2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HCR 3016

2011 HOUSE STANDING COMMITTEE MINUTES

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

HCR 3016
January 31, 2011
Job #13671

☐ Conference Committee

Committee Clerk Signature Pat Mae Kuehn

Explanation or reason for introduction of bill/resolution:

A resolution urging Congress to repeal the Patient Protection and Affordable Care Act.

Minutes:

Chairman Keiser: Opens the hearing on 3016.

Vice Chairman Kasper, Co-Sponsor~District 46, Fargo: This is a resolution urging Congress to repeal the Patient Protection and Affordable Care Act (PPACA) or as I refer to it, "Obama care." Congress has passed the bill with little or no debate. There are many people who do not know what is in the bill. The bill requires that about 150 federal agencies need to be created. These people are going to pass rules and regulations without knowing where it's going. The bill and the process in which it was passed are seriously flawed and should be repealed. This Resolution asks Congress to repeal PPACA.

I don't oppose health care reform, but I do oppose what Congress did with PPACA. There are many areas the law doesn't address such as tort reform, multistate purchasing across state lines of insurance products, and medical inflation. BCBS and the larger providers in ND have made a commitment to get medical inflation under control. Ultimately those decisions should be made in the private sector with limited government involvement.

On line 8 we refer to the fact that the result of this law will be to create a government takeover of the health care industry that will increase health care costs. It is my opinion that with what is in the Health Care Reform Act, we are heading for a government takeover of the health care system in the United States and the socialization of medicine. We will only have one single payer which has been the goal of many. Single payer means monopoly. Government means inefficient and more costs.

The law on line 13 also restrains the freedom of individuals to choose their own doctor and health care provider. On line 15 a single payer health care system could cause millions of Americans who receive health insurance through their employer to lose their health insurance. We've heard this is not going to impinge on the right for you to keep your private insurance but when you look at the grandfathering rules where many businesses will not be able to meet those rules because they have been set up purposely to not allow

these businesses to meet the rules of grandfathering. That means you lose the status and are forced into a single payer health system of the government.

The worst part of Obama care is line 22, the U.S. Department of Health and Human Services dictates the benefits, how the plans are run, etc. This asks the Congress to repeal what they have done and to start over with something better. About 60-70% of the people in our state support the repeal of what the federal government has done.

Representative Amerman: You mention the need to reform. A lot of people say there are a lot of good things in PPACA. On line 14, page 2, it says "That the Sixty-second Legislative Assembly Urges Congress to repeal the Patient Protection and Affordable Care Act." What if we amended "repeal" and put "reform."

Vice Chairman Kasper: I would absolutely oppose that amendment. I am asking them to repeal and start over.

Representative N Johnson: You said to start over, but there is nothing in here that says that. It just says to repeal.

Vice Chairman Kasper: I haven't thought about that. An amendment that would encourage them to start over in the proper way with all parties coming to the table, I would not oppose that amendment.

Representative Boe: If we did put the amendment in there, had the open dialogue, and ended up with the same thing again, would we support it?

Vice Chairman Kasper: The same exact thing I would not support. But I don't think that will happen.

Opposition:

Dave Kemnitz~President of the AFL-CIO: Our opposition begins with: we are strong proponents of health care reform. We were not at the table for discussion. There is a letter (See attached #1) out that is addressed to the U.S. House of Representatives Committee on the Budget by a group of 250 or better asking the committee to preserve the health care reform act. The 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 and/or hiring fewer workers. Lack of universal coverage impairs job mobility because many workers pass up opportunities because they fear losing their health insurance or facing higher premiums.

I found on www.standupforhealthcare.org 12 reasons to support health care.
(See attached testimony #2). Additional reasons (See attached testimony #3).

There is a shortage of medical staff in the rural areas. I read the Affordable Health Care Act Immediate Benefits for North Dakota. Much was addressed if it is applied. Some benefits are increasing retention of health care professionals, improving Medicaid reimbursements, tax credits for rural and underserved practices, malpractice immunity for providing voluntary or free care, payment bonuses or incentives, subsidies for the installation of effective electronic health records, Medicaid reimbursement of telemedicine, promoting practice ownership through low interest loans, offering leadership opportunities, providing a greater voice in clinic policies and work schedules, reducing on-call frequency by coordinating cross coverage, providing telephone triage, and provide full-time physician staffing in local emergency rooms. We have rural depopulation, out migration of younger citizens, an aging population with an increasing proportion of elderly citizens, low population density, and rapid growth in the western portion of the state due to the oil patch. This trend of residential consolidation in North Dakota is similar to that occurring throughout the Great Plains. The UND School of Medicine has a 61% retention rate. The book refers to immigrating medical grads. The turnover rate in ND is much higher. Part of it is to enhance what we have here. What I am moving toward is that we have a lot of study of ND Health Care Service delivery, distribution, needs, and necessities. Reform is one thing. Repeal turns all of that discussion back into how do we fund it, but yet the State of North Dakota has great needs. We need to have something to begin the debate. Our opposition is because it says "repeal."

One line 13, where it says "the law will constrain the freedom of individuals to choose their own doctor and will interfere with individuals' ability to make personal health care decisions." That is what you have done with previous law in Workers' Comp. Line 15-17 "a single-payer health care system, which forces patients to enroll in a one-size-fits-all plan with rich benefits and weak cost-sharing." Weak cost-sharing is because we are not spreading it out with everybody that has coverage. There is only one way and that is to make sure we are all in.

On lines 18 &19, "according to the Congressional Budget Office, the law could cause millions of Americans who receive health insurance through their employer to lose their health insurance coverage and also result in premiums in the individual and small group markets to substantially increase" I think the act addressed that. Lots of small employers are applying for that exception. We have high deductibles, excessive copays, and copremiums that become onerous to an individual.

Lines 22-23, "the U.S. Department of Health and Human Services will dictate what benefits insurers must offer and how much to charge." I think that's done now in North Dakota. You lawmakers dictate to the insurance carriers what they are going to provide. There is regulation. There are demographic implications here.

Page 2, lines 3-5 where it says "the law will increase taxes on employers who do not offer adequate insurance and will increase taxes on investment income, which in turn will reduce capital available for job expansion, reduce economic growth, and result in fewer jobs for Americans." That is the opposite point of view from what the affordable act does for North Dakota. All economists agree that is what is not profit or gain is a burden and a penalty to the free market system.

Vice Chairman Kasper: You made a comment about regulation of insurance today, where are the markets currently regulated—state or federal level?

Dave Kemnitz: The regulation I am aware of is state.

Vice Chairman Kasper: Under PPACA that regulation moves entirely to the federal level.

Dave Kemnitz: As I read there is lots of room for states to utilize what is offered.

Vice Chairman Kasper: Are you familiar with the process Congress went through in implementing Obama care or PPACA? How much debate did you see on that bill before it was passed?

Dave Kemnitz: On all the TV networks there were volumes of debates.

Vice Chairman Kasper: I'm talking about Congress. How much debate did the House or Senate of the U.S. have before that bill was passed in the dark of night?

Dave Kemnitz: I'm sure there was some.

Vice Chairman Kasper: There was none, zero. There are many people who want to start over because we feel the debate needs to be had. This resolution says it needs to be repealed and started over. It doesn't say we need to repeal and stop. With Rep. Johnson suggesting that amendment about starting the process over, would you support the bill at all if it would have that language added?

Dave Kemnitz: If there are 12 reasons to support the Health Care Reform as presented, I could not. We have so many gains in this legislation. To set all of that aside, would be the wrong approach.

Vice Chairman Kasper: I will provide you with substantial information about the other side of the story. Your handouts are from people who support what has occurred. I will give documentation from economists, 100 of them, who signed onto the letter to the Congress and from Governors and OMB who gives us the true scoring so that the goals on that sheet of paper may be back in with a start over. The fact is the debate on both sides of the issue has never been had.

Representative Kreun: You mentioned the 12 points of support. Earlier in one of the other bills you talked about definitions. But if you look at these words in (attached #2):

1. Refers to "affordable health care"
2. Refers to "affordable health care"
3. Refers to "relief"
4. Refers to "afford"
9. Refers to "affordable"

How do you pay for all that when it is all affordable? What's the definition of "affordable"? Whoever wrote that list says to clamp down on insurance company abuses but there is

nothing in there about patient abuses. There is nothing in there about an appeal process for the individual or the businesses or the health care providers. Why isn't this balanced?

Dave Kemnitz: All the other viewpoints have been expressed. In an effort to open the debate and enlarge it, these were supplied to you.
From the list of 12 reasons:

1. Access to quality affordable health care
2. Purchase affordable health care
3. Extend relief to small businesses

We can answer some of that with the letter I handed out (#1) dated January 26. It talks about how we approach that. In the end they say again "rather than undermining Health Care Reform, Congress needs to make the Affordable Care Act as successful as it can be." It would be as good for our economy as it is for the health of our citizens. That's the bottom line. Starting new means these items are discarded.

Representative Kreun: If you are in fact that adamant about making it work, why are you not addressing the costs of where they come from and how they are paid for? In the letter you handed out it says there are 7.9 million federal dollars. Where do they come from? Those are the things that concern me. Am I going to pay for someone's cost? They don't address where the money comes from and it troubles me when we don't look at the whole picture.

Dave Kemnitz: President Nixon said, "Find those who have nothing." How do we not afford to help other people? If we don't, we are wrong on our approach.

Representative Kreun: My story is also true. So now should I be punished, where is the balance to make it fair? Where does it become the responsibility of individuals to take care of themselves as well? When you look at #7—age 26—shouldn't they be working by now?

Dave Kemnitz: My daughter and her husband both have a job. Neither have health care.

Representative Kreun: I pay $1247/month for insurance. My deductible is also well over a $1,000. That's the responsibility you have as an individual. I made sure I had insurance at age 20. At some point society can't take care of everyone their whole life. Where is the responsibility of the individual to take care of themselves?

Dave Kemnitz: If longevity is the goal then what is the value of longevity if you don't have some economic security along with it. If we don't move forward and adjust the things that make it right for everyone, why would we deny that progress was made with health care, and not make it better for everyone.

Vice Chairman Kasper: The purpose of this bill is not to go back to old times, but the purpose is to say that the process that Congress used to pass this bill was wrong and there was no open debate or input of all involved. We need to do better. We didn't do it the right way and some of your concerns will be addressed.

Neutral: None

Chairman Keiser: Closed the hearing,

Representative N Johnson: Vice Chairman Kasper talked about the process was flawed and that was not in here either. That would be something to consider in an amendment.

2011 HOUSE STANDING COMMITTEE MINUTES

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

HCR 3016
February 7, 2011
Job #14108

☐ Conference Committee

Committee Clerk Signature L. Mae Kasper

Explanation or reason for introduction of bill/resolution:

Committee Work—urging Congress to repeal the Patient Protection and Affordable Care Act.

Minutes:

Vice Chairman Kasper: This is a companion resolution to HB 1165 that we just passed. It is asking Congress to repeal PPACA. It is letting Congress and the executive branch know what the wishes are of the ND legislature.

Vice Chairman Kasper: Moved Do Pass

Representative Sukut: Seconded the motion

A Roll Call vote was taken. **Yes: 10, No: 4, Absent: 0,**

DO PASS carries. HCR 3016 goes on the eleventh order.

Representative Clark will carry the bill.

Date: Feb 7, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 3016

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 Kasper Seconded By Rep Sukut

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 Clark

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

Does not go on consent

REPORT OF STANDING COMMITTEE

HCR 3016: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HCR 3016 was placed on the Eleventh order on the calendar.

2011 SENATE HUMAN SERVICES

HCR 3016

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HCR 3016
3-21-2011
Job Number 15766

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A concurrent resolution urging Congress to repeal the patient Protection and Affordable Care Act.

Minutes: Attachments.

Senator Judy Lee opened the hearing on HCR 3016.

Representative Jim Kasper (District 46) prime sponsor introduced HCR 3016. There are some federal judges in the United States that believe that the PPACA are unconstitutional and there are a few judges that have ruled that it is constitutional.
The interim IBL committee studied the effect of the health reform act on ND. Rep. Keiser was very specific in wanting to learn what our state agencies felt the cost to implement this health care act in ND. After compiling the data relating to the testimony the committee concluded that there is $1.1 billion of additional costs that the state of ND will incur over the next 10 years in one form or another because of the health reform act.
The resolution asks the Congress to repeal the act.
He provided an oversight of articles about the Health Care Reform Law and rulings from several judges. Attachment #1
He urged the committee to give favorable consideration to HCR 3016.

Senator Tim Mathern said one of his concerns is the fact that there is no clear direction from the House. There is a bill that says "let's figure this deal out and make it work for ND" then there is a resolution that says "let's repeal this". Couldn't the House come to one mind?

Rep. Kasper responded by citing different bills in the House that will be coming to the Senate or that are already in the Senate.
He said the sense of the House that he gets is that they want to do all they can to protect the right of the citizens of ND to have the health care that they so choose without a federal mandate.
He believed that when it is all said and done, the package in the Senate will be (1) the opportunity to put a constitutional amendment before the people and let them vote, (2) a number of resolutions that state "we don't like what the health care reform act did and (3) the bill that will provide standing for the people of ND so that we have in law the fact that

we do not have to purchase health insurance as individuals or businesses and that we can see the health care providers of our choice.

Senator Tim Mathern cited other bills not mentioned that will also move us toward implementation. He said it was a mixed message for him.

Rep. Kasper said that was the dilemma in the fact that until something changes such as the Supreme Court strikes the Health Care Act down or partially strikes it down we have to live under what the federal law now says we have to do. We need to be prepared to move forward but the House is asking to move forward slowly and cautiously at this time.

The scoring of PPACA by CBO was discussed and explained.
Speculation is that the feds will shift the cost to the states and retain the control.
The costs for the services are not amortized with the dollars that are required to provide them. It looks like we are fine in the first few years because some of the benefits are not set in place yet. As the costs to provide those services move ahead the dollars will be eaten up faster than they are being gained.

Rep. Kasper feels we need true health care reform. We need all the players at the table and we need a true reform and not what is before us. HCR 3016 says that as a matter of statement of this legislative body we ask the Congress to repeal it and start over the way a lot think they should have done in the first place.

Senator Tim Mathern noted some of the waiver discussion in his testimony. He wondered if a plan was presented to demonstrate that we are covering all North Dakotans and controlled it by ND if we could also get a waiver.

Rep.Kasper had given some thought to that. He said that if the federal government would let ND take care of our own, he felt ND would do a better job.

Dave Kemnitz, NDAFL-CIO, opposed HCR 3016 and provided Attachment #2 – Act for the Relief of Sick & Disabled Seamen and other information.
He made the point that in 1798 the President of the US and the president of the Senate were both framers and signers of the constitution. The question of whether the Health Care Act of 2010 is constitutional has to sometime go back to the thoughts of the framers and what those people enacted then to protect commerce, workers, and to provide for the common good.
The other point he had was on page 1 lines 8-12.
He reviewed a report and said the study points to the insurance barriers and lack of health insurance coverage.
He made comparisons between the Act for the Relief of Sick & Disabled Seamen and the Health Care Act.

Senator Dick Dever talked about the provision to provide for the general welfare and explained that there are a couple of different senses to the word welfare.

Mr. Kemnitz talked about provisions that are already being implemented by the Health Care Act. He said we ought to offer coverage to those who have the least, and those who

can pay something should. We can't do that unless we have a system that says that's how it works.

Senator Tim Mathern pointed out that the study Mr. Kemnitz had referred to was a report requested of the Legislature to be provided by the School of Medicine. All the legislators received a copy at the beginning of the session.

Kevin Herrmann spoke in opposition to HCR 3016. He asked why there is a mandate for vehicle insurance and home insurance if they are against this mandate.

Senator Judy Lee clarified that the homeowners insurance is required by the lender. With vehicle insurance there isn't a requirement to have collision if you want to pay for the repair of your own car. Because of the potential harm to someone else the liability insurance is there.

Senator Tim Mathern asked for people of his profession who are not working how is health insurance generally covered.

Mr. Herrmann said he is a member of IBEW out of Hazen but it is the utility part so he works year round. He couldn't answer how those that get laid off handle it.

There was no further testimony and the hearing was closed.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HCR 3016
3-28-2011
Job Number 16060

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Minutes: Attachments

Senator Judy Lee opened committee work on HCR 3016 and introduced an amendment .01002 dated 3-28-2011 which the committee reviewed. Attachment #3

Senator Tim Mathern said it seems like the amendments are dramatically changing the resolution. He said he would feel more comfortable just going up or down on the resolution as it is. He was reluctant to turn this into something he wasn't sure the sponsors would want. From his perspective they have already passed a bill regarding federal health care reform (2309).

Senator Judy Lee said it was worthy to focus on both 2309 and 3016. This discussion should focus on (a) whether the amendments have any value and (b) whether they want to deal with the resolution when they have already sent out 2309.
The amendments were brought by Sen. Lee and Sen. Uglem to see if they could have something not so strident to consider.

Senator Gerald Uglem also pointed out that they had intended to change the word "hurt" on line 9 to something milder. It was his feeling if they take this to the floor it is going to pass – it's a matter of how they want it to pass. Do they want it the way it is or the amendments to make it a little milder? He was comfortable with making it milder.

Senator Tim Mathern thought it wouldn't pass.

Senator Dick Dever thought the question here is whether they are staying within the spirit of the resolution. He didn't have a problem with amending it and thought the third "whereas" as originally written jumped to some conclusions that may not be appropriate.

Senator Judy Lee asked if there are other areas of concern besides line 9 "hurt senior citizens" if they are to consider these amendments

Senator Tim Mathern felt they were sending a mixed message when sending a resolution to call for a repeal plus doing all the work to make PPACA work as best as possible for ND.

Discussion: The difficulty is that they are not in a position to set the direction of policy regarding health care. They do need to move forward with the things the law requires whether they like it or not.
Changing "hurt" to something that would indicate diminished service was discussed. "Negatively affect" seemed to work.

Senator Gerald Uglem felt the resolution was to point out the negative portions.

Senator Judy Lee pointed out that there are so many unknowns and it is hard to respond adequately in every area.

Senator Spencer Berry reported that he would have no trouble voting on this as is.

Senator Tim Mathern moved a **Do Not Pass on HCR 3016.**

Motion died for lack of a second.

Senator Tim Mathern moved to **accept the amendments .01002 with the inclusion of "negatively affect" senior citizens.**

Second by **Senator Dick Dever**.

This does take off some of the rough edges but it was felt that it didn't destroy the spirit of the bill.

Senator Tim Mathern pointed out that he was still opposed to the resolution and would do what he could to get it defeated. He also believed that the changes do make it better.

Roll call vote 4-1-0. **Amendment adopted**.

Senator Dick Dever moved a **Do Pass as Amended**.

Second by **Senator Gerald Uglem**.

Senator Tim Mathern planned to vote against the motion. He thought they were sending too many mixed messages out of this legislative session and said this was another mixed message.

Senator Dick Dever felt PPACA goes further than it should have and a more reasonable approach would have been a much smaller approach. They need to repeal it and start over.

Senator Judy Lee would have liked to have seen the federal level deal with the 15% who were not satisfied with their health care. There are things that need to be addressed. The

state level needs to think about the number of people who are covered by self funded plans. The states have no impact over those but the feds do.

Senator Spencer Berry pointed out that he tries to look for the positives. The fact that the federal health care bill was passed and made law has brought it to the forefront and is forcing us to take a look at it and deal with it. Most people look at it and say that there are parts of it that are good and other things that need to be resolved.

Roll call vote 4-1-0. **Motion passed**.

Carrier is **Senator Dick Dever**.

11.3031.01003
Title.02000

Prepared by the Legislative Council staff for
Senate Human Services
March 28, 2011

3-29-11

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3016

Page 1, line 8, remove "the result of"

Page 1, line 8, remove "will be to create a government takeover of the health care"

Page 1, line 9, replace "industry that will" with "is likely to"

Page 1, line 9, replace "hurt" with "negatively affect"

Page 1, line 9, remove "destroy jobs,"

Page 1, line 10, replace "restrict" with "limit"

Page 1, line 10, remove ", limit individuals'"

Page 1, line 11, replace "access to" with "in accessing"

Page 1, line 11, after "and" insert "may"

Page 1, line 13, replace "will" with "may"

Page 1, line 14, replace "will" with "may"

Page 1, line 15, replace "single-payer" with "government-controlled"

Page 1, line 15, remove ", which forces patients to enroll in a"

Page 1, line 16, replace "one-size-fits-all plan with rich benefits and weak cost-sharing, will cause" with "is likely to increase"

Page 1, line 17, remove "to escalate"

Page 1, line 17, after the first "and" insert "result in the risk of"

Page 1, line 17, replace "to ration" with "rationing"

Page 1, line 24, replace "many physicians lose money servicing government" with "reimbursement for health care providers treating"

Page 1, line 25, replace ", the law will increase this problem by further reducing" with "is often less than the cost of providing the care, additional reductions in"

Page 2, line 1, remove "fees to doctors and hospitals and will discourage individuals from entering the health"

Page 2, line 2, replace "care field" with "reimbursement may further contribute to health care provider shortages"

Page 2, line 6, replace "will" with "may"

Renumber accordingly

Date: 3-28-11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 3016

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.3031.01003

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Mathern 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 1

Absent 0

Floor Assignment

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

Date: 3-28-11

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 3016

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.3031.01003 Title 02000

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 1

Absent 0

Floor Assignment Sen. Dever

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

REPORT OF STANDING COMMITTEE

HCR 3016: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HCR 3016 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "the result of"

Page 1, line 8, remove "will be to create a government takeover of the health care"

Page 1, line 9, replace "industry that will" with "is likely to"

Page 1, line 9, replace "hurt" with "negatively affect"

Page 1, line 9, remove "destroy jobs,"

Page 1, line 10, replace "restrict" with "limit"

Page 1, line 10, remove ", limit individuals'"

Page 1, line 11, replace "access to" with "in accessing"

Page 1, line 11, after "and" insert "may"

Page 1, line 13, replace "will" with "may"

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Page 2, line 2, replace "care field" with "reimbursement may further contribute to health care provider shortages"

Page 2, line 6, replace "will" with "may"

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HCR 3016

2011 HOUSE STANDING COMMITTEE MINUTES

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

HCR 3016
April 14, 2011
16616

☒ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:

To repeal the Patient Protection & Affordable Care Act

Conference Minutes:

Chairman Kasper: Opened the Conference Committee hearing on HB 3016. The House has looked at your amendments and we like what we see. We have no questions.

Representative Sukut: Moves that the House accedes to the Senate amendments.

Representative M Nelson: Second.

Roll call was taken for the House to Accede to the Senate Amendments on HCR 3016 with 6 yeas, 0 nays, 0 absent.

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Industry, Business and Labor

Bill/Resolution No. 3016 as (re) engrossed

Date: April 14, 2011

Roll Call Vote #: 1

Action Taken

- [x] HOUSE accede to Senate amendments
- [ ] HOUSE accede to Senate amendments and further amend
- [ ] SENATE recede from Senate amendments
- [ ] SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1203 - 1204

- [ ] Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1 was placed on the Seventh order of business on the calendar

Motion Made by: Rep Sukut Seconded by: Rep M Nelson

Representatives	A 14			Yes	No		Senators	A 14			Yes	No
Chairman Kasper	✓			✓			Senator Berry	✓			✓	
Representative Sukut	✓			✓			Senator Uglem	✓			✓	
Representative M Nelson	✓			✓			Senator Mathern	✓			✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep Kasper Senate Carrier Rep Berry

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HCR 3016: Your conference committee (Sens. Berry, Uglem, Mathern and Reps. Kasper, Sukut, M. Nelson) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1203-1204 and place HCR 3016 on the Seventh order.

HCR 3016 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HCR 3016

Letter #1

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

testimony 2

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

Compliments of
North Dakota AFL-CIO

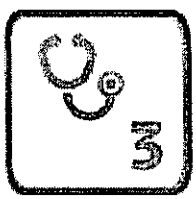
12 Reasons to Support Health Care

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!

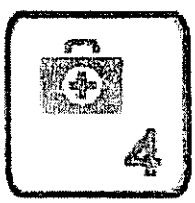
The new health care law will:

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

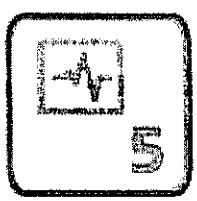
Create a new, regulated marketplace where consumers can purchase affordable health care.



Extend much needed relief to small businesses.



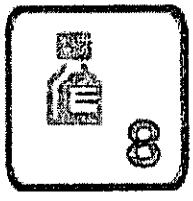
Improve Medicare by helping seniors and people with disabilities afford their prescription drugs.



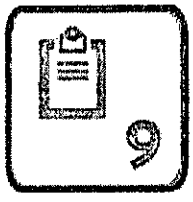
Prohibit denials of coverage based on pre-existing conditions.

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.

testimony 3

Compliments of
North Dakota AFL-CIO

http://www.whitehouse.gov/healthreform/downloadthestates

The Affordable Care Act: Immediate Benefits for North Dakota

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/pra_omnibus_final.pdf

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

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.

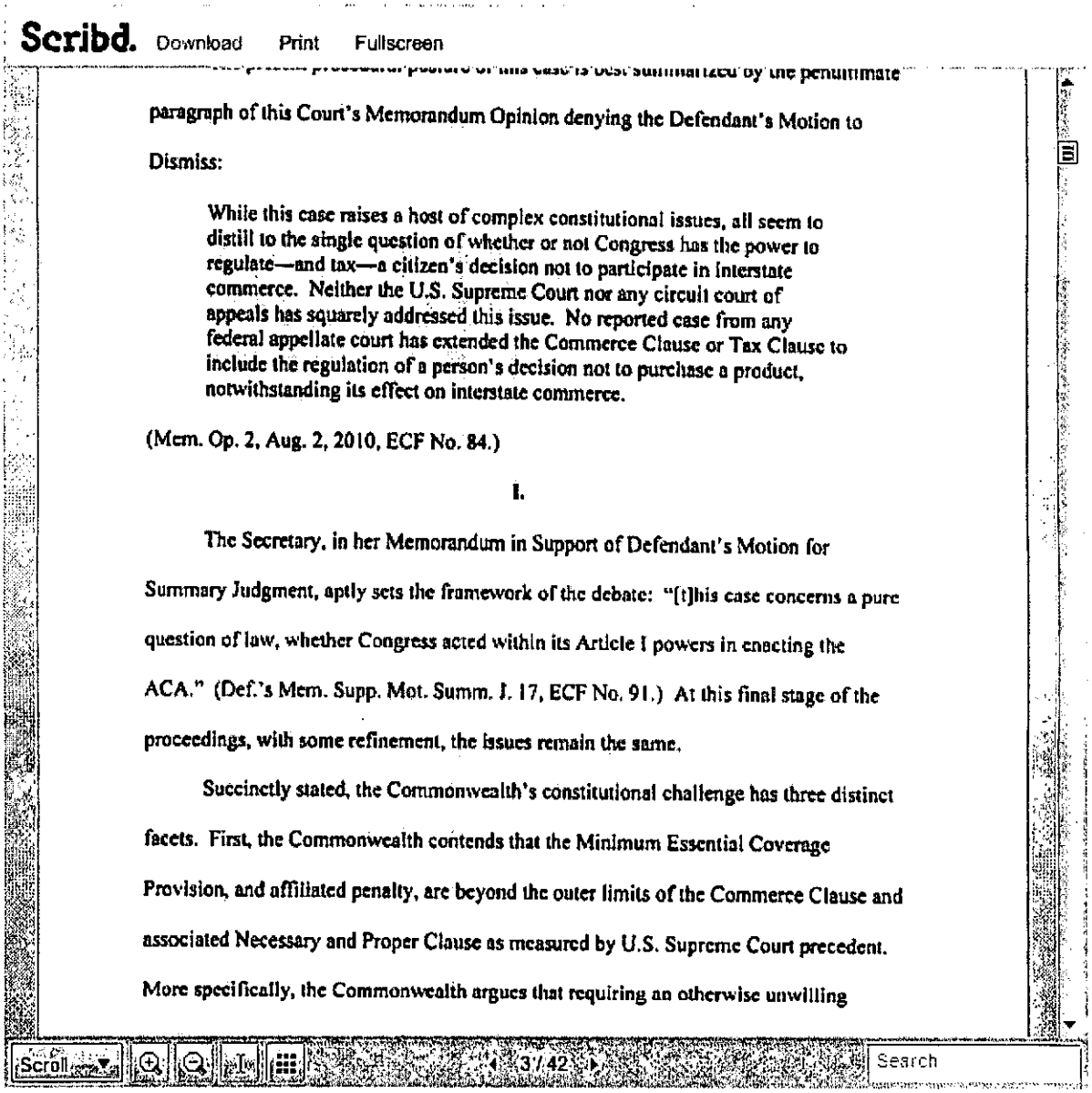
Update: "Without the individual mandate, the entire structure of reform would fail," said Obama healthcare guru Jonathan Gruber. Given that, the entire bill should be undone by

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

(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 Declatory 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

SHARE Written by: Lesley Swann

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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."

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

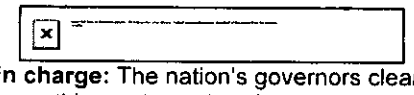
He said in January his decision was "the functional equivalent of an injunction" that would bar the administration from proceeding with implementing the law.

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.



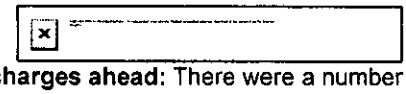
States are in charge: The nation's governors clearly showed who is in charge this week, as they flexed their muscle with the administration over Medicaid spending and implementation of the law. The White House needs them to begin setting up the infrastructure for the health overhaul, and the governors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

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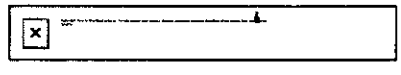
- Competitiveness and Regulation: The FDA And The Future of America's Biomedical Industry



Events

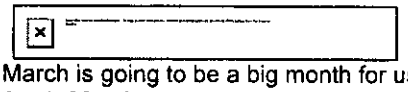
Living Well at the End of Life
National Journal Policy Summit Series
Tuesday, March 8, 2011
8:00am - 10:30am
Washington, DC

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.

back to top

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

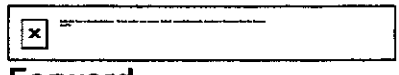
The Budgetary Impact of Federal Health Care Reform
Pioneer Institute Hewitt Health Care Lecture
Wednesday, March 9, 2011
5:30pm - 8:00pm
Washington, DC

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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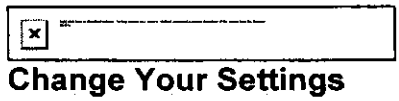

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Washington Whispers

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."

It 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."

The 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

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."

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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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previous | **Annotations p. 2**

Act for the Relief of Sick & DisabledSeamen, July

#2

March 21, 2011
Dave Kennit
NOAA-C10

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.

§ 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

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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.

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.

HB 3016

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

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

Compliments of
North Dakota AFL-CIO

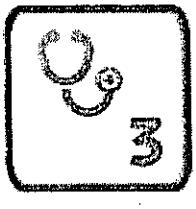
12 Reasons to Support Health Care

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!

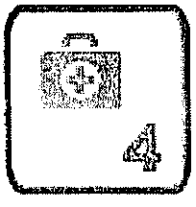
The new health care law will:

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

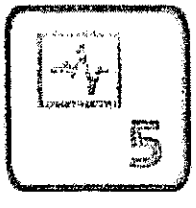
Create a new, regulated marketplace where consumers can purchase affordable health care.



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.

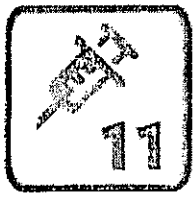
Limit out-of-pocket costs so that Americans have security and peace of mind.

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.

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.

P. 3 more Data Providers

- 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/pra_omnibus_final.pdf

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

#3

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Title.

Prepared by the Legislative Council staff for
Senate Human Services
March 28, 2011

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3016

Page 1, line 8, remove "the result of"

Page 1, line 8, remove "will be to create a government takeover of the health care"

Page 1, line 9, replace "industry that will" with "is likely to"

Page 1, line 9, remove "destroy jobs,"

Page 1, line 10, replace "restrict" with "limit"

Page 1, line 10, remove ", limit individuals'"

Page 1, line 11, replace "access to" with "in accessing"

Page 1, line 11, after "and" insert "may"

Page 1, line 13, replace "will" with "may"

Page 1, line 14, replace "will" with "may"

Page 1, line 15, replace "single-payer" with "government-controlled"

Page 1, line 15, remove ", which forces patients to enroll in a"

Page 1, line 16, replace "one-size-fits-all plan with rich benefits and weak cost-sharing, will cause" with "is likely to increase"

Page 1, line 17, remove "to escalate"

Page 1, line 17, after the first "and" insert "result in the risk of"

Page 1, line 17, replace "to ration" with "rationing"

Page 1, line 24, replace "many physicians lose money servicing government" with "reimbursement for health care providers treating"

Page 1, line 25, replace ", the law will increase this problem by further reducing" with "is often less than the cost of providing the care, additional reductions in"

Page 2, line 1, remove "fees to doctors and hospitals and will discourage individuals from entering the health"

Page 2, line 2, replace "care field" with "reimbursement may further contribute to health care provider shortages"

Page 2, line 6, replace "will" with "may"

Renumber accordingly