

From: Col Owens [mailto:cowens@lascinti.org]

Sent: Monday, October 10, 2011 10:14 AM

Subject: FW: information on Issue 3

Folks –

I hope you will look this over. It is long, but important. Issue 3 is very dangerous. It has nothing to do with the Affordable Care Act, as only the Supreme Court can affect its fate, but can do a lot of damage to state and local governments' ability to provide and regulate health care. I hope you will make every effort to insure that people understand this and why voting no is so important.

Thanks –

Col

Col Owens
Senior Attorney
Legal Aid Society of Southwest Ohio LLC
215 E. 9th St., Suite 500
Cincinnati, OH 45202
Direct 513-362-2841
Cell 513-300-3042
Fax 513-241-7871
cowens@lascinti.org

From: drbillh1@aol.com [mailto:drbillh1@aol.com]

Sent: Saturday, October 08, 2011 10:37 AM

Subject: Fwd: information on Issue 3

Cathy and Col

This is a long email. I have attached all of the documents referenced in it so you can look at them and make your own informed assessment.

As the first assignment for my 2011 Health Policy students I asked them to reflect of Issue 3, the Ohio Healthcare Freedom Amendment. Before grading their essays I carefully reviewed materials supporting the amendment by Ohioans for Healthcare Freedom. What I discovered is that this amendment is much more than a simple vote on Obamacare. As written, and as intended, this Amendment is to have profound impact on the ability of Ohio's own elected officials, at the state or local level, to regulate health care services and health insurance in Ohio.

Since my own review, I have found that most health-related professionals, and I fear most everyone, have not read the language. The Health Policy Institute of Ohio has put up a website with pro and con information resources on Issue 3. Both the pro and con resources have confirmed my own analysis. It is important to have people review these materials.

Here is my take on Issue 3 based on my review.

The specific language of Issue 3 is:

**Proposed Constitutional Amendment
TO PRESERVE THE FREEDOM OF OHIOANS TO CHOOSE THEIR HEALTH CARE
AND HEALTH CARE COVERAGE
Proposed by Initiative Petition**

To adopt Section 21 of Article I of the Constitution of the State of Ohio

A majority yes vote is necessary for the amendment to pass.

The proposed amendment would provide that:

1. In Ohio, no law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.
2. In Ohio, no law or rule shall prohibit the purchase or sale of health care or health insurance.
3. In Ohio, no law or rule shall impose a penalty or fine for the sale or purchase of health care or health insurance.

The proposed amendment would not:

1. Affect laws or rules in effect as of March 19, 2010.
2. Affect which services a health care provider or hospital is required to perform or provide.
3. Affect terms and conditions of government employment.
4. Affect any laws calculated to deter fraud or punish wrongdoing in the health care industry.

If approved, the amendment will be effective thirty days after the election.

There is a lot of ambiguity in this language. For instance, I understand now that there is the term wrongdoing has no current legal foundation.

However, I gained clarity on the proponents interpretation and intent from this language from a donor's booklet put together by Ohioans For Healthcare Freedom's (http://ohioansforhealthcarefreedom.com/wp-content/themes/ohioansf/OFHF_Donor_Booklet.pdf). The first effect of this amendment touted in the OFHF's booklet is:

“Passage of the Ohio Health Care Freedom Amendment necessarily provides protections that will be effective as against state and local government.

This means that Ohio and its local governments would be prohibited from enacting health care and health insurance mandates, a single-payer system, or any regulatory provisions equivalent to health care systems

in Massachusetts, Vermont, Canada, or the United Kingdom. Moreover, even in the face of a valid federal health insurance mandate, Ohio governments would be prohibited from enacting regulations above and beyond the federal baseline.

Finally, the Amendment prohibits Ohio state and local governments from enacting any regulation that has the effect of significantly impeding health care or health care insurance choices, or significantly raising costs of health care or health care insurance”

I found the last paragraph to be most striking. It clearly shows that this Amendment is much more than a symbolic vote on Obamacare. The pro Issue 3 essay by Maurice Thompson, Executive Director of the 1851 Center for Constitutional Law, posted on HPIO’s website, underscores this point. According to the author, this Amendment will prevent regulation of people who pursue alternative medicine, prevent adoption of any more health insurance mandates, prevent new regulations on innovation or sale of services and procedures, and prevent requiring of sharing one’s medical history even if participating in a government program.

In the author’s own words:

“In so doing, this division further recognizes that we, as a society, will not further overcrowd our prisons with those who pursue alternative medicine, or make an economically rational choice for themselves, while not imposing harm on others. Moreover, one’s medical history is private, and the state should not compel it to be shared, simply as a prerequisite to participation in a government program.”

and

“The state may not impose sweeping new regulations that forbid innovations outright, nor may it punish the purchase or sale of cutting edge services, procedures, and coverages.”

and

“To advance this worldview, they first argued that Issue 3 was merely symbolic, but now argue that it *does too much*, and endangers the status quo. On this latter point, they are partially correct: while the Amendment preserves the freedoms we still have, it draws a clear line in the sand, which even the most audacious bureaucrats may not cross.”

I take from the words of the Amendment’s supporters that their preference is to create an entirely libertarian-based system for regulating health care. It seems to me that effects of the Amendment would include:

- Eliminating licensure requirements on anyone who wants to provide new approaches to health care
- Prevent passage of diabetes supplies mandate or any other mandate
- Prevent further state regulation of insurance industry practices

- Prevent payment reform, data reporting, HIE sharing, and other government-promoted care transformation actions
- Make unconstitutional the recently passed state requirements related to reporting on pharmaceutical prescriptions
- A whole lot of court cases to define what the language of the amendment means.

Interestingly this language might also

- Make medical marijuana constitutional in Ohio
- Make abortion officially constitutional in Ohio and prevent any further or recently passed regulations on abortion (depends on court interpretation of wrongdoing)
- Make euthanasia constitutional in Ohio

I found additional confirmation in my thoughts from information released by Innovation Ohio, who is opposed to Issue 3. They have released a short legal analysis of the legislation which is discusses many of these points and includes other points you may find of interest. The two points I found most interesting was would this Amendment prevent the modification of any existing regulations and might it nullify existing regulations when they have to be reviewed and formally readopted every five years. The anti-Issue 3 essay on HPIO's website, by Jannetta King head of Innovation of Ohio, captures the essence of the legal analysis's findings.

My conclusion is that regardless of one's position on Obamacare and regardless of one's position on Issue 2 (on Senate 5), Issue 3 requires careful attention and review because of the potential havoc it could create regarding the protecting the health of Ohioans and practice of medicine. Thirty days after its passage things will get really challenging and confusing for work such as the PCMH Collaborative that consumers support or ODH and other regulatory processes, especially for anything that has gone into effect since March 19, 2010.

Thoughts? I am curious if you come to the same conclusion that I have come to or a different conclusion.

Bill Hayes
736-0102