

**HB**

**1**

<TARGET><BILL>HB 1</BILL><SUBJECT>HB  
1</SUBJECT><COMM>HHSS27</COMM></TARGET>

# Alaska State Legislature

**SESSION ADDRESS:**  
Alaska State Capitol  
Juneau, Alaska 99801  
Phone: (907) 465-3743  
1-800-565-3743  
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Wasilla, AK 99654  
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## Representative Carl Gatto

**TO:** Representative Wes Keller, Chair  
House HSS Committee

**FROM:** Rep. Carl Gatto

A handwritten signature in black ink that reads "Carl Gatto".

**DATE:** February 23, 2011

**RE:** Request for a hearing of HB 1

---

Enclosed is the committee packet for HB 1, *an Act stating a public policy that allows a person to chose or decline any mode of securing health care services,* also called "Alaska Health Freedom Act". I have included a sponsor statement, the original version of the bill, and other supplemental material.

I would appreciate a hearing before your House HSS Committee at your earliest convenience. I appreciate your time and look forward to your reply.

Please contact my staff member, Karen Sawyer at 465-5025, with any questions or comments regarding this request.

Thank you for your consideration.

# *Alaska State Legislature*

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## **Representative Carl Gatto**

### ***HB 1 Alaska Health Freedom Act***

**The *Alaska Health Freedom Act*** codifies as state policy that every person in the state of Alaska is and shall continue to be free from government compulsion in the selection of health insurance options, and that such liberty is protected by the Constitutions of the United States and the State of Alaska. The bill removes the authority of any state official or employee from enforcing any penalty which violates the policy. **HB 1** affirms the right of all Alaskans to choose their own “mode of securing health care services.”

We allege that the new federal law, *Patient Protection and Affordable Care Act (PPACA)*, infringes upon the constitutional rights of U.S. individuals by mandating all citizens and legal residents have qualifying health care coverage or pay a tax penalty. By imposing such a mandate, the law exceeds the powers of the United States under the Constitution.

There are currently at least 40 state legislatures who have introduced legislation to limit, alter or oppose selected state or federal actions, including single-payer provisions and mandates that would require purchase of insurance. Please help Alaska join three states, Idaho, Georgia, and Missouri, who enacted legislation in 2010 to establish the individual’s right in their state to be free from government force to make their own choice about health care.

Contact: Karen Sawyer  
465-5025  
27-LS0006\A  
February 22, 2011

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB001  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HB001-DHSS-HCMS-02-24-11  
 Title: Policy for Securing Health Care Services  
 Sponsor: Rep. Bob Lynn, Rep. Carl Gatto  
 Requester: House HSS Committee  
 Dept. Affected: Health and Social Services  
 Appropriation: Medicaid Services  
 Allocation: Heath Care Medicaid Services  
 OMB Component Number: 2077

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
-----------------------------	--	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES</b>								
---------------------------	--	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

NA

Prepared by: Kim Poppe-Smart, Director  
 Division: Health Care Services  
 Approved by: Alison Elgee, Assistant Commissioner  
DHSS Finance & Management Services

Phone 334-2520  
 Date/Time 2/24/11 12:00 AM  
 Date 2/24/2011

FISCAL NOTE

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. HB001

**Analysis:**

The bill adds a new AS 44.99.130, which states that a person has the right to choose any mode of obtaining or declining health care without subject to penalty or threat of penalty. There is an exception for health programs that are required by the State, its political subdivisions, and State courts. The bill adds no responsibility to the Department of Health and Social Services and would not directly impact it.

Amendment in House HSS Committee

March 10, 2011

BY: Rep. Paul Seaton

TO: Version A HOUSE BILL NO.: 1

Page 2, Line 9: following "charge" [.]

Insert: ": however. liability for the cost of health services is not a penalty."

# The Truth About the Health Care Bills

Posted August 12, 2009

Well, I have done it! I have read the entire text of proposed House Bill 3200: The Affordable Health Care Choices Act of 2009. I studied it with particular emphasis from my area of expertise, constitutional law. I was frankly concerned that parts of the proposed law that were being discussed might be unconstitutional. What I found was far worse than what I had heard or expected.

To begin with, much of what has been said about the law and its implications is in fact true, despite what the Democrats and the media are saying. The law does provide for rationing of health care, particularly where senior citizens and other classes of citizens are involved, free health care for illegal immigrants, free abortion services, and probably forced participation in abortions by members of the medical profession.

The Bill will also eventually force private insurance companies out of business and put everyone into a government run system. All decisions about personal health care will ultimately be made by federal bureaucrats and most of them will not be health care professionals. Hospital admissions, payments to physicians, and allocations of necessary medical devices will be strictly controlled.

However, as scary as all of that is, it just scratches the surface. In fact, I have concluded that this legislation really has no intention of providing affordable health care choices. Instead it is a convenient cover for the most massive transfer of power to the Executive Branch of government that has ever occurred, or even been contemplated. If this law or a similar one is adopted, major portions of the Constitution of the United States will effectively have been destroyed.

The first thing to go will be the masterfully crafted balance of power between the Executive, Legislative, and Judicial branches of the U.S. Government. The Congress will be transferring to the Obama Administration authority in a number of different areas over the lives of the American people and the businesses they own. The irony is that the Congress doesn't have any authority to legislate in most of those areas to begin with. I defy anyone to read the text of the U.S. Constitution and find any authority granted to the members of Congress to regulate health care.

This legislation also provides for access by the appointees of the Obama administration of all of your personal healthcare information, your personal financial information, and the information of your employer, physician, and hospital. All of this is a direct violation of the specific provisions of the 4<sup>th</sup> Amendment to the Constitution protecting against unreasonable

searches and seizures. You can also forget about the right to privacy. That will have been legislated into oblivion regardless of what the 3<sup>rd</sup> and 4<sup>th</sup> Amendments may provide.

If you decide not to have healthcare insurance or if you have private insurance that is not deemed “acceptable” to the “Health Choices Administrator” appointed by Obama there will be a tax imposed on you. It is called a “tax” instead of a fine because of the intent to avoid application of the due process clause of the 5<sup>th</sup> Amendment. However, that doesn’t work because since there is nothing in the law that allows you to contest or appeal the imposition of the tax, it is definitely depriving someone of property without the “due process of law.”

So, there are three of those pesky amendments that the far left hate so much out the original ten in the Bill of Rights that are effectively nullified by this law. It doesn’t stop there though. The 9<sup>th</sup> Amendment that provides: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people;” The 10<sup>th</sup> Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are preserved to the States respectively, or to the people.” Under the provisions of this piece of Congressional handiwork neither the people nor the states are going to have any rights or powers at all in many areas that once were theirs to control.

I could write many more pages about this legislation, but I think you get the idea. This is not about health care; it is about seizing power and limiting rights. Article 6 of the Constitution requires the members of both houses of Congress to “be bound by oath or affirmation” to support the Constitution. If I was a member of Congress I would not be able to vote for this legislation or anything like it without feeling I was violating that sacred oath or affirmation. If I voted for it anyway I would hope the American people would hold me accountable.

For those who might doubt the nature of this threat I suggest they consult the source. Here is a link to the Constitution:

[http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)

And another to the Bill of Rights:

[http://www.archives.gov/exhibits/charters/bill\\_of\\_rights\\_transcript.html](http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html)

There you can see exactly what we are about to have taken from us.

Michael Connelly  
Retired attorney,  
Constitutional Law Instructor  
Carrollton, Texas  
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# Florida Judge Voids Entire Health Care Law

Brian Beutler | January 31, 2011, 3:00PM

President Barack Obama

A federal judge in Florida ruled today that a key provision in the new health care law is unconstitutional, and that the entire law must be voided.

Roger Vinson, a Ronald Reagan appointee, agreed with the 26 state-government plaintiffs that Congress exceeded its authority by passing a law penalizing individuals who do not have health insurance.

"I must reluctantly conclude that Congress exceeded the bounds of its authority in passing the Act with the individual mandate," Vinson writes. "Because the individual mandate is unconstitutional and not severable, *the entire Act must be declared void.*" [Emphasis added]

Here's a primer on why the Democrats' failure to include a severability clause in the legislation opened the entire package up to being stricken by the court. You can read the entire ruling below.

By determining the entire law must be wiped out, Vinson went farther than a different Republican-appointed judge in Virginia who declared the mandate unconstitutional late last year. The Obama administration has appealed the Virginia ruling, and is expected to appeal this one.

Vinson declined to enjoin the law, however, and that means implementation in the 26 states will continue pending higher-court rulings.

The question, as the plaintiffs framed it, is whether Congress can require citizens to purchase a product -- health insurance -- under its powers to regulate interstate commerce. Conservatives -- who originally conceived of and supported the individual insurance mandate -- have argued in numerous lawsuits that the government doesn't have the power, as they put it, to "regulate inactivity."

Before Democrats passed the health care law, legal experts across the spectrum largely held that a Constitutional challenge was futile. But in the intervening months, the question of the mandate has exposed a partisan rift on the federal bench.

In a preliminary ruling back in October, Vinson hinted pretty strongly that he was skeptical of the government's argument. At the time, he called the provision "unprecedented."

"There may be a first time for anything," Vinson wrote at the time. "But, at this stage of the case, the plaintiffs have most definitely stated a plausible claim with respect to this cause of action."

Vinson joins Judge Henry Hudson of Virginia -- a George W. Bush appointee -- in declaring the mandate unconstitutional. Both liberal and conservative legal experts criticized Hudson's ruling for its circular reasoning.

Thus far, two Democratic-appointed judges have thrown similar cases out. The contrary rulings put the law on track to be decided by federal appeals courts and ultimately the U.S. Supreme Court.

## **STATEMENT OF PURPOSE**

### **RS19299**

This bill known as the "Idaho Health Freedom Act" codifies as state policy that every person in the state of Idaho is and shall continue to be free from government compulsion in the selection of health insurance options, and that such liberty is protected by the Constitutions of the United States and the State of Idaho. The bill removes the authority of any state official or employee from enforcing any penalty which violates the policy. It also tasks the office of the Attorney General with seeking injunctive or other appropriate relief, or defending the state of Idaho and its officials and employees against laws, enacted by any government, which violate the policy.

### **FISCAL NOTE**

The fiscal impact depends upon the necessity and extent of any action required by the office of the attorney general. Enforcement may require up to one additional attorney and staff at a cost of approximately \$100,000. The office may, however, be able to cover it with existing resources at lesser or no additional cost.

**Contact:**

**Name:** Representative Jim Clark

**Office:**

**Phone:** (208) 332-1111

**LEGISLATURE OF THE STATE OF IDAHO**  
**Sixtieth Legislature**

**Second Regular Session - 2010**

**Legislative Co-sponsors**

**RS19299**

Representative Jim Clark  
Representative Lynn Luker  
Representative Raúl Labrador

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 391, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO HEALTH AND SAFETY; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 90, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE A STATEMENT OF PUBLIC POLICY AND TO PROVIDE FOR ENFORCEMENT; AND AMENDING SECTION 67-1401, IDAHO CODE, TO REVISE DUTIES OF THE ATTORNEY GENERAL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 90, Title 39, Idaho Code, and to read as follows:

CHAPTER 90

IDAHO HEALTH FREEDOM ACT

39-9001. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Health Freedom Act."

39-9002. DEFINITIONS. (1) "Health care services" shall mean any service, treatment, or provision of product for the care of physical or mental disease, illness, injury, defect or condition, or to otherwise maintain or improve physical or mental health, subject to all laws and rules regulating health service providers and products within the state of Idaho.

(2) "Mode of securing" shall mean to purchase directly or on credit or by trade, or to contract for third-party payment by insurance or other legal means authorized by the state of Idaho, or to apply for or accept employer or government sponsored health care benefits under such conditions as may legally be required as a condition of such benefits, or any combination of the same.

(3) "Penalty" shall mean any civil or criminal fine, tax, salary or wage withholding, surcharge, fee or any other imposed consequence, established by law or rule of the federal government of the United States of America or its subdivision or agency, that is used to punish or discourage the exercise of rights protected under this chapter.

39-9003. STATEMENT OF PUBLIC POLICY. (1) The power to require or regulate a person's choice in the mode of securing health care services, or to impose a penalty related thereto, is not found in the Constitution of the United States of America, and is therefore a power reserved to the people pursuant to the Ninth Amendment, and to the several states pursuant to the Tenth Amendment. The state of Idaho hereby exercises its sovereign power to declare the public policy of the state of Idaho regarding the right of all persons residing in the state of Idaho in choosing the mode of securing health care services free from the imposition of penalties, or the threat

1 thereof, by the federal government of the United States of America relating  
2 thereto.

3 (2) It is hereby declared that the public policy of the state of Idaho,  
4 consistent with our constitutionally recognized and inalienable rights of  
5 liberty, is that every person within the state of Idaho is and shall be free  
6 to choose or decline to choose any mode of securing health care services  
7 without penalty or threat of penalty by the federal government of the United  
8 States of America.

9 (3) The policy stated herein shall not be applied to impair any right  
10 of contract related to the provision of health care services to any person or  
11 group.

12 39-9004. ENFORCEMENT. (1) No public official, employee, or agent  
13 of the state of Idaho or any of its political subdivisions, shall act to  
14 impose, collect, enforce, or effectuate any penalty in the state of Idaho  
15 that violates the public policy set forth in section 39-9003(2), Idaho Code.

16 (2) The attorney general shall take such action as is provided in  
17 section 67-1401(15), Idaho Code, in the defense or prosecution of rights  
18 protected under this act.

19 SECTION 2. That Section 67-1401, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in  
22 this chapter, it is the duty of the attorney general:

23 (1) To perform all legal services for the state and to represent  
24 the state and all departments, agencies, offices, officers, boards,  
25 commissions, institutions and other state entities, in all courts and  
26 before all administrative tribunals or bodies of any nature. Representation  
27 shall be provided to those entities exempted pursuant to the provisions of  
28 section 67-1406, Idaho Code. Whenever required to attend upon any court or  
29 administrative tribunal the attorney general shall be allowed necessary and  
30 actual expenses, all claims for which shall be audited by the state board of  
31 examiners.

32 (2) To advise all departments, agencies, offices, officers, boards,  
33 commissions, institutions and other state entities in all matters involving  
34 questions of law.

35 (3) After judgment in any of the causes referred to in the first  
36 subdivision, to direct the issuing of such process as may be necessary to  
37 carry the same into execution.

38 (4) To account for and pay over to the proper officer all moneys  
39 received which belong to the state.

40 (5) To supervise nonprofit corporations, corporations, charitable  
41 or benevolent societies, person or persons holding property subject  
42 to any public or charitable trust and to enforce whenever necessary  
43 any noncompliance or departure from the general purpose of such trust  
44 and, in order to accomplish such purpose, said nonprofit corporations,  
45 corporations, charitable or benevolent societies, person or persons holding  
46 property subject to any public or charitable trust are subject at all times  
47 to examination by the attorney general, on behalf of the state, to ascertain  
48 the condition of its affairs and to what extent, if at all, said trustee

1 or trustees may have failed to comply with trusts said trustee or trustees  
2 have assumed or may have departed from the general purpose for which it was  
3 formed. In case of any such failure or departure, the attorney general shall  
4 institute, in the name of the state, any proceeding necessary to enforce  
5 compliance with the terms of the trust or any departure therefrom.

6 (6) To give an opinion in writing, without fee, to the legislature or  
7 either house thereof, or any senator or representative, and to the governor,  
8 secretary of state, treasurer, state controller, and the superintendent of  
9 public instruction, when requested, upon any question of law relating to  
10 their respective offices. The attorney general shall keep a record of all  
11 written opinions rendered by the office and such opinions shall be compiled  
12 annually and made available for public inspection. All costs incurred in  
13 the preparation of said opinions shall be borne by the office of the attorney  
14 general. A copy of the opinions shall be furnished to the supreme court and  
15 to the state librarian.

16 (7) When required by the public service, to repair to any county in  
17 the state and assist the prosecuting attorney thereof in the discharge of  
18 duties.

19 (8) To bid upon and purchase, when necessary, in the name of the state,  
20 and under the direction of the state controller, any property offered for  
21 sale under execution issued upon judgments in favor of or for the use of the  
22 state, and to enter satisfaction in whole or in part of such judgments as the  
23 consideration for such purchases.

24 (9) Whenever the property of a judgment debtor in any judgment  
25 mentioned in the preceding subdivision has been sold under a prior judgment,  
26 or is subject to any judgment, lien, or encumbrance, taking precedence of the  
27 judgment in favor of the state, under the direction of the state controller,  
28 to redeem such property from such prior judgment, lien, or encumbrance; and  
29 all sums of money necessary for such redemption must, upon the order of the  
30 board of examiners, be paid out of any money appropriated for such purposes.

31 (10) When necessary for the collection or enforcement of any judgment  
32 hereinbefore mentioned, to institute and prosecute, in behalf of the state,  
33 such suits or other proceedings as may be necessary to set aside and annul all  
34 conveyances fraudulently made by such judgment debtors; the cost necessary  
35 to the prosecution must, when allowed by the board of examiners, be paid out  
36 of any appropriations for the prosecution of delinquents.

37 (11) To exercise all the common law power and authority usually  
38 appertaining to the office and to discharge the other duties prescribed by  
39 law.

40 (12) To report to the governor, at the time required by this code, the  
41 condition of the affairs of the attorney general's office and of the reports  
42 received from prosecuting attorneys.

43 (13) To appoint deputy attorneys general and special deputy attorneys  
44 general and other necessary staff to assist in the performance of the duties  
45 of the office. Such deputies and staff shall be nonclassified employees  
46 within the meaning of section 67-5302, Idaho Code.

47 (14) To establish a medicaid fraud control unit pursuant to the  
48 provisions of section 56-226, Idaho Code, and to exercise concurrent  
49 investigative and prosecutorial authority and responsibility with county  
50 prosecutors to prosecute persons for the violation of the criminal

1 provisions of chapter 2, title 56, Idaho Code, and for criminal offenses that  
2 are not defined in said chapter 2, title 56, Idaho Code, but that involve  
3 or are directly related to the use of medicaid program funds or services  
4 provided through the medicaid program.

5 (15) To seek injunctive and any other appropriate relief as  
6 expeditiously as possible to preserve the rights and property of the  
7 residents of the state of Idaho, and to defend as necessary the state  
8 of Idaho, its officials, employees and agents in the event that any law  
9 or regulation violating the public policy set forth in the Idaho health  
10 freedom act, chapter 90, title 39, Idaho Code, is enacted by any government,  
11 subdivision or agency thereof.

Moved by Clark

Seconded by Luker

IN THE HOUSE OF REPRESENTATIVES  
HOUSE AMENDMENT TO H.B. NO. 391

AMENDMENT TO SECTION 1

1  
2 On page 1 of the printed bill, in line 27, following "consequence" in-  
3 sert: ", "; in line 28, delete "a government" and insert: "the federal gov-  
4 ernment of the United States of America"; also in line 28, following "agency"  
5 insert: ", "; in line 38, following "services" insert: "free from the impo-  
6 sition of penalties, or the threat thereof, by the federal government of the  
7 United States of America relating thereto".

8 On page 2, in line 5, following "threat of penalty" insert: "by the fed-  
9 eral government of the United States of America".

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# Goldwater Institute Applauds Health Care Victory

By *goldwater*

Created 01/31/2011 - 13:09

Goldwater Institute Press Release

January 31, 2011

U.S. District Judge Roger Vinson of Florida today struck down the federal health care law challenged by 26 states, including Arizona.

“This is a huge victory for health care freedom,” said Clint Bolick, the Goldwater Institute's litigation director, which is challenging the law in a separate lawsuit in Arizona. “It’s a triumph for 26 states fighting to protect their autonomy against the federal juggernaut, and for all Americans who want to control their own health care decisions.”

Judge Vinson ruled that Congress doesn't have the authority to force anyone to buy health insurance. As written, the unconstitutional health insurance mandate can't be separated from the rest of the measure approved in 2010, the judge said. So he suspended the entire law.

“I emphasized once before, but it bears repeating again: this case is not about the myriad problems in our health care system,” the judge's opinion says. “In fact, it is not really about our health care system at all. It is principally about our federalist system, and it raises very important issues regarding the Constitutional role of the federal government.”

Judge Vinson's decision in Florida joins an earlier ruling by a federal court in Virginia, which struck down key parts of the law.

The Goldwater Institute's Scharf-Norton Center for Constitutional Litigation has a pending request for a federal court injunction against a different part of the law that creates the Independent Payment Advisory Board. This new agency is charged with sweeping authority related to government payment for health care services. The lawsuit challenges the agency as unconstitutional because Congress and the federal courts have almost no oversight of the board's decisions, and the health care law makes it nearly impossible for Congress to repeal the agency, Mr. Bolick said.

To read about this and other lawsuits by the Goldwater Institute to enforce constitutional limits on government, visit [www.goldwaterinstitute.org/litigation](http://www.goldwaterinstitute.org/litigation) <sup>[1]</sup>. The Goldwater Institute is an independent government watchdog that develops innovative, principled solutions to issues facing the states and whose work is made possible by the [generosity](#) <sup>[2]</sup> of its supporters.



Issues & Research » Health » State Legislation & Actions Challenging Certain

Go 18906

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## State Legislation and Actions Challenging Certain Health Reforms, 2010-11

**Updated: February 18, 2011** - subject to additions

by: Richard Cauchi, Program Director, NCSL Health Program

States have an extensive and complicated shared power relationship with the federal government in regulating various aspects of the health insurance market and in enacting health reforms.

In response to federal health reform legislation and enacted law, some members of at least 40 state legislatures proposed legislation to limit, alter or oppose selected state or federal actions, including single-payer provisions and mandates that would require purchase of insurance. In general most of the measures, in both 2009 and 2010:

Focus on not permitting or not implementing or enforcing mandates (federal or state) that would require purchase of insurance by individuals or by employers and impose fines or penalties for those who fail to do so.

Seek to keep in-state health insurance optional, and instead allow people to purchase any type of health services or coverage they may choose.

Contradict, some would say challenge, some policy features contained in the new federal law.

The language varies from state to state, often using provisions from [Arizona](#), as cited below.

### State-Based Actions: November 2010 - February 2011

**Major court cases.** These actions by executive branch officials and private parties are provided for information only. They are legally separate from state lawmaking but may affect state deliberations:

♦ **Florida:** Federal District Judge Roger Vinson ruled on January 31 to strike down the entire healthcare reform law, ruling that the requirement for individuals to purchase insurance is unconstitutional and is too central to making the law function. he said the whole law cannot stand because the law depends on the mandate to work. Twenty Six state Attorneys General had joined the case as January 18, 2011.

> February 18, 2011- Judge Vinson Replies to Administration's Request for Clarification on the Florida Decision Regarding the ACA - [\[Details below\]](#) <sup>NEW</sup>

♦ **Virginia's** federal district court ruled December 13, 2010 that the individual mandate to purchase insurance is unconstitutional. In a 42-page opinion issued in Richmond, Va., Judge Henry Hudson wrote that the law's central requirement that most Americans obtain health insurance exceeds the regulatory authority granted to Congress under the Commerce Clause of the Constitution. The ruling does not by itself enjoin or halt any part of the federal law, pending rulings by higher courts. [\[Text of ruling\]](#) [Case details below](#)

♦ **Michigan:** In the first decision among more than 20 cases filed against the new law, a federal district judge in Detroit, Michigan dismissed one case and ruled in favor of the federal reform law; that decision has been appealed and does not in itself alter the status of the law. [\[Read news summary of court action\]](#)

♦ Also in **Virginia**, a private party suit by Liberty University was rejected in another federal district court on November 30; the judge's 54 page ruling upheld the federal law. [\[read news article\]](#) Additional information and cases are in an [appendix table](#) at the back of this report.

**2011 Proposed legislation:** In the first weeks of new state sessions, so far, 9 states will consider constitutional amendments, 18 states have bills filed for

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[Arizona Passed Constitutional Amendment](#)

[Some Legal and Legislative Opinions on Anti-Reform State Actions](#)

[Requiring Individuals to Obtain Health Insurance: A Constitutional Analysis](#)

### Related NCSL Resource Pages

[Health Reform Implementation](#)

[Constitutional Issues and the Patient Protection and Affordable Care Act \(PPACA\)-presentation to NCSL Legislative Summit, July 25, 2010](#)  
[States Push Back](#). State Legislatures Magazine, June 2010

proposed statutes and nine have advisory resolutions filed. (as of February 8, 2011) **Details Coming soon in a new report.** NEW

**November 2 ballot questions.** With 45 state legislatures out of session, the focus of attention shifted to the three states with proposed constitutional ballot questions facing voters in Nov. 2, 2010, elections:

- Arizona** - passed by voters, 55.4% Yes to 44.7% No [results]
- Colorado** - rejected by voters, 53% No to 47% Yes. [article 11/3/10]
- Oklahoma** - passed by voters 64.73% Yes to 35.27% No [state results 11/3/10]

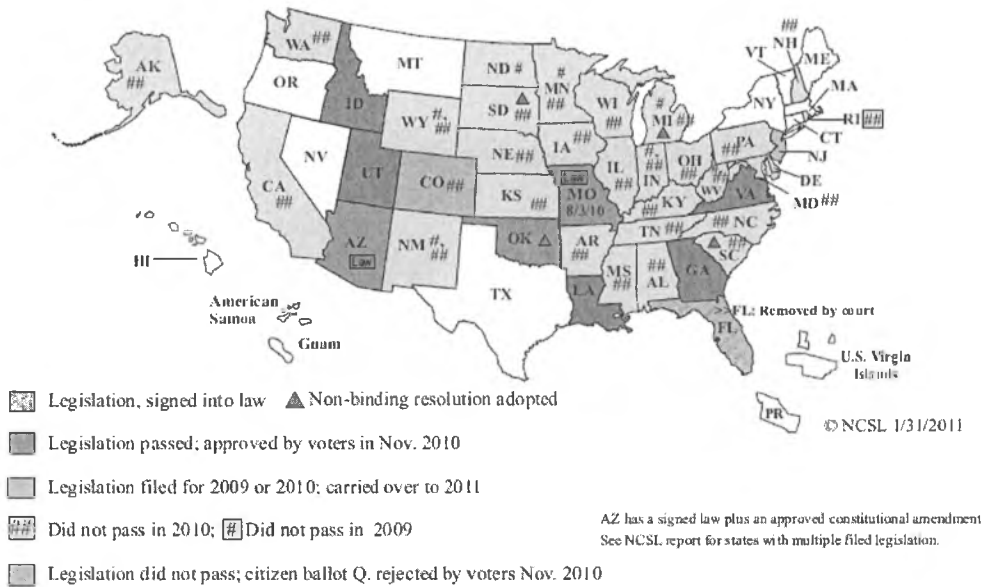
**State constitutional amendments:** In 30 of the states, the filed measures included a proposed constitutional amendment by ballot question. In a majority of these states, their constitution includes an additional hurdle for passage--requiring either a "supermajority" of 60 percent or 67 percent for passage, or requiring two affirmative votes in two separate years, such as 2010 and 2011.

**Federal constitutional amendment:** Idaho called for adding a U.S. 28th Amendment that Congress shall make no law requiring citizens of the United States to enroll in, participate in or secure health care insurance or to penalize any citizen who declines to purchase or participate in any health care insurance. This was adopted by both Senate and House on March 29, 2010. Florida adopted a non-binding resolution referencing a federal constitutional amendment process.

**Changing state law:** In at least 16 states, proposed bills aimed to amend state law, not the state constitution. These require a simple majority vote and action by the governor; they also can be re-amended or repealed by a future state law. So far in 2010, seven states have enacted such laws. Virginia became the first to enact a new statute section titled, " Health insurance coverage not required." It became law on March 10, 2010. Georgia, Idaho, Louisiana, Missouri, Utah and Arizona also each enacted similar statutes.

**40 States with 2009-2010 Legislation Opposing Certain Health Reforms**

NOTES: FLORIDA's proposed ballot question was removed from the ballot by the state court on August 31.



As of December 31, 2010 more than 115 formal resolutions or bills had been considered in **Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.** Additional states were reported in media or association articles to have discussed future action or intentions; examples are [listed below.](#)

**New Laws: Seven states have signed or enacted statutes in 2010, based on final actions as of November, 2010:**

A **Virginia** law passed both Senate and House, was amended by the Governor and both branches of the legislature and became law as Chapter 106 on March 10, becoming the first such statute in the nation.\*  
**Idaho** enacted a similar statute, signed as Chapter 46 on March 17.

A **Utah** statute, signed March 22, prohibits any state agency from implementing health reform unless state agencies recommend action or the legislature passes a provision.

A **Georgia** statute addition was substituted during a conference committee and passed by Senate and House on the last day; it was signed into law by the governor on June 2.

**Louisiana** enacted a statute, declaring that residents "shall be free from governmental intrusion in choosing or declining to choose" health coverage; signed July 2.

**Arizona** enacted a separate statute, similar to their constitutional ballot question for November 2010. (Explained below)

### **Statute by Ballot Question approved in Missouri**

**Missouri's** Legislature passed a proposed statute, but required that it be put to voters for approval or disapproval on their primary election day, Tuesday August 3, 2010. It was approved by a 71.1 percent yes vote.

### **Constitutional Ballot Questions passed in two states:**

**Arizona's** resolution of June 2009 was the first constitutional ballot question measure to have passed the legislative process; it was approved by voters on November 2, 2010. (Also see statute, listed above). NEW

**Oklahoma's** constitutional amendment ballot question was approved by the Senate and House in May 2010; it was approved by voters on the November 2, 2010 ballot. NEW

### **Question Rejected by Voters**

**Colorado:** Although the legislature rejected a resolution on the topic, a citizen initiative proposed constitutional amendment was placed on the November 2, 2010 ballot; it was rejected. NEW

### **Question Rejected by Court:**

**Florida's** legislature was the second state to approve a constitutional amendment ballot question, on 4/22/10, for a decision by voters on Nov. 2, 2010. However, in late July a Florida District court ruled the question wording as inappropriate; on August 31 their State Supreme Court agreed that the question must **be removed** from the ballot.

### **Non-binding measures:**

**South Dakota** passed a resolution opposing "government take-over" of health care. **South Carolina** adopted a resolution opposing health mandates and directing the attorney general to challenge such provisions in federal health reform. A **Michigan** Senate resolution urging removal of financial obligations passed in January 2010. **Idaho** called for adding a U.S. Constitutional Amendment to provide that Congress shall make no law requiring citizens of the United States to enroll in, participate in or secure health care insurance or to penalize any citizen who declines to purchase or participate in any health care insurance.

### **Measures That "Did Not Pass:"**

For the 2009-2010 legislative sessions, **30 states** have failed to pass or have rejected bills and resolutions (29 states in 2010, one in 2009)

For 2010 sessions, the states are: **Alabama, Alaska, Arkansas, California, Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, West Virginia, Wisconsin** and **Wyoming**. A 2009 **North Dakota** constitutional proposal did not pass by the end of their session. If additional special sessions, reintroductions or reconsideration motions are filed, they will be added to this report.

An "interim study proposal" resolution was not acted on in Arkansas; in Indiana a resolution passed the Senate but did not pass the House. States with discussions but no known legislation are listed separately; information in the examples list below is based on media statements by individual legislators or legislative associations.<sup>[1]</sup>

**Attorneys General** in at least 21 individual states also have taken some actions related to constitutional challenges to health reform, listed below. In addition individual governors in 3-4 states have urged such legal challenges.

The issue has garnered state legislative interest in 2009-2010 in part due to the American Legislative Exchange Council's (ALEC) model "Freedom of Choice in Health Care Act," which the organization described as "How Your State Can Block Single-Payer and Protect Patients' Rights." The ALEC-endorsed language mirrors Arizona Proposition 101, which was narrowly defeated in 2008.

Legal experts have expressed widely varying pro and con opinions on the validity of this approach. [See [Appendix 2](#) for commentary and quotes.]

Based on actions initially in **Arizona in 2009**, 29 other states considered proposed state constitutional amendments, using language such as:

"To preserve the freedom of all residents of the state to provide for their own health care... A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system ... A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services..."

B. Subject to reasonable and necessary rules that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or rule"

[see full text in [Appendix 1](#)]

According to The New York Times, "Conservatives and libertarians, mostly, have been advancing the theory lately that the individual mandate, in which the government would compel everyone to buy insurance or pay a penalty, is unconstitutional." (NY Times, 9/26/09)

Missouri votes: August 3, 2010



Photo: NY Times (c)

**Table 1:  
Filed Bills and Resolutions for 2009-2010**

Table 1 indicates 1) Activity and status for measures filed;  
2) the percentage of affirmative votes in the legislature required for approval;  
3) the earliest date that a proposed constitutional amendment can appear on the statewide ballot. Timing and parliamentary steps vary among states.

**The State Constitutional process:**

In 35 states, the legislature can enact a proposed constitutional amendment during a single session. [Appendix 3] This would allow passed measures to appear on the state ballot in 2010 or later. In 12 states the legislature must enact a proposed constitutional amendment during two sessions, which would make 2012 the earliest date for voter decisions.

State	Activity/Legislation	Required for passage
Alabama	<p><u>HB 42</u> by Rep. Bentley; HB 47 by Rep. Gipson; HB 498 by Rep. Galliher; SB 233 by Sen. Beason.</p> <p>Would propose a constitutional amendment to prohibit any person, employer, or health care provider from being compelled to participate in any health care system. (HB 42 prefiled 11/5/09 for 2010 session; sent to Health Committee 1/12/10; <b>did not pass</b> by end of session 4/22/10) (SB 233 filed 1/13/10; Passed Senate, sent to House 4/1/10; <b>did not pass</b> by end of session 4/22/10)</p>	60% both legislative chambers + 2010 ballot vote
Alaska	<p><u>HJR 35</u> by Rep. Kelly filed for 2010 session</p> <p>Would propose a state constitutional amendment prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system. (Filed 1/19/10; favorable House committee reports 3/12/10; <b>failed passage</b> 22y-18n 4/15/10)</p>	2/3rds both legislative chambers + 2010 ballot vote
	<p><u>HR 14</u> by Rep. Chenault</p> <p>Would urge the United States Congress to oppose federal health care reform bills. (Filed 2/17; re-referred to House Comm. 3/19/10; <b>did not pass</b> by end of session)</p>	Non-binding resolution; majority vote
Arizona (2009)	<p><u>Resolution HCR 2014</u> of 2009 by Rep. Barto</p> <p>Refers to the November 2010 ballot a proposed amendment to the State Constitution "which provides that no law or rule shall compel any person or employer to participate in any health care system, a person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for doing so, a health care provider may provide directly purchased lawful health care services; prohibits the terms or conditions of a health care system from imposing certain mandates or limitations." [full text in <a href="#">Appendix 1</a> below] (Filed 1/16/09; <b>passed House</b> 6/11/09; <b>passed Senate</b> 6/22/09; <b>passed by voters, 55.4% Yes to 44.7% No, on Nov. 2, 2010 ballot.</b>) Also see <a href="#">2008 ballot question history</a>, below.</p>	50% both legislative chambers (Passed) 2010 ballot vote
Arizona (2010)		

	<p><u>SB 1001</u>                  Added by state statute the "public policy that every person in this state... may choose or decline to choose any mode of securing lawful health care services without penalty or threat of penalty." Also protects "any right of contract related to the provision of lawful health care services to any person or group". "A public official or an employee or agent of this state or any political subdivision of this state shall not act to impose, collect, enforce or effectuate any penalty in this state that violates the public policy prescribed in this section."  <i>(Substituted by committee; <b>Signed into law by governor as Chapter 1, 4/1/2010.</b>)</i></p> <p><u>HB 2443</u> by Rep. Burges                  Would add by state statute the Health Care Freedom of Choice Act requiring Arizona to exercise its option to decline the public health care plan if authorized by the federal government.  <i>(Filed and sent to committees 1/26/10; <b>did not pass</b> by end of session)</i></p>	<p>Proposed statute: majority both legislative chambers</p>
<p>Arkansas</p>	<p><u>ISP 2009-204</u> by Rep. Glidewell (Interim Study Proposal for 2010 Fiscal Session)                  Would add a state statute to "ensure freedom of choice in health care" for state residents; "to prevent involuntary enrollments in health care insurance programs" and providing that an "individual or an employer may make direct payment for lawful health care services and shall not be required to pay penalties or fines" for making direct payment for health services.  <i>(Filed 12/17/09 for 2010 session; 2010 <b>regular session ended without action</b> on any language)</i></p>	<p>Proposed statute: majority both legislative chambers</p>
<p>California</p>	<p><u>SCA 29</u> by Sen. Strickland                  Would propose a state constitutional amendment prohibiting the effectiveness or enforcement of a state or federal program that (1) requires individuals to obtain health care coverage, (2) requires health care service plans or health insurers to guarantee issue contracts and policies to all applicants, (3) requires employers to either provide health care coverage to their employees or pay a fee or tax to the state or the federal government in lieu thereof, (4) allows an entity created, operated, or subsidized by the government to compete with health care service plans and health insurers in the private sector, or (5) creates a single-payer health care system, unless the program is approved by the electorate by ballot measure.  <i>(Filed 2/19/10; <b>did not pass</b> Senate Comm. 3y-6n, 5/5/10)</i></p>	<p>2/3rds both legislative chambers + 2010 ballot vote</p>
<p>Colorado</p>	<p><u>HJR 10-1009</u> by Rep Acree                  Resolution stating the intent of the General Assembly, to "Reserve the opportunity and ability of the State of Colorado and its citizens, under the state's and the people's Tenth Amendment rights, to opt out of any obligations due or participation required in any new federal health care legislation."  <i>(Filed 2/5/10; Judiciary Comm. <b>did not pass</b> -postponed indefinitely 3/11/10)</i></p> <p>Ballot Amendment 63  <i>A separate citizen initiative petition was circulated in summer 2010 and certified by the Secretary of State to appear on the November 2, 2010 ballot.</i>                  It stated: "(1) All persons shall have the right to health care choice, no statute, regulation, resolution, or policy adopted or enforced by the state of Colorado, its departments and agencies, independently or at the instance of the United States shall: (a) require any person directly or indirectly to participate in any public or private health insurance plan, health coverage plan, health benefit plan, or similar plan; or (b) deny, restrict, or penalize the right or ability of any person to make or receive direct payments for lawful health care services."  <i>(Requires a majority vote on the statewide ballot; <b>rejected by voters November 2, 2010, by 53% No to 47% Yes</b>) [article 11/3/10]</i>  <i>(News articles: Ballot amendment 63 "Two sides of the debate" &gt; <u>Vote "YES - Stand up to D.C."</u> versus <u>Vote "NO - It won't hold down health costs"</u>)</i></p>	<p>50% both legislative chambers</p> <p>No legislative role; requires 2010 ballot vote</p>
<p>Delaware (2010)</p>	<p><u>HB 353</u> by Rep. Hudson                  Would add a state statute providing the following:                  "The people of Delaware have the right to enter into private contracts with health care providers for health care services and to purchase private health care</p>	<p>State statute; 50% majority vote</p>

	<p>coverage. The United States Congress may not require any person to participate in any health care system or plan, nor may it impose a penalty, fine, tax, surcharge, or fee of any type for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan. Only the State of Delaware has the legal authority to regulate private health care insurance, systems, plans, and services for the people of Delaware within its borders." (Filed 3/30/10; held in House Administration Comm.; <b>did not pass</b> by end of regular session 6/30/10; may be considered in special session)</p> <p><u>HCR 28</u> by Rep. Hudson A non-binding resolution, stating opposition to the passed federal health reform; maintaining that the federal government does not have the authority to impose a federal healthcare program and urges the U.S. Congress to pursue less costly and more viable alternatives to reduce the cost of healthcare and increase its availability. Also states that "should the 111th Congress decide to enact a federal healthcare entitlement, it would urge Delaware's Congressional delegation to advocate for a provision that would require states to choose to "opt-in" to the program. (Filed and sent to committee 3/18/10; no action; held in committee; <b>did not pass</b> by end of regular session 6/30/10; may be considered in special session)</p>	<p>Non-binding resolution; 50% majority vote</p>
Florida	<p><u>HJR 37</u> (Joint Resolutions filed for 2010) by Rep. Plakon; 39 co-sponsors; <u>SJR 72</u> by Sen Baker. Joint resolutions propose a State Constitutional amendment to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system; permits person or employer to purchase lawful health care services directly from health care provider, and permits health care providers to accept direct payment from a person or employer for lawful health care services. (HJR 37 prefiled 7/27/2009 for 2010 session; substituted; <b>passed House; passed Senate; enrolled</b>; 4/22/10; was directed to appear on the November 2, 2010 state ballot for voter approval or disapproval) This ballot question, Amendment 9, was ordered removed from the ballot by the Florida District Court in late July; on August 31 the Florida State Supreme Court agreed and orderd that the question wording was inappropriate and must be <b>removed from the ballot</b>. [text of court ruling, No. SC10-1527] [Article by AP, 9/1/10] (SJR 72 prefiled 10/5/09; favorable comm. report 3/4/10 substituted by HJR 37 above) <b>News update:</b> "Fla. Const. amendment, round 2 in 2011?" - published 11/24/10) <sup>NEW</sup></p> <p>NOTE: <u>SB 10</u> separately calls for a United States Constitutional Convention to address various matters related to a balanced Federal Budget, including health care expenditure requirements. (Passed Senate and House; <b>enrolled and signed</b>, 5/5/10)</p>	<p>60% both legislative chambers + 2010 ballot vote</p>
Georgia	<p>2010 resolutions: <u>HR 1086</u> by Rep. Calvin Hill; <u>HR 1107</u> by Rep. Mills; <u>SR 794</u> by Sen. Hill; <u>SR 795</u> by Sen. Harp. Would propose an amendment to the Constitution so as to provide that no law or rule or regulation shall compel any person, employer, or health care provider to participate in any health care system and to authorize persons and employers to pay directly for lawful health care services without penalties or fines; would provide for submission of the amendment for ratification or rejection. SR 795 would provide that residents would not be subject to penalties or fine for not having health insurance. (Prefiled 11/23/09 for 2010 session; HR 1086 favorable report 3/11/10; did not pass House 3rd Reading 111y-61n-3nv, 3/18/10; motion to reconsider vote granted 110y-58n-6nv, 3/24/10) 2/3rd affirmative vote required; <b>did not pass</b> by end of session 4/29/10) SR 795 favorable report by Senate Judiciary 2/2/10; <b>did not pass</b> by end of session 4/29/10)SR 794 <b>did not pass Senate</b> 3rd reading 31y-19n, 3/18/10)</p>	<p>2/3rds both legislative chambers + 2010 ballot vote</p>
Georgia	<p><u>SB 317</u> by Sen. Hill Would establish by statute that "no law or rule or regulation shall compel any person, employer, or health care provider to participate in any health care system;" to authorize persons and employers to pay directly for lawful health care services</p>	<p>Statute: majority both</p>

	<p>without penalties or fines. (<i>SB 317 filed 1/25/10; favorable Comm. report 2/10/10; <b>passed Senate</b> 31y-16n; <b>did not pass</b> by end of session 4/29/10</i>)</p> <p><u>SB 411</u> with amendment 37-1032S by Sen. Hill Wellness discounts bill; amended, inserting similar language from SB 317 by Sen. Judson Hill. Establishes by statute that "no law or rule or regulation shall compel any person, employer, or health care provider to participate in any health care system;" to authorize persons and employers to pay directly for lawful health care services without penalties or fines. The intent is that state residents would not be forced to comply with the mandates in the federal health care reform law. <b>(House amendment, added and passed 4/27/10; 4/29/10 (AM21-3736) passed Senate 4/29/10; signed into law by governor 6/2/10) [Bill history]</b></p> <p><u>SR 829</u> and <u>SR 830</u> by Sen. Hill. (<i>Substituted and approved by conference committee;</i> Resolutions would direct the Attorney General to "initiate a formal investigation into the constitutionality of the special exemption set forth in the United States Senate's version of this national health care legislation and explore the availability of all other legal challenges. (<i>Filed 1/15/10; Senate 2nd reading 2/11/10; did not pass</i> by end of session 4/29/10)</p>	<p>legislative chambers</p> <p>Resolutions; majority vote</p>
Idaho	<p><u>HB 391</u> by State Affairs Comm. Amend and add to existing law to establish the Idaho Health Freedom Act, stating in part, "that every person within the state of Idaho is and shall be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty." (<i>Filed 1/19/10; passed House 52y-8n, 2/9/10; amended; passed Senate 24y-10n &amp; enrolled, 3/12/10; signed into law by governor as Session Law Chapter 46, 3/17/10</i>)</p>	<p>Statute: majority both legislative chambers</p>
	<p><u>SJM 106</u> by State Affairs Committee Non-binding memorial stating findings of the Legislature urging Congress to take action to amend the United States Constitution to provide that "Congress shall make no law requiring citizens of the United States to enroll in, participate in or secure health care insurance or to penalize any citizen who declines to purchase or participate in any health care insurance program." (<i>Filed 3/26/10; passed Senate and House 3/29/10</i>)</p>	<p>Memorial to Congress</p>
	<p><u>H 6842</u> by Rep. Mitchell Would provide by statute that no resident of the State, regardless of whether he has or is eligible for health insurance coverage shall be required to obtain or maintain individual insurance except as required by a court or a State agency (<i>Filed and sent to committee 3/26/10; pending; held in Rules Comm. as of 1/3/2011</i>)</p>	<p>Statute: majority both legislative chambers</p>
Illinois (2010)	<p><u>HR 1074</u> by Rep. Bellock Would request that the IL Commission on Government Forecasting and Accountability examine the provisions of the federal health care reform law to determine the fiscal impact of the provisions on the budget of the State. (<i>Filed and sent to Rules Committee, 3/26/10; placed on calendar 4/28; held in Rules Comm. as of 1/3/2011</i>)</p> <p><u>HR 1075</u> by Rep. Bellock Would urge the IL Attorney General to take steps necessary to file a suit challenging the constitutionality of the federal Patient Protection Affordable Care Act. (<i>Filed and sent to Rules Committee, 3/26/10; pending; held in Rules Comm. as of 1/3/2011</i>)</p>	<p>Non-binding resolutions</p>

<p>Indiana (2009)</p>	<p><u>SJR 65</u> by Sen. Waltz; <u>SJR 91</u> by Sen. Waltz; <u>SJR 111</u> by Sen. Waltz (Advisory resolutions for 2009)                  SJR 91: Resolved, "That the Indiana General Assembly must ensure that all residents of Indiana may enter into private contracts with health care providers for health care services and may purchase private coverage for health care services. That the Indiana General Assembly should not require an individual to participate in a health care system or plan or impose on an individual a penalty or fine of any type for choosing to obtain or decline coverage for health care services or participating in a particular health care system or plan."                  (SR 65 - filed 4/7/09 - did not pass by end of session; SR 91 - filed 4/27/09 - <b>did not pass</b> by end of session; SR 111 - filed 4/28/09 - <b>did not pass</b> by end of session; Indiana does not carry over bills or resolutions to 2010)</p>	<p>Non-binding resolutions</p>
<p>Indiana (2010)</p>	<p><u>SJR 14</u> by Sen. Krause, <u>HJR 6</u> by Rep. Noe; <u>HJR 8</u> by Rep. Turner; also non binding resolution <u>SCR 10</u>                  Would propose a state constitutional amendment stating, "A person, an employer, or a health care provider shall not be compelled, directly or indirectly, to participate in any health care system. A person or an employer may pay directly for lawful health care services and shall not be subject to penalties or fines for paying directly for lawful health care services. A health care provider may receive direct payment for health care services from a person or an employer and shall not be subject to penalties or fines for accepting direct payment from a person or an employer."                  SCR10 - nonbinding resolution passed Senate 2/1/10; did not pass House Committee)                  (Filed 1/11/10; <b>did not pass</b> by end of regular session deadline 3/3/10)</p>	<p>50% both legislative chambers + 2012 ballot vote</p>
<p>Iowa</p>	<p><u>HJR 2007</u> by Rep. Upmeyer                  Would propose a state constitutional amendment prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system.                  (Filed 1/26/10; <b>did not pass</b> by end of session 4/12/10)</p> <p><u>HF 2117</u> by Rep. Sorensen; <u>HF 2214</u> by Rep. Upmeyer; <u>S 2139</u> by Sen. Zaun                  Would establish by statute that the people of Iowa have the right to enter into contracts with health care providers for health care services and to purchase private health care coverage. In addition, the general assembly cannot require any person to participate in any health care system or plan, or impose any type of penalty or fine on any person for choosing to obtain or declining to obtain health care coverage or for participating or declining to participate in any particular health care system or plan.                  (Filed 1/26/10; HF 2214 motion to expedite failed 44y-53n, 2/12/10; <b>did not pass</b> by end of session 4/12/10)</p>	<p>50% both legislative chambers + 2012 ballot vote</p> <p>Proposed statute: majority both legislative chambers</p>
<p>Kansas</p>	<p><u>HCR 5032</u> by Rep. Landwehr; <u>SCR 1626</u> by Sen. Pilcher-Cook                  Would propose a state constitutional amendment providing that 1) "A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system or purchase health insurance. "2) A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services."                  (Filed &amp; sent to committees 2/2/10, 2/17/10; HCR 5032 <b>did not pass</b> House 74y-47n by required 2/3rds vote, 3/24/10; SCR 1626 withdrawn from and returned to Judiciary committee, 2/17/10) [staff analysis]</p>	<p>2/3rds both legislative chambers + 2010 ballot vote</p>
<p>Kentucky</p>	<p><u>HB 307</u> by Rep Moore                  Would prohibit by statute any other law "from requiring any individual to participate in any health care system or plan, or to impose a penalty or fine regarding participation; permit an individual or an employer to pay directly for health care services and a health care provider to accept direct payment without penalties or fines. Also would prohibit the state executive branch from "participating in or complying with any federal law, regulation, or policy that would compromise the freedom of choice in the health care."                  (Filed 1/21/10; sent to Banking &amp; Insurance Comm. 1/26/10; discharge from committee petition filed 3/24/10; <b>did not pass</b> by end of session 4/15/10)</p>	<p>Proposed statute: majority both legislative chambers</p>

<p>Louisiana</p> <p>Louisiana</p>	<p>HB 1474 by Rep. Talbot Prohibits by state statute any state resident from being required to purchase health insurance coverage; provides that it is a declared public policy of the state that every person within the state is and shall be free from governmental intrusion in choosing or declining to choose any mode of security health insurance coverage without a penalty or threat of penalty. <i>(filed 5/6/10; signed into law by governor as Act 952, 7/2/10)</i></p> <p>SB 26 by Sen. Crowe Would prohibit by statute any other law requiring a "person, employer, health care provider to participate" in a health system or insurance system; also would prohibit compelling participation in any health care system or health insurance plan. Would establish a misdemeanor offense and penalty (\$500 or five day in prison) for any state or local official who "attempts to coerce any individual to purchase health insurance." <i>(Filed and sent to Sen. Health and Welfare 3/5/10; did not pass by end of session) 5A</i></p>	<p>Proposed statute: majority both legislative chambers</p>
	<p>HB 94 by Rep. Talbot Would propose a state constitutional amendment to prohibit laws or rules that would compel "any person, employer, or health care provider to participate in any health care system"; would allow the direct payment of health care services; also such persons, employers or providers would "not be required to pay penalties or fines" for buying or selling health services. <i>(Prefiled 3/4/10; House ordered to 3rd reading; did not pass by end of session)</i></p>	<p>2/3rds both legislative chambers + 2010 ballot vote</p>
<p>Maryland</p>	<p>HB 603 by Rep. Shenk; SB 397 by Sen. Pipkin Would propose a state constitutional amendment limiting the regulation of health care in the state; prohibiting a law from compelling residents to participate in any health care system; prohibiting residents from being required to pay penalties or fines for not participating in health insurance; specifying that the purchase or sale of specified health insurance may not be prohibited by law; authorizing residents to pay directly or accept direct payment for specified health care services. <i>(Filed 1/29/10; HB 603 unfavorable report, did not pass Health &amp; Govt. Op. Committee, 3/26/10) (SB 397 did not pass Comm. 3/29/10)</i></p> <p>HB 1563 by Rep. Dwyer Would provide by statute any other law requiring a "person, employer, health care provider to participate" in a health system or insurance system; a person has the right to choose to participate in a private health insurance system or plan; establishes that, notwithstanding specified provisions of law and subject to a specified exception, a person has the right to pay for lawful medical services without interference and a penalty, tax, fee, or fine may not be imposed on a person who declines to contract for health insurance coverage. <i>(Filed and sent to committee 3/21/10; did not pass by end of session 4/20/10)</i></p>	<p>60% both legislative chambers + 2010 ballot vote</p> <p>Proposed statute: majority both legislative chambers</p>
<p>Michigan</p>	<p>SJR K of 2009 by Sen. Kuipers; HJR CC by Rep. Calley; HJR Z of 2009 by Rep. Amash Would propose a state constitutional amendment "to affirm the right to independent health care." Includes a statement that "a person or employer shall not be required to pay penalties or fines for paying directly for lawful health care services." <i>(Filed 8/1/9/09, 8/29/09 and 9/9/09; pending in Committee on Health Policy; no floor vote in 2009; carried over to 2010) SJR K 2nd Reading and committee substituted; failed to pass 3rd Reading; reconsidered 3/16/10; no further actions as of 5/21/10)</i></p>	<p>2/3 both legislative chambers + 2010 ballot vote</p>
<p>Minnesota</p>	<p>HF 171 by Rep. Emmer, S 325 by Sen. Koch, S 1282 by Sen. Hann Would propose an amendment to the Minnesota Constitution stating that "no law shall be passed that restricts a person's freedom of choice of private health care systems or private health plans of any type. No law shall interfere with a person's or entity's right to pay directly for lawful medical services, nor shall any law impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or health plan." <i>(Filed 1/22/09, 3/9/09; did not pass committee by end of 2009 session; did not pass committees by end of 2010 session 5/17/10)</i></p>	<p>50% both legislative chambers + 2010 ballot vote</p>

	<i>Executive Order 10-12: In an action unrelated to the legislature "Governor Pawlenty signed an Executive Order "Directing State Agencies to Decline All Discretionary Participation" in Federal health reform – 8/31/2010.</i>	
Mississippi	HCR 17 by Rep. Monsour; SCR 562 by Sen. Nunnelee Resolution, would propose a constitutional amendment to prohibit laws compelling any person, employer or health care provider to participate in any health care plan. Would provide that a "person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly." (Filed; sent to Committee on Constitution 1/7/10; HCR 17 and SCR 562 <b>died in committee</b> 2/2/10)	2/3 both legislative chambers + 2010 ballot vote
Missouri	HJR 48 by Rep. Davis; HJR 50 by Rep. Ervin; HJR 57 by Rep. Jones Ti; SJR 25 by Sen. Cunningham; Joint resolutions, would propose a constitutional amendment which would prohibit compelling a person to participate in any health care system. "Upon voter approval, this proposed constitutional amendment prohibits any person, employer, or health care provider from being compelled to participate in any health care system. Individuals and employers may pay directly for lawful health care services, and health care providers can accept payment for health care services from individuals or employers without being subject to fines or penalties. The purchase or sale of health insurance in private health care systems cannot be prohibited by law or rule. Committee substitute added definitions (Prefiled 1/6/10 for 2010 session; HJR 48 House resolutions combined & <b>passed House</b> 109y-46n, 3/16/10; pending in Senate 5/12/10) ( SJR 25 substituted; favorable comm. report 3/16/10); session adjourned 5/25/10 without further action)	50% both legislative chambers + 2010 ballot vote
	HB 1764 by Sen. Cunningham [final full text] Proposed state insurance statute amendment to prohibit "any person, employer, or health care provider from being compelled to participate in any health care system. Individuals and employers may pay directly for lawful health care services, and health care providers can accept payment for health care services from individuals or employers without being subject to fines or penalties. The summary for voters reads, "Shall the Missouri Statutes be amended to: Deny the government authority to penalize citizens for refusing to purchase private health insurance or infringe upon the right to offer or accept direct payment for lawful healthcare services?" (Senate substituted language prohibiting "compelling" participation in health insurance. <b>Passed Senate 26y-8n, 5/4/10; passed House</b> 5/11/10, 5/11/10; <b>approved on August 3, 2010 primary election ballot by voters, 71.1% yes</b> ) <a href="#">Vote Results Here</a> <sup>NEW</sup> > Legislative <a href="#">News release</a> 5/11/10. > <a href="#">With Prop C, Missouri voters will be first in nation to weigh in on health-care reform.</a> Includes NCSL material. - St. Louis Beacon - July 28, 2010	State Statute placed on voter ballot for approval in August 2010.
Nebraska	LR 289CA by Sen. McCoy Proposed constitutional amendment stating "no law shall be passed that: (1) Restricts a person's freedom of choice of private health care systems or private health plans of any type; (2) Interferes with a person's or an entity's right to pay directly for lawful medical services; or (3) Imposes a penalty or fine of any type for choosing to obtain or decline health care coverage." (Filed 1/13/10; postponed indefinitely; <b>did not pass</b> by end of session 4/14/10)	60% both legislative chambers + 2010 ballot vote
New Hampshire	CACR 30 of 2010 by Rep. Renzullo Would propose a state constitutional amendment to establish a right stating, "People may enter into private contracts with health care providers for health care services and to purchase health care coverage." Also would prohibit the state legislature from requiring health insurance or imposing any fine or penalty for not having coverage. (Filed 1/6/10; <b>did not pass</b> as "inexpedient to legislate" 2/3/10)	60% both legislative chambers + 2010 ballot vote with 2/3rds popular vote
	Also see <a href="#">Financing</a> category below	--

<p>New Jersey</p>	<p><u>ACR 109</u> by Assemblymember Mchose; <u>SCR 81</u> by Sen. Doherty                  Would propose a state constitutional amendment to prohibit state or federal law or regulation from compelling a person to obtain, provide, or participate in health care coverage.                  (New Jersey 's constitution requires a three-fifths vote in each chamber at one session [2010], or majority vote in each chamber for two successive sessions [for 2012])                  (ACR 109: Filed 2/25/10; held in in commerce committee as of 1/3/2011)                  (SCR 81: Filed 2/25/10; held in health and human services committee as of 1/3/2011)</p>	<p>Both legislative chambers                  +                  ballot vote                  (see note)</p>
<p>New Mexico (2009)</p>	<p><u>SJR 1</u> of 2009 by Sen. Sharer/ <u>HJR 10</u> of 2009 by Rep. Gardner                  Proposed constitutional amendment stating, "No law shall be enacted that: A. restricts a person's freedom of choice of a private health care system or plan; B. interferes with a person's right to pay directly for lawful medical services; or C. imposes a penalty or fine of any type on a person for choosing to obtain or to decline health care coverage or for participation in a particular health care system or plan."   <u>Fiscal Impact Report</u>                  (SJR 1 filed 1/21/09; HJR 10 filed 1/28/09; <b>failed to pass</b> by end of session; no carryover)</p>	<p>50% both legislative chambers                  +                  2010 ballot vote</p>
<p>New Mexico (2010)</p>	<p><u>HJR 5</u> by Rep. Gardner; <u>SJR 2</u> by Sen. Sharer                  Proposed constitutional amendment stating, "No law shall be enacted that: A. restricts a person's freedom of choice of a private health care system or plan; B. interferes with a person's right to pay directly for lawful medical services; or C. imposes a penalty or fine of any type on a person for choosing to obtain or to decline health care coverage or for participation in a particular health care system or plan."                  (Filed 1/20/10; <b>failed to pass</b> by end of regular session 2/10)</p>	<p>2010 ballot vote</p>
<p>North Carolina</p>	<p><u>HJR 1674</u> by Rep. Stam; <u>SJR 1134</u> by Sen. Clary                  Proposed Joint Resolution Authorizing the 2009 General Assembly to Consider a Bill To Be Entitled An Act To Protect The Freedom to Choose Health Care And Health Insurance.                  (Filed 5/17/10; <b>Did not pass</b> by end of 2010 session)</p>	<p>Proposed bill, majority vote required</p>
<p>North Carolina</p>	<p><u>SB 1157</u> by Sen. Forrester                  Proposed constitutional amendment stating, "A law or rule shall not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system. (b) A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services."                  (Filed 5/17/10; <b>Did not pass</b> by end of 2010 session)</p>	<p>50% both legislative chambers                  +                  2010 ballot vote</p>
<p>North Dakota</p>	<p><u>HCR 3010</u> by Rep. Kasper (Joint Resolution), a proposed 2010 constitutional amendment based on Arizona language.                  Would propose an amendment to the State Constitution; relates to freedom of choice in health care; prohibits laws that restrict an individual's choice of private health care systems or private plans, interfere with a person's right to pay for lawful medical services, or impose a penalty or fine for choosing to obtain or decline health care coverage or for participation in any health care system or plan."                  (Filed 1/14/09, <b>failed to pass</b> House 3/4/09 by end of 2009 session; no regular session in 2010)</p>	<p>50% both legislative chambers                  +                  future year ballot vote</p>
<p>Ohio</p>	<p><u>SJR 2</u> of 2009 by Sen. Coughlin; <u>SJR 7</u> by Sen. Grendell; <u>HJR 3</u> by Rep. Maag                  Joint resolutions for a proposed constitutional amendment to state, " The people of Ohio have the right to enter into contracts with health care providers ... and to purchase private health care coverage" Would prohibit state laws requiring coverage or imposing fines. For "obtaining or declining" coverage.                  (SJR 2 filed 2/24/09; held in Senate committee; <b>did not pass</b> by end of session 1/4/11)                  (SJR 7 filed 9/29/09; held in Senate Insurance &amp; Commerce Comm. as of 1/3/2011)                  (HJR 3 filed 8/26/09; sent to Insurance Comm. 9/15/09; carried over to 2010; held in comm. as of 1/3/2011)</p>	<p>60% both legislative chambers                  +                  2010 ballot vote</p>

	<p>HB 489; SB 244                  Would prohibit requiring an individual to obtain or maintain a policy of health insurance.  <i>(Filed 4/14/10; pending; ' held in original comm. as of 1/3/2011)</i></p>	<p>Proposed statute: majority both legislative chambers</p>
Oklahoma	<p>HJR 1054 by Rep. Ritze; SJR 56 ; SJR 59 by Sen. Newberry                  Joint resolution for a proposed constitutional amendment stating, "A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system; and A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines" for lack of insurance.  <i>HJR 1054 was amended by conference committee: it would enact a <b>statute</b> instead of a constitutional amendment. Also directs the state Attorney General to file a lawsuit against the federal government to prevent legislation regarding federal health insurance;</i>  <i>(HJR 1054 filed 12/22/09; passed House 77y-10n, 3/11/10; enacting clause stricken, which nullified effect of the resolution; passed Senate 36y-11n, 3/23/10 ; <b>Statute version favorable conference committee report, 4/19/10; approved by House 4/28/10; approved by Senate 4/29/10; vetoed by governor; veto overridden by House 5/18/10; veto override did not pass in Senate, 5/21/10)</b></i></p> <p>SCR 64 by Sen. President Pro Tempore Coffee and House Speaker Bengé                  Non-binding resolution authorizing legislative leaders to "employ legal counsel to file a lawsuit against the United States Congress, the President of the United States of America, and the Secretary of the United States Department of Health and Human Services to prevent the provisions" of federal health care from taking effect.  <i>(Adoped by Senate by 29y-17n; adopted by House by 63y-19n; certified as passed)</i>  <i>(SJR 59 Conference Comm. report for a separate 2010 constitutional amendment ballot question <b>approved by Senate by 30y-13n, 5/5/10; approved by House by 88y-9n and sent to Secretary of State 5/26/10; will appear on the November 2, 2010 ballot as Question #756)</b></i>                  Oklahoma article: <a href="#">Question 756: Voters will have health care 'opt out' amendment in November - 9/8/2010</a></p>	<p>50% both legislative chambers + 2010 ballot vote</p> <p>-----</p> <p>HJR 1054 majority both legislative chambers</p>
	<p>SJR 58 by Sen. Coffee                  Petitions the federal government to opt-out of certain mandates; and for certain waivers and block grants.  <i>(Filed 2/1/10; passed Senate 35y-11n, 2/22/10; <b>did not pass</b> by end of session 5/28/10)</i></p> <p>SJR 64                  Directs the Attorney General to file a lawsuit against the federal government to prevent legislation regarding federal health insurance; directs distribution.  <i>(Filed 2/1/10; passed Senate 29y-16n, 2/24/10; <b>did not pass</b> by end of session 5/28/10)</i></p>	<p>Non-binding resolutions</p>
Pennsylvania	<p>HB 2053 by Rep. Baker                  Proposed statute "providing for the rights of individuals to purchase private health care insurance and prohibiting certain governmental action." States, "The people shall have the right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The legislature may not require any individual to participate in any health care system or plan, nor may it impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan."  <i>(Filed and sent to Insurance Committee, 10/21/09; no floor vote in 2009; carried over; <b>did not pass</b> by end of 2010 session)</i></p>	<p>Proposed statute: majority both legislative chambers</p>
Rhode Island	<p>S 2544 and S 2747 by Sen. Blais                  Would provide that no law would restrict a person's ability to contract with, pay for,</p>	<p>Proposed statute: majority both</p>

	and/or otherwise select a private health care system or private plan of that person's choosing; would take effect upon passage. <i>(Filed and sent to committee 2/11/10; committee "held for further study"; did not pass by end of 2010 session 4 /28/10)</i>	legislative chambers
South Carolina	<p><u>HJR 4181</u> by Rep. Scott; <u>HJR 4240</u> by Rep. Duncan; <u>HJR 4602</u> by Rep. Viers; <u>SJR 980</u> by Sen. Bright; <u>SJR 1010</u> by Sen. Rose. Resolution for a proposed constitutional amendment, "prohibiting any law, regulation, or rule to compel an individual, employer, or health care provider to participate in a health care system, by allowing individuals and employers to pay directly for lawful health care services without penalties or fines for these direct payments, by providing that the purchase or sale of health insurance in private health care systems must not be prohibited by law, regulation, or rule." The resolution title states, "... to preempt any federal law or rule that restricts a person's choice of private health care providers or the right to pay for medical services." <i>(HJR 4181 filed for 2010 session; sent to Committee on Labor, Commerce and Industry, 11/17/09; held/pending 5/31/10; session adjourned without further action 6/3/10; state wide session to be held 6/15/10)</i> <i>(SJR 980 and SJR 1010 filed; sent to Senate Judiciary Committee 1/12/10; favorable report 3/30/10; session adjourned without further action 6/3/10; state wide session to be held 6/15/10)</i></p> <p><u>SB 987</u> by Sen Rose. By statute would provide that citizens "have right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The General Assembly may not require a person to participate in any health care system or plan and may not impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan." <i>(Favorable Senate Judiciary Committee report 3/31/10; held/pending 5/31/10; session adjourned without further action 6/3/10; state wide session to be held 6/15/10)</i></p>	<p>50% both legislative chambers + 2012 ballot vote</p> <p>Proposed statute: majority both legislative chambers</p>
	<p><u>SCR 424</u> by Sen. Bright Senate concurrent resolution referencing state sovereignty under 9th and 10th Amendments. Resolves "that it is the policy of the State" that "no law shall interfere with the right of a person to be treated by or receive services from a health care provider of that person's choice; no law shall restrict a person's freedom of choice of private health care systems or private health care plans of any type; no law shall interfere with a person's or an entity's right to pay directly for lawful medical services; and no law shall impose a tax, penalty, or fine, of any type, for choosing a health care provider." States that "the Attorney General will challenge constitutionality of any provision adopted by U.S. Congress" that violates these policies; also "no state agency, agent, department, instrumentality, or subdivision shall cooperate or participate in any way with any mandate passed by U.S. Congress" if a court challenge is filed. <i>(Adopted by Senate and House with amendments, 3/9/10)</i></p>	<p>resolution; majority vote; no signature needed</p>
South Dakota	<p><u>HJR 1001</u> by Rep. Jensen Resolution for a proposed constitutional amendment, stating "The Legislature may not enact a law that restricts an individual's freedom of choice of private health care systems or private plans of any type; a law that interferes with a person's right to pay directly for lawful medical services; or a law that imposes a penalty or fine of any type for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan." <i>(Filed 1/28/10; sent to committees 2/10/10; did not pass committee "deferred " past end of session, 2/18/10)</i></p>	<p>50% both legislative chambers + 2010 ballot vote</p>
	<p><u>SCR 1</u> by Sen. Brown Would oppose "the government takeover of health care as currently proposed by</p>	<p>Non-binding resolution</p>

	<p>Congress" and encouraging preservation of states' rights regarding health care regulation, urging "not to adopt either measure or institute new federal review, oversight, or preemption of state health insurance laws."  <i>(Filed 1/28/10; passed Senate 22y-10n, 2/1/10; passed House 44y-24n, 2/3/10)</i></p>	
Tennessee	<p>SB 2490 by Sen. Black; SB 2560 by Sen. Black; SB 3498 by Sen. Beavers; HB 2622 by Rep. Lynn; HB 2654; HB 3433 by Rep. Bell                  Would amend state law by adding a "Tennessee Freedom of Choice in Health Care Act."  <i>(SB 2560, HB 2622 assigned to committees, 2/22/10, 3/17/10; ; did not pass by end of session 6/10)</i>                  SB 3498 <b>passed Senate</b> engrossed, 29Y-1n, 2/22/10; <b>did not pass</b> House by end of session 6/10)</p>	Proposed statute: majority both legislative chambers
	<p>HJR 0745 by Rep. Lynn                  Resolution for a proposed constitutional amendment, stating - Prohibits laws or rules that would compel any person, employer, or health care provider to participate in any health care system.  <i>(Filed 1/21/10; sent to committees, 2/22/10; held; did not pass House by end of session 6/10)</i></p>	50% both legislative chambers + 2012 ballot vote
	<p>SJR 897 by Sen. Ramsey                  Would request that the TN Attorney General join other States in contesting the implementation of the federal health care legislation that was signed into law on March 23, 2010.  <i>(Filed 3/25; adopted in Senate 21y-8n, 4/12/10; ; did not pass House by end of session 6/10)</i></p>	Non-binding resolution
Utah	<p>H 67 for 2010 session by Rep. Wimmer                  Amends statute provisions related to the state's strategic plan for health system reform to respond to federal reform efforts; prohibits a state agency or department from implementing any provision of the federal health care reform without first reporting to the Legislature: 1) whether the federal act compels the state to adopt the particular federal provision; 2) consequences to the state if the state refuses to adopt the particular federal provision; and 3) impact to the citizens of the state if reform efforts are implemented or not implemented; 4) would require any agency of the state not to implement any part of federal health care reform passed by the US Congress after March 1, 2010, unless the department or agency reports to the Legislature and the Legislature passes legislation "specifically authorizing the state's compliance or participation in, federal health care reform."  <i>(Passed House amended , 53y-20n, 2/11/10; passed Senate 22y-7n; signed into law by governor 3/23/10) News articles 4, 7</i></p>	Statute: majority both legislative chambers
	<p>HCR 8 by Rep. Clark                  Urges Congress to refuse to pass any health care legislation that contains certain provisions, urges Congress to pass health care legislation with specific provisions, and urges Congress, should it pass health reform legislation that further restricts states, to grandfather certain state laws, regulations, and practices.  <i>(Filed 1/25/10; signed into law by governor, 3/22/10)</i></p> <p>HJR 11 by Rep. Morley                  Urges the United States Congress to refrain from passing certain federal health insurance reforms.  <i>(Filed 1/25/10; Passed House 51y-21n, 2/8/10; passed Senate 18y-8n, 2/18/10)</i></p>	Non-binding resolution
Virginia	<p>HJ 7 by Del. Marshall                  Resolution for a proposed constitutional amendment, to protect "an individual's right and power to participate or to decline to participate in a health care system or plan; prohibiting any law that will infringe on an individual's right to pay for lawful medical services and prohibiting the adoption of any law that imposes a penalty, tax, or fine upon an individual who declines to enter into a contract for health care coverage or to participate in a health care system or plan.  <i>(Filed for 2010 and sent to committee 12/9/09; did not pass) [Also see bills below]</i></p>	50% both legislative chambers + 2012 ballot vote

	<p><u>SB 283</u> by Sen. Quayle; <u>SB 311</u> by Sen. Martin; <u>SB 417</u> by Sen. Holtzman Vogel, <u>HB 10</u> by Del. Marshall.</p> <p>Amends state law by adding a section, "Health insurance coverage not required. No resident of this Commonwealth, regardless of whether he has or is eligible for health insurance coverage under any policy or program provided by or through his employer, or a plan sponsored by the Commonwealth or the federal government, shall be required to obtain or maintain a policy of individual insurance coverage.</p> <p>No provision of this title shall render a resident of this Commonwealth liable for any penalty, assessment, fee, or fine as a result of his failure to procure or obtain health insurance coverage." It does not apply to Medicaid and CHIP coverage. (Filed for 2010 session 1/13/10; <u>SB 283</u>, <u>SB 311</u> and <u>SB 417</u> passed Senate 23y-17n, 2/1/10; passed House 67y-29n, 2/12/10; sent to governor; amended and <b>repassed Senate</b> 3/4/10; <b>repassed House</b> ; <b>became law</b> 3/10/10) <sup>NEW</sup></p> <p>* Under Virginia law, the Governor exercised his option to return the bill to the legislature with a formal recommended amendment. Both branches of the legislature voted to accept the Governor's recommendation, at which point the bills became law without requiring the Governor's signature.</p> <p>[news articles: VA 2/10/2010; Boston Globe 3/8/2010]</p>	<p>Statute: majority both legislative chambers</p>
Washington	<p>HB 2669 by Rep. Hinkle; <u>SB 6535</u> by Sen. Holmquist</p> <p>Would amend state law by adding a provision that the state "shall not directly or indirectly compel any person, employer, or health care provider to participate in any health care system." and that " A person or employer may pay directly for lawful health care services and shall not be required to pay any penalty, fine, or other sanction for paying directly for lawful health care services.</p> <p>(Filed &amp; sent to Health &amp; Wellness Comm. 1/12/2010; <b>did not pass</b> by end of regular session; reintroduced in 1st Special Session 3/15/10); final day 4/13/10)</p>	<p>Proposed statute: majority both legislative chambers</p>
	<p>SJR 8220 by Sen. Stevens</p> <p>A proposed 2010 Constitutional amendment to provide that no law or rule may compel any person, employer, or health care provider to participate in any health care system; defines health care system as any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment for, health care services or health care data or information for its participants.</p> <p>(Filed &amp; sent to Health &amp; Wellness Comm. 1/12/2010; <b>did not pass</b> by end of regular session; reintroduced in 1st Special Session 3/15/10)</p>	<p>2/3rds both legislative chambers + 2010 ballot vote</p>
West Virginia (2009)	<p>H 3002 by Rep. J. Miller</p> <p>The "Health Care Freedom Act" states, "The people have the right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The Legislature may not require any person to participate in any health care system or plan, nor may it impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan."</p> <p>(Filed 3/9/09; <b>failed to pass</b> by end of session; cannot carry over to 2010)</p>	<p>Proposed statute: majority both legislative chambers (Did not pass)</p>
West Virginia (2010)	<p>HJR 103 by Rep. J. Miller</p> <p>A proposed 2010 Constitutional amendment prohibiting compulsory purchases in healthcare and providing choice and in payment for health services.</p> <p>(Filed 2/5/10; motion to discharge postponed 2/25/10; <b>did not pass</b> committee by deadline -end of session. 3/19/10)</p>	<p>2/3rds Vote in both legislative chambers + 2010 ballot vote</p>
Wisconsin	<p><u>SJR 62</u> by Sen. Leibham; <u>AJR 138</u></p> <p>A proposed 2012 Constitutional amendment; would establish the "right of the people to contract privately for health care services and health care coverage, and prohibiting requiring a person to obtain or maintain" health coverage.</p> <p>(Filed 2/22/10; <b>did not pass</b> committee by 2010 session deadline 4/28/10)</p>	<p>50% both legislative chambers + 2012 ballot vote</p>
Wyoming (2009)	<p><u>SJR 3</u>, by Sen. Pres. Hines</p> <p>A proposed 2010 Constitutional amendment based on Arizona language, "that protects individuals, employers and health care providers from having to participate in any health care system." Provides for "freedom of choice in health care; prohibits laws interfering with freedom of choice in health care"</p> <p>(Filed 1/20/09; <b>died in Senate committee</b> 3/3/09; no carryover)</p>	<p>2/3 both legislative chambers + 2010 ballot vote</p>

Wyoming (2010)	<p><u>SJ 1</u> by Sen. Pres. Hines; <u>HJ 12</u> by Rep. Lubnau Resolution for a proposed 2010 constitutional amendment for "Health freedom of choice," stating, "the federal government shall not interfere with an individual's health care decisions." Also would call for "prohibiting any penalty, fine or tax imposed because of a decision to participate in or decline health insurance, or to pay directly or receive payment directly for health care services." (Filed 1/26/10; <b>did not pass</b> introduction 18y-12n, 2/9/10; HJ 12 <b>did not pass</b> introduction 38y-19n, 2/10/2010) [<i>news article</i>]</p>	2/3 both legislative chambers + 2010 ballot vote
"	<p>SB 49 by Sen. Jennings Resolution would direct the attorney general to investigate the state and federal constitutional effects of federal health care or health insurance reform legislation; requiring a report within 60 days of any future federal enactment; providing for the attorney general to seek legal remedies. (Filed 2/3/10; <b>did not pass</b> introduction requirement, 18y-12n, 2/9/10)</p>	Proposed statute; 2/3 required for consideration in budget session

**States Opposing Health Reform Financing and Unfunded Mandates**

State	Activity/Legislation	Required for Passage
Arizona	<p>HCM 2002 ; SCM 1001 Relates to Medicaid; urges Congress to ensure that any federal health care reform legislation has a minimal fiscal impact on the states. (Filed 1/15/10; favorable report 3/17/10; <b>did not pass</b> by end of session)</p>	Non-binding resolutions
Florida	<p>S4b (Senate Memorial) Urges the Congress of the United States to amend Title XIX of the Social Security Act in order to reestablish a fair and prudent federal-state partnership that respects that respects certain constitutional requirements and enables states to provide cost-effective health care services to low-income residents; urges Congress to restructure the Medicaid program. (Passed Senate; passed House 11/16/10 <b>Adopted</b>)</p>	
Illinois	<p>HR 1074 by Rep. Bellock Would request that the IL Commission on Government Forecasting and Accountability examine the provisions of the federal health care reform law to determine the fiscal impact of the provisions on the state budget, with a report due July 1, 2010 for use with the FY1011 budget. (Filed and sent to Rules Committee, 3/26/10; held in comm. as of 9/7/10)</p>	Non-binding resolutions
Iowa	<p>SB 2097 Would affirm the intent of the General Assembly to exercise those powers reserved to the states; includes but not limited to providing state-based regulation of the health insurance market; provides aggressive oversight of this market; enforces consumer protection and a local, responsive presence for consumers. (Filed; sent to Senate Committee on Judiciary 1/27/10; <b>did not pass</b> by end of session 4/10)</p>	
Michigan	<p>SR 106 by Sen. George Memorializes the President, the Congress, and the Secretary of HHS to remove provisions from the final version of the federal health care reform legislation that would increase financial obligations for states, whether through expanded Medicaid requirements or other mandates. (Filed; <b>Adopted by Senate</b> 1/16/10)</p>	Non-binding resolutions
New Hampshire	<p>SB 417 by Sen. Bradley Would amend state law to prohibit the expansion of the Medicaid program if Congress passes a national health insurance plan unless the expansion is approved by the NH Legislature or is paid for by the federal government. (Filed and sent to Senate Finance Committee 1/6/10; <b>did not pass</b>; voted as "inexpedient to legislate" , 14y-10n, 3/3/10)</p>	Proposed statute: majority both legislative chambers



Sources: NCSL research; State legislative web sites; StateNet for selected features.

**Table 2: State Attorneys General or Governors Seeking to Block Healthcare Law in Court**

*These actions are listed for information only. Unless otherwise noted above, they may have no connection to actions or decisions by the state legislatures.*

Can Congress compel Americans to engage in specific commercial transactions?

In early April, 13 state attorneys general filed a lawsuit seeking to repeal health care reform in federal court in Florida; by June a total of at least 20 states had some role in support of this legal challenge. Virginia Attorney General Ken Cuccinelli is pursuing a similar suit in his home state. The cases center on health care reform's mandate that Americans, starting in 2014, purchase insurance. If they don't, they will stand to pay a fine of \$750, or 2 percent of their income, whichever is greater.

**Key ACA Provisions Challenged**

Collectively the litigation raises constitutional challenges to four provisions of the ACA, as analyzed in a brief by the George Washington Law Center, updated 12/6/2010:

Individual responsibility – The law's requirement that beginning January 1, 2014, non-exempt individuals either maintain health insurance coverage (termed "minimum essential coverage"<sup>[10]</sup>) or pay a penalty in the form of a tax.<sup>[11]</sup>

Medicaid expansion – The law's requirement that states participating in Medicaid expand their programs, beginning January 1, 2014 to cover non-elderly persons with incomes below 133 percent of the federal poverty level (FPL), including individuals previously ineligible for federally assisted Medicaid benefits.<sup>[12]</sup>

Insurance market reforms – Federal reforms aimed at curbing certain practices by health insurers, specifically: reforms that require insurers and self-insured group plans to issue and renew health insurance coverage without regard to the health status of individuals or groups, and to offer coverage that is not subject to annual or lifetime limits and that complies with certain other requirements.<sup>[13]</sup>

Employer responsibility – The law's minimum employer contribution responsibilities in the case of employers that either offer no plan or a plan with inadequate subsidies, with contribution responsibilities tied to the number of employees that qualify for a subsidy.<sup>[14]</sup>

On April 6th, the Thomas More Law Center asked the U.S. District Court for the Eastern District of Michigan (Case No. 2:10-cv-11156-GCS-RSW) for a preliminary injunction preventing the implementation of the health care reform provision that would require all Americans to purchase health insurance.

The Center, in its motion for preliminary injunction, claimed that health care reform, particularly the individual mandate, "represents an unprecedented encroachment on the liberty of all Americans, including plaintiffs, by imposing unprecedented governmental mandates that restrict their personal and economic freedoms in violation of the Constitution." Read more: <http://www.politico.com/news/stories/0510/37155.html#ixzz0pA3z7Of3>

**As of January 2011 there are two distinct state-based federal court challenges and three other private party suits with judges' rulings:** NEW

1. State of Florida v. U.S. Dep't of Health & Human Services. (led by Florida A.G.; in Florida Northern District Court; Case No.3:2010-cv-0009 ) Filed March 23, 2010. On January 31, 2011 Federal District Judge Roger Vinson declared the federal health care overhaul unconstitutional, siding with 26 states that sued to block it, saying that people can't be required to buy health insurance by 2014 or face penalties. He went a step further than a previous ruling against the law, declaring the entire thing unconstitutional if the insurance requirement does not hold up.

Attorneys for the administration had argued that the states did not have standing to challenge the law and that the case should be dismissed. The final step will almost certainly be the U.S. Supreme Court. Two other federal judges have already upheld the law and a federal judge in Virginia ruled the insurance mandate unconstitutional but

**List of States Attorneys General (or Governors\*) acting to pursue lawsuits opposing health provisions.**

**-As of January 18, 2011**

**Note:** Statements and actions by state executive officials are listed for background information only. This report does not evaluate the role or claims of such officials.

- [Alabama](#)
- [Alaska](#)
- [Arizona](#) (4/7/10) \*
- [Colorado](#) §
- [Florida](#) ([news release 5/27/10](#))
- [Georgia](#) \*
- [Idaho](#)
- [Indiana](#) (4/7/10)
- [Iowa](#) (1/18/11)\*\*
- [Kansas](#) (1/18/11)
- [Louisiana](#)
- [Maine](#) (1/18/11)\*\*
- [Michigan](#) §
- [Mississippi](#) (4/7/10) \*
- [Nebraska](#)
- [Nevada](#) (4/7/10) \*
- [North Dakota](#) (4/7/10)
- [Ohio](#) (1/18/11)\*\*
- [Pennsylvania](#) §§
- [South Carolina](#)
- [South Dakota](#)
- [Texas](#)
- [Utah](#)
- [Virginia](#) ([District Court ruling 8/2/10](#))
- [Washington](#) §
- [Wisconsin](#) (1/18/11)\*\*

stopped short of voiding the entire thing. At issue was whether the government is reaching beyond its constitutional power to regulate interstate commerce by requiring citizens to purchase health insurance or face tax penalties.

- > Judge Vinson held a hearing on the merits for December 16.
- > "**Fla. judge strikes down Obama health care overhaul**" - Washington Post 1/31/2011
- NEW
- > **Judge Vinson Replies on Feb. 18** to Administration's Request for Clarification on the Florida Decision Regarding the ACA,, with an Order Directing Expedited Filing. The order suggests that a clarification about the legal effect of the January 31 ruling will be expedited as well.

2. **Commonwealth of Virginia v. Sebelius**. (led by Virginia A.G.; in U.S. District Court for the Eastern District of Virginia; Civil Action No. 3:10-cv-188). Filed March 23, 2010. Judge Henry Hudson in early August declined to dismiss the suit and heard oral arguments on October 18. He issued a ruling declaring the individual mandate unconstitutional on December 13, 2010. The insurance mandate is central to the law's mission of covering more than 30 million uninsured because insurers argue that only by requiring healthy people to have policies can they afford to treat those with expensive chronic conditions.
  - > [Health Care Law Ruled Unconstitutional](#) (NY Times, 12/13/2010)
  - > [Virginia: Reply Memo Summary Judgment-Oct 4](#) |[see "opinions" section below]
3. **Thomas More Center v. Obama**. (on behalf of 4 residents of S.W. Michigan; in U.S. District Court for the Eastern District of Michigan; Case No. 2:10-cv-11156-GCS-RSW) Filed March 23, 2010. On October 7, Judge George Steeh dismissed this case, stating that choosing not to obtain health insurance coverage qualified as an example of "activities that substantially affect interstate commerce." Plaintiff have indicated the case is being appealed.
4. **Liberty University v. Geitner**. Also in Virginia, a private party suit by Liberty University was rejected in the U.S. District Court for the Western District of Virginia on November 30; the judge issued a [54-page ruling](#) that granted the government's request to dismiss the case. [read news article]
5. **US Citizens Assoc. v. Sebelius**. In another private party suit, the U.S. District Court for the Northern District of Ohio in a ruling Nov. 22 allowed part of a lawsuit challenging the constitutionality of the health reform law to move forward. Dismissing three claims brought by the U.S. Citizens Association, Judge David Dowd agreed to hear arguments that the law's individual mandate violates the Constitution's interstate commerce clause. The rejected claims asserted that the law violated plaintiffs' freedom of association guaranteed by the First and Fifth Amendments, the due-process clause of the Fifth Amendment and plaintiffs' right to privacy. "It is apparent to the undersigned that the controversy ignited by the passage of the legislation at issue in this case will eventually require a decision by the Supreme Court after the above-described litigation works its way through the various circuit courts," Dowd wrote.
6. *Other* -- There are a variety of other private-party filed lawsuits related to the 2010 federal health law. [litigation list]

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 ♦ <http://www.healthcarelawsuit.us/> - Website maintained by the Florida Attorney General on behalf of the 20 state plaintiffs.

**Legal Challenges to the Affordable Care Act** - Legal brief by [Katherine Hayes](#) and [Sara Rosenbaum](#) of the George Washington Law Center; updated December 6, 2010.

♦ **HHS Letter to State Governors in Response to Legal Challenges to Individual Mandate** - Letter from Secretary of the Department of Health and Human Services Katherine Sebelius to state governors - December 2010. NEW

♦ **Health Law Faces Threat of Undercut From Courts** - New York Times, November 27, 2010

♦ **Florida Attorney General Responds to Motion to Dismiss the Health Care Reform Act Lawsuit** - Statement by FL A.G. Bill McCollum, June 17, 2010.

♦ **Health Care Battle Heats Up** - National Law Journal (Law.com) - Aug 9, 2010

♦ **Overview of Litigation Filed to Stop Health Reform** - National Health Law Program (NHeLP)- Jane Perkins, June 2010)

♦ **Court Schedules for Pending Cases -challenging health reform-** National Health Law Program (NHeLP) - Updated November 5, 2010

♦ **O & A: Update on Litigation Challenging the Affordable Care Act - National Health Law Program (NHeLP) - Updated November 9, 2010**

♦ **4 Dem governors fighting Republican AGs' challenge to health care law-** Denver Post, Oct. 17, 2010

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**Constitutional Issues and the Patient Protection and Affordable Care Act - Meeting Session**

**NCSL's Legislative Summit 2010, July 27, 2010 — Louisville, Kentucky**

**Since passage of the federal health reform laws in March, questions have been raised about the constitutionality of some key provisions, including the requirement that most people have health insurance and the expansion of who is**

Wyoming (1/18/11)\*\*

\* = States where legal action was initiated by governors' offices.  
 \*\* New executive branch officials for 2011 announced support for lawsuit.

§ = States where Attorney General initiated action but Governor publicly supports law, opposes challenge.  
 §§ = The Republican AG of Penn. was elected Governor on 11/2/2010.

**entitled to Medicaid. Explore and discuss these key constitutional questions and review pending challenges to the new laws.**

**Speaker: James Blumstein, Vanderbilt University School of Law, Tennessee -**  
[State Challenges to Health Reform: A Look At The Constitutional Issues](#) ( **18-page PDF File**)

**Table 3**

**Examples of states with reported interest or pre-legislative steps toward a proposed constitutional amendment or statute.**

No formally filed legislation was reported in these states - they do not meet in even numbered years. Montana<sup>5</sup> (next regular session in 2011)  
 NCSL provides links or references to third-party articles and information as a convenience. NCSL is not responsible for the accuracy or completeness of such material. Local Texas, [source](#) (next regular session in 2011)  
 news and opinion sources are listed as background only.

**Recent News and Articles**

[NCSL Podcast audio](#) (11/20/09)

["Can the States Nullify Health Care Reform?"](#) - New England Journal of Medicine - 2/10/2010

["Va. health bill could foil Obama proposal: State questions constitutionality."](#) - Boston Globe, 3/8/2010

[MO: Missouri House sends to Senate plan for voiding federal requirement to buy health insurance](#) - Kansas City Star

The Missouri House on Tuesday gave final approval to a proposed state constitutional amendment that would attempt to nullify a possible federal mandate to purchase health insurance, 3/16/2010.

["Lots of Bark, Little Bite in State Efforts to Block Health Reform"](#) - includes NCSL citation. Health Beat Blog, 3/16/2010

[Legal Challenges to Health Reform - An Alliance for Health Reform Toolkit](#) by Kevin Arts. March 29, 2010 - [www.allhealth.org](#)

["Many States Preparing Laws Rejecting Individual Mandate"](#) - includes NCSL materials. Managed Care magazine March 2010.

["States Mount Challenges to Health Reform Law."](#) - includes NCSL materials. PBS NewsHour, April 1, 2010.

[Health Reform Challenges Continue from Many States-](#) PBS VIDEO 4/1/10 (13 1/2 minutes)

[Efforts to Halt Health Reform: Playing Politics with Our Health](#) "counters the misinformation that is being spread by opponents of reform, particularly regarding the individual responsibility requirement". Families USA, 4/10

[ObamaCare: Historic, but Is It Constitutional?](#) Cato Institute Webinar, 5/4/10.

[Requiring Individuals to Obtain Health Insurance: A Constitutional Analysis](#) - Report by the Congressional Research Service (CRS), 5/7/10.

[Virginia Suit Against Health Care Law Moves Forward](#) - New York Times - Aug. 3, 2010

[Missouri voters could rebel against health-care reform law](#) - The Christian Science Monitor - Aug. 3, 2010

[Missouri: Proposition C landslide sends strong message, proponents say](#) - St. Louis Beacon, August 3, 2010

[Health Care Battle Heats Up](#) National Law Journal (Law.com) - August 9, 2010

[Health Insurance Politics in Federal Court](#) - New England Journal of Medicine - August 25, 2010

[Florida: Suit on Health Care Bill Appears Likely to Advance](#) - federal judge says he will rule on challenge to the new health care law within a month.-9/15/2010

[Florida: Justices Nix Legislature-backed health care amendment off ballot](#) Article by AP/Bloomberg, 9/1/2010

[Colorado: Ballot amendment 63 "Two sides of the debate"](#)

> [Vote "YES - Stand up to D.C."](#) versus ["Vote "NO - It won't hold down health costs"](#)

["Florida Court Swings Pendulum Toward Supreme Court"](#) - Community Catalyst 10/15/10

**2011 News and Articles**

[N.C. House passes bill to exempt state from individual mandate in federal health reform](#) - American Independent, North Carolina, 2/2/2011

**APPENDIX 1 - The Arizona Approved Constitutional Amendment**

Engrossed (Full Text)

State of Arizona, House of Representatives -- Forty-ninth Legislature, First Regular Session, 2009

HOUSE CONCURRENT RESOLUTION 2014

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE XXVII, BY ADDING SECTION 2, CONSTITUTION OF ARIZONA; RELATING TO HEALTH CARE SERVICES.

Be it resolved by the House of Representatives of the State of Arizona, the Senate concurring:

1. Article XXVII, Constitution of Arizona, is proposed to be amended by adding section 2 as follows if approved by the voters and on proclamation of the Governor:

2. Health care; definitions

section 2. A. To preserve the freedom of Arizonans to provide for their health care:

1. A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system.

2. A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

B. Subject to reasonable and necessary rules that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or rule.

C. This section does not:

1. Affect which health care services a health care provider or hospital is required to perform or provide.

2. Affect which health care services are permitted by law.

3. Prohibit care provided pursuant to article xviii, section 8 of this constitution or any statutes enacted by the legislature relating to worker's compensation.

4. Affect laws or rules in effect as of January 1, 2009.

5. Affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services.

D. For the purposes of this section:

1. "compel" includes penalties or fines.

2. "direct payment or pay directly" means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

3. "health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for or payment for, in full or in part, health care services or health care data or health care information for its participants.

4. "lawful health care services" means any health-related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or regulation that may be provided by persons or businesses otherwise permitted to offer such services .

5. "penalties or fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee with a similar effect established by law or rule by a government established, created or controlled agency that is used to punish or discourage the exercise of rights protected under this section.

2. The article heading of article XXVII, Constitution of Arizona, is proposed to be changed as follows if approved by the voters and on proclamation of the Governor:

The article heading of article XXVII, Constitution of Arizona, is changed from "REGULATION OF PUBLIC HEALTH, SAFETY AND WELFARE" to "REGULATION OF HEALTH, SAFETY AND WELFARE".

3. The Secretary of State shall submit this proposition to the voters at the next general election as provided by article XXI, Constitution of Arizona.

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Arizona 2008 History/Action: In 2008, Arizona Proposition 101 appeared on the ballot, referred to by proponents as the "Freedom of Choice in Health Care Act." If it had passed, it would have added the following language to the Arizona Constitution: "Because all people should have the right to make decisions about their health care, no law shall be passed that restricts a person's freedom of choice of private health care systems or private plans of any type. No law shall interfere with a person's or entity's right to pay directly for lawful medical services, nor shall any law impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan." Proposition 101 failed to pass by a vote of 1,048,512 in favor and 1,057,199 opposed, a difference of 8,687 votes. Arizona's Proposition 101 language from 2008 has served as the basis for 2009 legislative language drafted by the American Legislative Exchange Council (ALEC).

Arizona Opinions: ALEC article: "Arizona Poised to Block Single-Payer Health Care"

[http://www.alec.org/am/pdf/Inside\\_July09.pdf](http://www.alec.org/am/pdf/Inside_July09.pdf)

The 2009 legislative resolution was approved "along party lines." "I certainly would expect it would go to the courts as a states' rights issue," says Bert Coleman, manager of the Arizona campaign. Coleman adds that proponents of the efforts chose to go through the legislative route rather than a much slower citizen petition (as in 2008) process in order to be part of the ongoing discussion over health reform. "We wanted to be part of the debate now," Coleman stated to Inside Health Policy. "Will it influence the debate? I certainly hope so."

## APPENDIX 2: Some Legal and Legislative Opinions on Anti-Reform State Actions

◆ **Rep. Nancy Barto**, chairwoman of the Arizona House's Health and Human Services Committee, sponsored the bill that led to the ballot referendum. Her basic argument is that "there is no place for government between someone and their doctor," said Becky Blackburn, communications director for the Republican Caucus of the Arizona House of Representatives.

◆ **Rep. Linda Upmeyer**, Iowa State Representative and the chair of ALEC's Health and Human Services Task Force stated, "Federal health care reform efforts may include a requirement that individuals purchase health insurance, and a so-called 'public option' which will result in less choices for consumers and new government mandates."

◆ **Thomas Miller**, resident fellow at the American Enterprise Institute, stated that lawsuits are likely to challenge the mandate as an unprecedented violation of inherent individual rights under the U.S. Constitution in enforcing the purchase of a product "with no other reason other than the fact that you are just living in the country. "There's no clear Supreme Court precedent suggesting that this is going to be overturned constitutionally," he said. However, "give me the right five justices and anything's possible. Enforce it in a particularly onerous, all-encompassing, unfair manner and then it's more politically viable for judges to have problems with the way it comes out." [2]

The New York Times cited several legal experts who said "they saw little room for such a challenge:"

◆ **Mark A. Hall**, professor of law and public health at Wake Forest University, says states don't have the power to override or "opt out" of, or not participate in the mandate. The debate is "a flash in a pan" set off by libertarians who say "Washington, D.C. shouldn't be telling us what to do," he said. "There is no way this challenge will succeed in court," adding that the state measures seemed more "an act of defiance, a form of civil disobedience if you will." [2] Hall has studied the constitutionality of mandates that people buy health insurance, for the O'Neill Institute at Georgetown University.

◆ **Timothy Stoltzfus Jost**, a health law expert at Washington and Lee University School of Law, concludes that "States can no more nullify a federal law like this than they could nullify the civil rights laws by adopting constitutional amendments." [3, 8] In March 2010, he added, "State law cannot nullify federal law. This principle is simply beyond debate, and state legislators, many of them lawyers, know that," writes Jost in the New England Journal of Medicine. "The purpose of these laws, therefore, is not legal but rather political." Should health reform pass, the state bills "can thus be seen as invitations to civil disobedience that counsel state citizens to 'violate the federal law, wave this statute in their face, and dare them to come after you,'" says Jost

◆ **Randy E. Barnett**, a Georgetown law school professor who has written about what he views as legitimate constitutional questions about health insurance mandates, seemed doubtful. "While using federal power to force individuals to buy private insurance raises serious constitutional questions," Professor Barnett said, "I just don't see what these state resolutions add to the constitutional objections to this expansion of federal power." [8]

◆ **Stuart Taylor Jr.** wrote, in "Health Law Not A Sure Bet In Court," ... But A Decision In Its Favor Is Still The Best Bet. What chances of success await the lawsuits challenging the constitutionality of the new health insurance reform law filed by 14 state attorneys general this week, with more lawsuits by states, individuals, and companies in the pipeline?

Not much, according to most of the academic experts who have weighed in. They confidently predict that the Supreme Court will (if the case gets that far) uphold the new law's major provisions. These include the much-debated mandate for individuals to buy comprehensive health insurance unless they're already covered by employer-based plans, and also the requirement that states spend billions of dollars expanding their Medicaid programs (unless they withdraw) and administering the complex new law. These experts cite the justices' very broad reading since the New Deal of Congress' powers to regulate interstate commerce and to tax and spend. -National Journal, 3/26/2010

◆ **NEW Virginia lawsuit oral arguments:** [as reported by the New York Times, 10/19/10] Judge Henry Hudson said he would rule by the end of the year on the constitutionality of the new health care law, as lawyers for the Obama administration and the Commonwealth of Virginia debated whether the entire 2,700-page act should be invalidated if a key provision is struck down. In a nearly three-hour hearing, a lawyer for the commonwealth argued that if **Judge Henry E. Hudson** of Federal District Court finds unconstitutional the provision that requires Americans to have health insurance, he should declare the entire law void until the Supreme Court can review it. The lawyer noted that in writing

the legislation, Congress failed to include "severability" language to specify that the rest of the law would survive.

But the federal government's lawyers argued on Monday that other provisions, like the vast expansion of Medicaid eligibility, could survive, and that the judge should keep the law in effect during the appeals process. That this stage in the legal assault on the health law has arrived so quickly is striking, given that many prominent law professors dismissed the challenges as baseless only seven months ago, when the first of more than 15 lawsuits were filed.

The Justice Department concedes that some of the most essential insurance changes, including requiring insurers to cover those with pre-existing conditions, will have to be scrapped if the coverage requirement loses in the courts. The administration maintains that the regulations can work only if everyone is required to have coverage, so people will not simply wait until they get sick to buy policies."

♦ **Scott Steinke**, *The Pink Sheet*, (October 25, 2010) reports on "**If States Win Lawsuits Against Health Reform Law, How Might Pharma Fare?** ...While it's likely to be 2012 before a final decision is handed down in lawsuits states have brought challenging the constitutionality of the Patient Protection and Affordable Care Act, questions are already arising about the possible impact on the law's pharmaceutical-related provisions if the states prevail...provisions such as PCORI or generic biologics have no connection to the individual mandate or Medicaid expansion, and thus stand a chance of being implemented regardless of the judicial outcome." [Paid Subscription Required](#)

♦ **Wendy K. Mariner**, J.D., M.P.H., and **George J. Annas**, J.D., M.P.H., Boston Univ. School of Public Health published the following, *Health Insurance Politics in Federal Court* in *NEJM*, August 25, 2010 (c) 2010 NEJM. Excerpts--

"Having been outmaneuvered in Congress with the passage of the Patient Protection and Affordable Care Act ("Affordable Care Act," or ACA), Republicans have taken their case to federal court, arguing that the law's key provision, the individual mandate to purchase health insurance, is unconstitutional. This argument has been made most prominently by attorneys general from 20 states in a Florida federal court and by the Commonwealth of Virginia in a Virginia federal court. In early August, federal district court judge Henry Hudson decided that the Virginia challenge deserves a hearing,<sup>12</sup> thereby giving the constitutional argument an aura of respectability and ensuring that we'll hear more about the meaning of states' rights in the context of the Constitution's Commerce Clause (which grants Congress the authority to regulate interstate commerce), both in court and on the campaign trail.

The states have inherent (police) powers authorizing them to regulate residents' inactivity — to require residents, for example, to get vaccinations and even to purchase health insurance, as Massachusetts does. The federal government's powers are limited to those listed in the Constitution, but the reach of the Commerce Clause has necessarily expanded with the national economy. Virginia argues that if Congress can regulate inactivity that affects interstate commerce like insurance and health care, then there is no practical limit to federal regulation and Congress will usurp the state's police powers.

The fundamental legal problem is whether, if the federal government can penalize individuals for refusing to purchase health insurance, there is any principle that would limit the power of the federal government to penalize the failure to purchase other products, such as a daily newspaper to save the newspaper business from extinction. The federal government's answer is that people simply cannot choose "to avoid participation in the health care market."<sup>1</sup> Rather, "it is inevitable . . . that every person — today or in the future — healthy or otherwise — will require medical care," and the ACA provides a dependable, affordable mechanism to pay for such care.<sup>12</sup>

This answer may offer a limiting principle that distinguishes the ACA from a hypothetical penalty for not buying newspapers. There are few nondiscretionary national markets in which virtually all Americans inevitably participate. Congress could not require all Americans to buy cars from Detroit in order to shore up the automobile industry; not everyone needs a car. On the other hand, perhaps the federal government could justify penalizing individuals for not buying an apple a day or for not buying a gym membership or multivitamins, at least if these purchases are seen as integral parts of containing costs in a national health insurance market, because people who don't make these purchases increase health care costs for all of us.

We think that the federal government has the more realistic view of how the national economy functions and how the Constitution should function today. Nonetheless, the outcome in the federal courts is far from certain and will ultimately be decided by a Supreme Court that is just as ideologically fractured as the Congress that passed this law. Other clearly constitutional approaches were available, including Medicare for All, or simply raising the income or payroll tax to pay for health benefits, but these would have been even more objectionable to those who are raising Commerce Clause problems with the ACA.

Judge Hudson's next decision, this fall, will be on the merits of the case, and as he recognizes, his decision will be appealed no matter how he rules. But health care politics will not be put on hold while we await judicial resolution, which could take years. Without mentioning the Commerce Clause or health care, many politicians will campaign on the argument that the federal government is too big, is too intrusive into our individual lives, and spends too much money. In this debate, the ACA will be exhibit number one." (10.1056/NEJMp1009054) was published on August 25, 2010, at [NEJM.org](#).

♦ **Ruth Marcus**, a legal analyst writing for the Washington Post (November 26, 2009), "[Constitution no bar to health reform](#)," seeks to make a detailed case that the latest federal proposals are constitutional. She stated,

"Is Congress going through the ordeal of trying to enact health-care reform only to have one of the main pillars -- requiring individuals to obtain insurance -- declared unconstitutional? An interesting debate for a constitutional law seminar. In the real world, not a big worry. ... it's worth explaining where the Constitution grants Congress the authority to impose an individual mandate. There are two short answers: the power to regulate interstate commerce and the power to tax. The (Commerce) clause empowers Congress "to regulate commerce . . . among the several states," which may not sound terribly far-reaching. But since the New Deal, the Supreme Court has interpreted this authority to cover local activities with national implications.

... But the individual mandate is central to the larger effort to reform the insurance market. Congress may not be empowered to order everyone to go shopping to boost the economy. Yet health insurance is so central to health care, and the individual mandate so entwined with the effort to reform the system, that this seems like a different, perhaps unique, case. Congress clearly has authority to, in effect, require employees to purchase health insurance for their old age by imposing a payroll tax to fund Medicare.

The individual mandate is to be administered through the tax code: On their forms, taxpayers will have to submit evidence of adequate insurance or, unless they qualify for a hardship exemption, pay a penalty. See full text [online](#).

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**Sources: NCSL provides links or references to third-party articles and information as a convenience. NCSL is not responsible for the accuracy or completeness of such material.**

[1] American Legislative Exchange Council (ALEC) as quoted in article of August 12, 2009 and NCSL interview with Christie Herrera, ALEC Health Director, August 17, 2009.

[2] Insurance NewsNet: Legal Analysts: "[Suits May Challenge Constitutionality of Individual Mandate in U.S. Health Reform](#)," October 8, 2009.

[3] New York Times "[Health Care Overhaul and Mandatory Coverage Stir State' Rights Claims](#)," September 29, 2009

[4] CNS News.com, a subsidiary of the [Media Research Center](#). "[Nineteen States Move to Defend Individual Health Care Choice](#)," Tuesday, October 27, 2009

[5] Inside ALEC: "[Arizona Poised to Block Single-Payer Health Care](#)." Page 11, July 2009. [ALEC web site](#), accessed 1/31/2010.

[5A] Marsha Shuler, The Advocate, [Baton Rouge]. "[\[Louisiana state\] legislator pushing amendment addressing health-care changes](#)." August 11, 2009

[6] Gov. Perry told Dallas talk radio WBAP's Mark Davis; as reported by the Fort Worth Star-Telegram, 7/23/2009

[7] Deseret News, "[Pushing back against feds](#)," August 13, 2009

[8] Politico.com. [Professor Randy Barnett and Professor Timothy Jost: "Healthcare: Is 'mandatory insurance' unconstitutional?"](#) Sept. 18 2009:

[9] Inside ARM. [State Lawmakers Seek Legislative Solutions to Health Care Reform Mandates](#) - September 28, 2009.

[10] News-Leader (Missouri) [Lawmakers: Overhaul a threat to freedom](#). November 15, 2009

[11] Denver Post. [Efforts already underway in Colorado to blunt federal health care reforms](#). December 30, 2009

[12] Virginia v. Sebelius, 2010 U.S. Dist. LEXIS 77678; Filed March 23, 2010 (Aug. 2, 2010).

**APPENDIX 3:  
 Number of Sessions During Which Legislative Enactment Is Required**

In the following 35 states, the legislature enacts a proposed constitutional amendment during only one session.

Alabama	Louisiana	North Dakota
Alaska	Maine	Ohio
Arizona	Maryland	Oklahoma
Arkansas	Michigan	Oregon
California	Minnesota	Rhode Island
Colorado	Mississippi	South Dakota
Florida	Missouri	Texas
Georgia	Montana	Utah
Idaho	Nebraska	Washington
Illinois	New Hampshire	West Virginia

Kansas  
Kentucky

New Mexico  
North Carolina

Wyoming

In the following 12 states, the legislature must enact a proposed constitutional amendment during two sessions.

Delaware \*\*  
Indiana  
Iowa  
Massachusetts

Nevada  
New York  
Pennsylvania  
South Carolina

Tennessee  
Vermont  
Virginia  
Wisconsin

\*\* Delaware does not require a public vote once a proposed amendment passes two consecutive sessions by a 2/3 vote.

In the following three states, the vote total determines the number of sessions during which a proposed constitutional amendment must be enacted.

Connecticut

New Jersey

Hawaii

Source for Appendix 3: Brenda Erickson, NCSL Legislative Management memorandum, 2009.

Visit this report online for future updates, at [www.ncsl.org/?TabId=18906](http://www.ncsl.org/?TabId=18906)

NCSL Health Reform resources: [www.ncsl.org/healthreform](http://www.ncsl.org/healthreform)

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10 SB 411/AP  
Senate Bill 411

By: Senators Hudgens of the 47th, Goggans of the 7th, Seabaugh of the 28th, Mullis of the 53rd,  
Wiles of the 37th and others

**AS PASSED**

**A BILL TO BE ENTITLED  
AN ACT**

To amend Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions concerning health, so as to provide that no law or rule or regulation shall compel any person, employer, or health care provider to participate in any health care system; to authorize persons and employers to pay directly for lawful health care services without penalties or fines; to provide for related matters; to amend Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to general provisions regarding insurance, so as to provide for exemptions from certain unfair trade practices for certain wellness and health improvement programs that provide for rewards or incentives in certain individual and group health insurance policies; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions concerning health, is amended by adding a new Code section to read as follows:

"31-1-11.

(a) As used in this Code section, the term:

(1) 'Compel' includes penalties or fines.

(2) 'Direct payment' or 'pay directly' means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

(3) 'Health care system' means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment for, in full or in part, health care services or health care data or health care information for its participants.

(4) 'Lawful health care services' means any health related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or regulation that may be provided

by persons or businesses otherwise permitted to offer such services.

(5) 'Penalties or fines' means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge, or any named fee with a similar effect established by law or rule by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this Code section.

(b) To preserve the freedom of citizens of this state to provide for their health care:

(1) No law or rule or regulation shall compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system; and

(2) A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

(c) Subject to reasonable and necessary rules and regulations that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or by rule or regulation.

(d) This Code section shall not:

(1) Affect which health care services a health care provider or hospital is required to perform or provide;

(2) Affect which health care services are permitted by law;

(3) Prohibit care provided pursuant to any statutes enacted by the General Assembly relating to workers' compensation;

(4) Prohibit the imposition by the General Assembly of conditions and limitations on the use or applicability of exemptions and deductions with regard to income taxation;

(5) Affect laws or rules in effect as of January 1, 2009; or

(6) Affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services."

## **SECTION 2.**

Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to general provisions regarding insurance, is amended by adding a new Code section to read as follows:

"33-24-59.13.

(a) An insurer issuing comprehensive, major medical group, or individual health insurance benefit plans may, in keeping with federal requirements, offer wellness or health improvement programs, including voluntary wellness or health improvement programs that provide for rewards or incentives, including, but not limited to, merchandise, gift cards, debit cards, premium discounts or rebates, contributions towards a member's health savings account, modifications to copayment, deductible, or coinsurance amounts, or any combination of these incentives, to encourage participation in such wellness or health improvement programs and to reward insureds for participation in such programs.

(b) The offering of such rewards or incentives to insureds under such wellness or health improvement programs shall not be considered an unfair trade practice under Code Section 33-6-4 if such programs are filed with the Commissioner and made a part of the health insurance master policy and certificates or the individual health insurance evidence of coverage as a policy amendment, endorsement, rider, or other form of policy material as agreed upon by the Commissioner. The Commissioner shall be authorized to develop an automatic or expedited approval process for review of such wellness or health improvement programs, including those

programs already approved under the laws and regulations of other states."

### **SECTION 3.**

All laws and parts of laws in conflict with this Act are repealed.

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10 SB 411/AP

Senate Bill 411

By: Senators Hudgens of the 47th, Goggans of the 7th, Seabaugh of the 28th, Mullis of the 53rd, Wiles of the 37th and others

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A BILL TO BE ENTITLED

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(3) 'Health care system' means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment for, in full or in part, health care services or health care data or health care information for its participants.

(4) 'Lawful health care services' means any health related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or regulation that may be provided by persons or businesses otherwise permitted to offer such services.

(5) 'Penalties or fines' means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge, or any named fee with a similar effect established by law or rule by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this Code section.

(b) To preserve the freedom of citizens of this state to provide for their health care:

(1) No law or rule or regulation shall compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system; and

(2) A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

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(d) This Code section shall not:

- (1) Affect which health care services a health care provider or hospital is required to perform or provide;
- (2) Affect which health care services are permitted by law;
- (3) Prohibit care provided pursuant to any statutes enacted by the General Assembly relating to workers' compensation;
- (4) Prohibit the imposition by the General Assembly of conditions and limitations on the use or applicability of exemptions and deductions with regard to income taxation;
- (5) Affect laws or rules in effect as of January 1, 2009; or
- (6) Affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services."

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(b) The offering of such rewards or incentives to insureds under such wellness or health improvement programs shall not be considered an unfair trade practice under Code Section 33-6-4 if such programs are filed with the Commissioner and made a part of the health insurance master policy and certificates or the individual health insurance evidence of coverage as a policy amendment, endorsement, rider, or other form of policy material as agreed upon by the Commissioner. The Commissioner shall be authorized to develop an automatic or expedited approval process for review of such wellness or health improvement programs, including those programs already approved under the laws and regulations of other states."

### **SECTION 3.**

All laws and parts of laws in conflict with this Act are repealed.

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From the St. Louis Business Journal:

<http://www.bizjournals.com/stlouis/stories/2010/08/02/daily35.html>

# Prop C passage sends political message, supporters say

St. Louis Business Journal - by Kelsey Volkmann

Date: Wednesday, August 4, 2010, 7:18am CDT

## Related:

[Health Care](#), [Insurance](#)

Missouri overwhelmingly approved Proposition C at Tuesday's primary election with 71 percent of voters supporting a law banning the government from forcing residents to buy health insurance.

Political observers nationwide watched for the outcome of Missouri's primary because the state is the first of three to vote on such a measure, and many consider it a referendum on President Obama and his health-care policies. Arizona, Florida and Oklahoma have similar ballots.

The proposition exempts Missouri residents from being penalized for not buying health insurance. The tax penalties are \$95 (or 1 percent of taxable income) in 2014, \$325 (or 2 percent of taxable income) in 2015, and \$695 (or 3 percent of taxable income) in 2016.

Missouri Lt. Governor Peter Kinder called Tuesday a historic night. "Missourians have the distinction of being the first Americans to go to the ballot box and reject the reckless federal health-care takeover," he said. "From Massachusetts to Virginia to Missouri, voters are rejecting the extreme liberal agenda being forced upon our nation by an out-of-control federal government."

"Missourians have sent Washington a clear message: stay out of our health-care decisions," said state Sen. Jane Cunningham, R-St Louis County. "For more than a year, Americans have taken to the streets to protest the federal government's irresponsible agenda. Washington liberals didn't listen when they rammed through Congress their reckless health care bill but they can't help but hear us now."

Some health policy and law experts have said the measure will likely be overturned in court but its passage will still be used as a rebuke of President Obama, his health-care overhaul and the Democrats who supported it.

Missouri Republican Party leaders said the success of Prop C will shape the race for U.S. senate between Republican Roy Blunt and Democrat Robin Carnahan.

"The federal government's takeover of our health-care system is going to be a defining issue in the U.S. senate campaign," said David Cole, chairman of the Missouri Republican Party. "Republicans, conservatives and independents have united in the opposition to Washington's reckless and unconstitutional health-care power grab, but Robin Carnahan has embraced it."

A total of 938,782 of Missouri's 4,104,834 registered voters, or 23 percent, went to the polls Tuesday. About 21 percent of St. Louis County voters cast votes, while less than 14 percent of St. Louis City voters did.

As Missouri Secretary of State, Carnahan had predicted that 24 percent of voters would turn out.

[View a map of Missouri showing the voter turnout in each county here.](#)

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kvolkmann@bizjournals.com

HB 1 – Explanation of:

Page 1, Line 12: does not apply to health care services provided or required by the state, a political subdivision of the state, or a court of the state; and

May not impair a contract right that provides health care services.

**This subsection does not apply to**

- (a) persons in custody of the Department of Correction or a local confinement facility or who have not completed all requirements imposed as the result of a sentence in a criminal conviction, including, but not limited to, any type of probation, parole, or post-release supervision.
- (b) This section shall not be construed to expand, limit, or otherwise modify any of the following:
  - (1) A court order for a spouse to be liable for the necessary expenses incurred by the other spouse, including expenses incurred by medical necessity, or any other duty a person owes to a spouse or dependent with respect to the provision of health care services or medical treatment.
  - (2) Any law regarding which health care services or medical treatments are lawful within this State or who is authorized to provide health care services or medical treatments within this State.
  - (3) Any law regarding the right or duty of a parent or guardian in the determination or provision of health care services or medical treatment for a minor.
  - (4) Any law regarding the screening of newborns for metabolic or other hereditary and congenital disorders, examination and testing of a child for lead poisoning and health assessments for children entering Kindergarten in the public schools as required
  - (5) Any law regarding health care services or medical treatments ordered under the Workers' Compensation Act.
  - (6) Any law regarding health care services or medical treatment regarding involuntary commitments for mental illness or substance abuse.
  - (7) The physical and mental examination of a party ordered by a judge, such as, a blood or genetic testing to establish paternity
  - (8) Any law requiring the provision of health insurance for employees as a condition of receiving State economic incentives.
  - (9) Any law regarding the examination and testing of persons to determine possible exposure to nuclear, biological, or chemical agents caused by a terrorist incident



## **Talking Points: States Triumph over Federal Mandate** **ALEC's Freedom of Choice in Health Care Act**

The *Freedom of Choice in Health Care Act* protects the right of patients to pay directly for medical services, and it prohibits penalties levied on citizens and businesses for declining participation in a particular health plan.

Look how far we've come in just one year:

- Twenty-six states are suing the federal government for unconstitutional mandates
- Eight states have passed legislation against ObamaCare
- Over 900 waivers have already been granted
- The U.S. House of Representatives voted to repeal ObamaCare
- Public opposition to the new health restrictions remains strong

Damaging affects of ObamaCare's federal mandate:

- If left unchecked, ObamaCare is calculated to result in more than \$600 billion in new or increased taxes within the next ten years.
- To comply with the new regulations, thirty-three states will see their Medicaid rolls jump by 20 to 30 percent. Some states will see their Medicaid rolls jump by 50 percent or more.
- The "maintenance of effort" requirement, which prevents states from cutting Medicaid eligibility, will force states to slash funding priorities like education, law enforcement, and Medicaid benefits for existing enrollees.

## **About the Bill**

The *Freedom of Choice in Health Care Act* will:

- Ensure a person's right to pay directly for medical care.
- Ensure that patients—not government officials—should decide which doctor to see, what treatments to get, and whether or not to get a second or third opinion.
- Would block legislation that imposes costly, bureaucratic penalties for choosing to obtain or decline health coverage.

**Purpose or goal of the Act if passed by statute:**

- Gives a state standing in the current lawsuits against the federal individual mandate.
- Allows a state to launch additional, 10<sup>th</sup> Amendment-based litigation if the current lawsuits fail.
- Empowers a state attorney general to litigate on behalf of individuals harmed by the mandate in 2014.

### **Purpose or goal of the Act if passed by constitutional amendment:**

- *The three points listed above, PLUS...*
- Will prohibit a Canadian-style, single-payer healthcare system at the state level if ObamaCare is upheld
- Will prohibit a state requirement to purchase health insurance if ObamaCare is repealed

### **The Act does not nullify ObamaCare:**

- It challenges those provisions of the law that are arguably unconstitutional—the federal requirement to purchase health insurance, and related restrictions on the sale and purchase of health services.
- Citizens may still choose to participate in other provisions of the law, including the new health insurance exchange subsidies or the Medicaid expansion. They just can't be forced into those choices.
- To the extent that the rest of the federal legislation is severable from the mandate, the law would likely remain in effect.

### **The Constitutional Defense:**

- Even without the *Freedom of Choice in Health Care Act*, ObamaCare is vulnerable to constitutional challenge:
  - Congress does not have the authority to regulate inactivity under the Commerce Clause. SCOTUS has ruled this way in *U.S. v. Lopez* (1995) and *U.S. v. Morrison* (2000).
  - Congress does not have the authority to penalize certain individuals—in this case, individuals who don't buy health insurance—and then call it a "tax" under Congress' taxing power.
  - Congress does not have the authority to commandeer states to do their bidding. SCOTUS has ruled this way in *New York v. United States* (1992).
- The *Freedom of Choice in Health Care Act* makes ObamaCare even more constitutionally vulnerable.
  - Objections that the Act would be trumped by the Supremacy Clause are unfounded. As affirmed recently by SCOTUS in *Gonzales v. Oregon* (2006), state law may go above and beyond federal law in protecting constitutional rights, especially as related to health care choices.
  - This kind of legal argument is not present in the current legal challenges, so the Act provides states with an additional layer of protection against federal overreach.

## **Additional Information**

### **Health insurance vs. auto insurance:**

- Owning an automobile is a choice—a choice many people don't exercise (think: New York City). Some of these people use public transportation, but many others also hire taxis or bike or walk.
- Auto insurance exists to protect other drivers. Health insurance exists to protect the individual who purchases it. Not all passengers in a car are required to have auto insurance.

For more information about ALEC's *Freedom of Choice in Health Care Act*, or if you need technical assistance, contact ALEC HHS Task Force Director Christie Herrera at 202-725-7127 or [christie@alec.org](mailto:christie@alec.org).

- Auto insurance mandates only apply to those who drive on public roads, not private property. The government is constitutionally charged with providing public roadways. No such constitutional provision exists regarding health care.

- Caution from the Congressional Budget Office (1994):



“A mandate requiring all individuals to purchase health insurance would be an unprecedented form of federal action. The government has never required people to buy any good or service as a condition of lawful residence in the United States. An individual mandate would have two features that, in combination, would make it unique. First, it would impose a duty on individuals as members of society. Second, it would require people to purchase a specific service that would be heavily regulated by the federal government.”

**ObamaCare places a tremendous financial burden on the states, including:**

- ➔ • A budget-busting Medicaid expansion, coupled with a “maintenance of effort” requirement, which will force states to slash other funding priorities, like education or law enforcement; and
- ➔ • An individual mandate that requires massive government subsidies to purchase the required health insurance, and that will also raise health insurance premiums and push more Americans onto government healthcare programs funded by the states; and
- ➔ • Job-killing employer mandates that will cripple small businesses and postpone economic recovery, and that will require states themselves to pay federal penalties if they don’t provide federally-dictated health insurance to state workers; and
- ➔ • A federal takeover of health insurance regulation, which has been traditionally been the purview of states, and will require states to expend limited state resources to comply with the new law.



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February 28, 2011

The Honorable Wes Keller, Chair  
House Health and Social Services Committee  
Alaska Capitol, Room 432  
Juneau, AK 99801-1182

RE: HB 1 (Gatto and Lynn)—Oppose

Dear Chair Keller:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Health and Social Services Committee to oppose HB 1, authored by Representatives Carl Gatto and Bob Lynn and co-sponsored by Representative Peggy Wilson.

There is no doubt that there is significant disagreement about the impact of federal health care reform, in particular the individual mandate.

To date, three federal judges have found it constitutional and two have found aspects of the federal bill to be unconstitutional.

AARP advocates for the full implementation of the Affordable Care Act in every state. We believe the federal law should be implemented to best meet the needs of older Americans and their families.

If HB 1 is enacted, we believe Alaskans would face a series of unintended consequences:

- Who would pay for the health care costs of individuals who decide to opt out of coverage? Would our hospitals have to provide free care to those who choose not to obtain insurance or who have limited coverage or high deductibles? To make up for this free care, hospitals would have to charge everyone else more, resulting in higher premiums for individuals, employers, state and local government and school districts, PERS and TRS.
- Because it would allow individuals to opt out of any health care coverage, HB 1 could, for example, preclude courts from ordering one party in a divorce proceeding to maintain health insurance for his spouse and children. This would leave many without coverage and some would undoubtedly seek coverage under Medicaid and Denali KidCare or rely on uncompensated hospital care.
- We understand that HB 1 would permit the sale of insurance by out-of-state and off-shore insurance companies not subject to state laws, regulation or courts. Consumers who have problems would not be able to seek the assistance of the Alaska Division of Insurance.

AARP believes there is great uncertainty of how the legislation would be carried out. The consequences of HB 1 are, we believe, not fully known or understood.

The language is vague and will be open to so many interpretations that it can only result in costly litigation for the state.

Our health care should not end up in litigation—that's nobody's idea of freedom of choice.

HB 1 could also impact the private sector too. It could result in insurance companies raising premiums, deductibles and co-pays—driving up already skyrocketing health care costs for individuals and businesses. Physicians and other providers, including our network of community health centers, hospitals and nursing homes, would find themselves serving even more uninsured patients.

HB 1 is a risky gamble. It is more than a political gesture to Washington, DC. HB 1 raises too many unanswered questions and unintended consequences. Why bet Alaska's health care on an unproven idea?

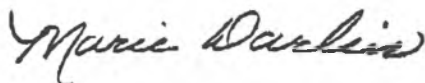
The federal health care reform implementation improves the state's ability to deliver health care for its citizens. Health care for our citizens is too important to become a turf war between the state and federal government.

AARP requests an "NAY" vote on HB 1.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator  
AARP Capital City Task Force  
415 Willoughby Avenue, Apt. 506  
Juneau, AK 99801  
586-3637 (voice)  
463-3580 (fax)

CC: Vice-Chair Alan Dick  
Representative Bob Herron  
Representative Paul Seaton  
Representative Sharon Cissna  
Representative Bob Miller  
Representative Charisse Millett  
Representative Carl Gatto  
Representative Bob Lynn



The Voice of Small Business®

ALASKA

February 28, 2011

The Honorable Carl Gatto  
Alaska State Representative  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Bill 1

Dear Representative Gatto,

On behalf of the National Federation of Independent Business/Alaska, I wish to express our support for House Bill 1. The National Federation of Independent Business is the largest small-business advocacy group in the Alaska.

House Bill 1 establishes a state policy that an individual cannot be coerced to purchase a health insurance policy. This legislation at the state level will help block a government requirement to purchase health insurance. If enacted in Alaska, the legislation will block an individual mandate. NFIB believes that the government does not have constitutional authority to mandate an individual purchase health insurance.

As you may be aware, NFIB is the only trade association that is a party to the lawsuit filed in federal court in Florida. The district court found in favor of our suit. We expect the government will appeal the ruling. In the interim, we believe it is important that Alaska, that is also a party to the suit, set a state policy consistent with the position advocated in the lawsuit.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dennis L. DeWitt", is written over a light blue horizontal line.

Dennis L. DeWitt  
Alaska State Director

cc: House Health Education & Social Services Committee