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Why constitutional amendments to allow Missouri to opt out of federal health care reform (HJR 48 and SJR 25) should be opposed

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Summary of the proposed legislation

If approved, the proposed legislation would require voter approval to amend the Constitution of Missouri. These amendments attempt to exclude Missouri from any individual mandate to purchase health insurance, which is a key provision of proposed federal health care reform. More than 30 states have introduced similar legislation as part of a larger conservative agenda whose goals include nullifying proposed health care reform.

MYTH: Federal health care reform is unconstitutional

FACTS:

- The **Supremacy Clause** of the U.S. Constitution provides that federal law is supreme to state law, including state constitutional provisions.¹
- Legal expert opinions and precedents set by the U.S. Supreme Court support the power of Congress to enact federal health reform under the **Commerce Clause** as well.²
- Under the **Commerce Clause**, the federal government has authority to regulate activity, even if it is local, as long as the regulated activity has an effect on interstate commerce through health reform in order to promote the general welfare³.
- The U.S. Supreme Court ruled in 1944 that insurance is a form of interstate commerce and therefore subject to federal regulation.⁴
- Healthcare activities clearly cross state lines. For example, individuals with a pre-existing medical condition may be unable to accept job offers in another state.⁵
- The Constitution grants Congress the power to “lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defense and general welfare of the United States”⁶ This gives clear authority to levy the tax on those who are required to purchase health insurance in order to permit insurance reforms and discourage “free riders” and adverse selection in insurance exchange pools.

MYTH: Federal health care reform takes away Missourians freedom

FACTS: Federal Reform will increase the choices of many Missourians who currently have no choices

¹ Center on Budget and Policy Priorities Memo, February 26, 2010 downloaded from www.cbbp.org.

² Ibid.

³ Monica Davey, “Health Care Overhaul and Mandatory Coverage Stir States’ Rights Claim,” New York Times, September 29, 2009; Gonzales v. Raich, 545 U.S. 1(2005) cited in Jack Balkin, “The Constitutionality of the Individual Mandate,” New England Medical Journal, February 11, 2010 at www.nejm.org.

⁴ United States c. South-Eastern Underwriters Association, 322 U.S. 533 (1944).

⁵ Akhil, Reed Amar, “Constitutional Objections to Obamacare Don’t Hold Up”. Los Angeles Times, January 20, 2010

⁶ Ibid at 2

- Growing numbers of Missourians are losing their health insurance because it is too costly for them and/or their employers. The proposed Constitutional amendments do nothing to address this
- Under the proposed national health care reform individuals who now have NO choices about health insurance will choose from a number of plans that best fit their needs
- Under proposed federal reform, those who like their current insurance plan will get to keep it

MYTH: Health care reform can better be accomplished piecemeal or in small incremental steps

FACTS: Requiring everyone to purchase insurance is critical to lowering costs

- Health insurance and health care services accounted for about 17.6 percent of the economy in 2009.⁷ Requiring all individuals to maintain minimal essential health coverage is the key to reducing these costs.
- There is broad agreement that individuals with pre-existing conditions should be able to purchase affordable insurance, and that the rules such as those that require women, older individuals and others with special health care needs to pay unfairly high premiums and deductibles need to be changed. If healthy individuals are not required to purchase insurance before they get sick, insuring older and sicker individuals will cause premiums to rise.
- Federal health care reform lowers premium costs in three ways:
 1. It broadens the pool of people being covered (larger pools allow lower premiums)
 2. It minimizes adverse selection (the process by which insurance companies market their products to younger, healthier people)
 3. It will lower administrative costs in the insurance market (applications and forms will be standardized, and insurance companies will not have to review surveys of potential insurees' health history to sort out who is unhealthy and/or a high risk)

FACTS: Comprehensive reform will have a tremendous positive impact on Missourians' lives and our economy

- Proposed federal reform will allow the 790,000 Missourians who are currently uninsured to participate as new consumers in the health insurance market.
- 335,000 Missourians in non-group insurance would have access to affordable coverage through the proposed health insurance exchange.⁸
- As a large employer, the state itself will benefit as it gets relief from rising health care costs for state employees and retirees.
- The proposed constitutional amendments are a distraction from the real issues that Missourians face in finding affordable health insurance

FACTS: The proposed constitutional amendments are risky for the state and its infrastructure for delivering health care

- Engaging in a legal battle(s) over these constitutional amendments will be costly for the state at a time when it is facing dire budget challenges
- The constitutional amendments could open the door to lawsuits from individuals who challenge the ability of managed care providers to require the use of approved care providers (Health care provided to those insured by the Missouri Consolidated Health Plan and of some insured by Medicaid are provided through managed care)⁹

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⁷ H.R. 3590, Section 1501 at www.opencongress.org

⁸ www.healthreform.gov/reports/statehealthreform/missouri.html

⁹ Krysten Sinema, Arizona House of Representatives. Presentation given at Families USA Conference, January 30, 2010