

OPINIONS

ELECTION 2011

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OHIO ISSUE 3

Keep politics out of health care



Jack Painter
GUEST COLUMN

Do you want to keep health care decisions between patients and doctors, and not politicians and bureaucrats? Do you want the freedom to choose the care and insurance that best fits your own needs? If so, vote yes on Issue 3, the Ohio Healthcare Freedom Amendment.

Issue 3 amends the Ohio Constitution to say Ohio cannot:

- Force you to participate in a health care system.
- Prohibit the purchase or sale of health care or health care insurance.
- Impose a fine or penalty for the purchase or sale of health care or health care insurance.

Issue 3 ensures that future Ohio laws won't impose a government-run system or take away your freedom to choose.

At the federal level, Issue 3 strengthens the argument that a federal mandate to purchase private health insurance is unconstitutional because it exceeds Congress' commerce power and violates a fundamental right to liberty.

For the first time in our history, the federal government is claiming the power to force you to purchase a private product for the rest of your life against your will. If it can do that, what's to stop it from forcing you to go to the doctor for check ups? And

what are the limits on Congress' power to force you to purchase other products?

The opponents of Issue 3 have tried to confuse people by creating three myths.

Their first myth is that Issue 3 won't accomplish anything because federal law takes priority over state law. The reality: The people of Ohio can prohibit their state government from taking away their health care freedom, and if they do that, the federal individual mandate is more likely to be held unconstitutional.

Their second myth is that, if Issue 3 passes, we won't be able to insure people with preexisting conditions, provide prescription drug coverage for seniors, or require insurance companies to cover children under their parents' policies until age 26. The reality: There are good proposals to deal with these problems that don't include an individual mandate.

Their final myth is that Issue 3 will override existing state laws and prevent new state laws we might need. The reality: Issue 3 doesn't affect laws in place before the Affordable Care Act, and it won't prevent new laws unless they take away our health care freedom.

Issue 3 preserves your freedom to make some of the most personal decisions you can make. It is a way to fight back against inappropriate government control over your life.

Jack Painter, a Cincinnati corporate attorney, is on the board of the Ohio Liberty Council and Ohioans for Healthcare Freedom.

State laws protect our health care



COL OWENS
GUEST COLUMN

Voters next Tuesday will have the opportunity to vote on a proposed state constitutional amendment known as Issue 3. Most people know little about this ballot issue. Proponents say it is simply a way for voters to opt Ohio out from coverage of the federal health-care reform legislation, the Affordable Care Act.

Nothing could be further from the truth.

The Affordable Care Act takes precedence over inconsistent state law under the Supremacy Clause of the U.S. Constitution. Only the U.S. Supreme Court can determine the constitutionality of the Affordable Care Act or any of its provisions. Passage of a state constitutional amendment can have no impact on that whatsoever.

What is not appreciated by many is the threat posed by the measure to state and local health care. Under its language, any state or local law that can be construed as mandatory and/or involving a health care system would be in jeopardy. What is a mandate? Health care system? It's not clear.

For example, Workers' Compensation is a mandatory system for employers that provides health care to injured employees. While laws in effect in March 2010 are grandfathered in under the measure, what if the legislature wants to change a provision not working well? Since this is a system in-

volving mandatory payment of taxes to provide health care, such an amendment would be in jeopardy.

Similarly, a variety of other state laws, such as COBRA health care benefits for former employees, university health care services for students, or imposition of medical support orders in child support cases, would be jeopardized. All are examples of state laws imposing health care options and/or obligations.

Most counties enact levies to fund or help fund various health care services. Such levies are grandfathered in if in place in March 2010. However, if the county seeks a renewal with different terms, it would be in jeopardy. Future new levies would be almost impossible to enact.

The language of Issue 3 is broad, indeed sweeping in its scope, and most words and phrases are undefined. Thus, any measures taken by state or local authorities addressing health care needs would be subject to challenge. One can anticipate a flurry of litigation, which while perhaps good for lawyers is not good for the public. Stability and predictability would be sacrificed to the whims of a very few.

Issue 3 cannot impact the application of federal law; but it can do enormous damage to the implementation of state and local law. And it can tie up our health care systems in litigation for years to come. Issue 3 is bad law and bad medicine.

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