurance coverage or other medical support provisions, or the enforcement of such order, and does not affect or prohibit any law or rule relating to such order."

Renumber accordingly