



## Issue 3 low-key, but has long reach

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By Robert Wang

As Issue 2 and the county sales tax issue dominate the limelight during this campaign, few local residents are paying attention to Issue 3, the proposed state constitutional amendment on the Nov. 8 ballot related to health care.

Issue 3 signs appear rarer than a four-leaf clover. There's little to no local grassroots campaign for or against the issue. A League of Women Voters forum on Issue 3 at Timken High School this month attracted about 16 people.

However, the amendment, if passed, could have significant effects years down the road.

Supporters, many of whom are Republicans and Tea Party conservatives, say the amendment would help keep state and federal governments from meddling in health care. Opponents, many of them members of groups allied with Democrats, say the amendment is so broadly worded that it could prevent the state from protecting public health.

### WHAT IS ISSUE 3?

Issue 3 would prohibit any "federal, state or local law or rule" from requiring through a fine or penalty "any person, employer, or health care provider to participate in a health care system." This would prohibit state or a local government from imposing an individual mandate, where nearly everyone would have to buy health insurance.

The amendment prohibits passage of any law that blocks the purchase or sale of health insurance. That apparently would prevent the state from setting up a single-payer system where the government would be the sole primary health insurer, like in Canada.

The amendment can't affect any laws or rules in effect on March 19, 2010; "affect which services a health care provider or hospital is required to perform or provide;" or "affect any laws calculated to deter, fraud or punish wrongdoing in the health care industry."

The amendment allows a government agency to require its employees to buy health insurance as a condition of employment.

### PETITION DRIVE

Conservative groups such as Ohio Liberty Council and the Ohio Project began collecting signatures to get the proposed amendment on the ballot within days after Congress passed the

Patient Protection and Affordable Care Act in March 2010, which mandates that nearly everyone eventually buy health insurance but subsidizes the purchase of coverage for low-income people.

"Health care decisions should be made between patients and doctors. Not politicians and bureaucrats," said Jeff Longstreth, campaign manager for Ohioans for Healthcare Freedom. "Ohioans are rising against that mandate and want to make their voices heard."

According to campaign finance reports, Longstreth's group has raised \$632,000 in cash and in-kind contributions for Issue 3. In contrast, the pro-Issue 2 and anti-Issue 2 campaigns have raised more than \$38 million in cash and in-kind contributions. The No On Issue 3 campaign committee has received at least \$28,000 in contributions.

Colleen Dundon, 48, of Perry Township, a member of Stark County 912 Patriots, said she collected several hundred petition signatures to put the amendment on the ballot last year.

"If they can mandate we buy health insurance, what else are they going to mandate we buy?" Dundon asked.

Supporters say passage of Issue 3 would strengthen the case before the U.S. Supreme Court that the Affordable Care Act is unconstitutional because the U.S. Constitution does not give Congress power to impose the individual mandate.

Maurice Thompson, executive director of the 1851 Center for Constitutional Law who wrote the amendment, says the U.S. Supreme Court more likely would find the federal law an inappropriate intrusion on state rights, if a ban on an individual mandate is explicitly in the state constitution.

## **TO SUPREME COURT**

Issue 3 opponents say if the U.S. Supreme Court upholds the Affordable Care Act, under the Constitution the federal law would trump the Ohio Constitution. Then the federal individual mandate would take effect in Ohio regardless of Issue 3.

"My opinion on Issue 3 is that it's mostly symbolic," said Democratic Party volunteer Barbra Lewis, 50, of Perry Township. "The federal law takes precedence over state law, and this issue will be decided by the federal courts."

Dale Butland, spokesman for Innovation Ohio, a liberal advocacy group, said Issue 3 "will have absolutely no effect on what Issue 3 proponents call Obamacare, but it will have far-reaching negative implications on literally dozens of existing Ohio laws, rules and regulations that we count on to keep us safe and healthy."

Andrew Doehrel, president and CEO of the Ohio Chamber of Commerce, says the chamber has endorsed Issue 3 because its members hate the health care act since it requires most to pay a tax if they don't provide a certain amount of health benefits to employees.

"Even if (passing Issue 3) sends a message that Ohioans are not in favor of Obamacare, we should be supportive of it," Doehrel said. "Even if this is a symbolic gesture."

Issue 3 supporters say the amendment would prevent the state from imposing an individual mandate like Massachusetts did to ensure that young, healthy people who often forego insurance pay into the health system. Thompson says Issue 3 would block Ohio from setting up a single-payer system where the state would be the sole health insurer.

## **CONSEQUENCES?**

Opponents say the reach of Issue 3 could go far beyond the health care debate.

They cite a paper co-authored by two Case Western Reserve law professors and Innovation Ohio's leaders that says the proposed amendment is "so sloppy, carelessly worded, and ambiguous that its passage would threaten a wide range of already-existing Ohio health programs, practices and policies ..."

"If you cannot require anyone to participate in a health care system, how could a court require deadbeat parents to pay (for) health insurance for children?" Butland asked. "This is so broadly written and so ambiguously worded it would ensure a tsunami of lawsuits that would cost millions of dollars."

Brian Rothenberg, executive director of Progress Ohio which is campaigning against Issue 3, says if Ohio decides to pass new laws to change how it responds to an epidemic, it could be stymied by Issue 3. Unless allowed by a law prior to March 2010, the state could not compel people be quarantined or get treatment.

Thompson said all the supposed unintended consequences are "political scare tactics from people who aren't educated on Ohio law."

He said states such as Arizona and Oklahoma have adopted similar constitutional amendments and have not had the unintended consequences predicted by Issue 3 opponents.

Rothenberg said the proposed Ohio amendment is broader than the Arizona amendment passed in 2010.

Thompson said the March 19, 2010, grandfather clause protects existing immunization, quarantine and other laws that protect the public from being affected by Issue 3 and that there's no need to revise those laws.

Ohioans for Healthcare Freedom says the law allowing courts to order non-custodial parents pay for health insurance for children is protected by the grandfather clause.

Meanwhile the amendment's clause that no laws "calculated to deter fraud or punish wrongdoing," would not affect sensible medical licensing requirements or other regulations. Butland said "wrongdoing" is not defined in the amendment and would be subject to interpretation by judges.

Longstreth said Issue 3 wouldn't affect worker's comp because the program is enshrined in the state constitution.

"We could go on with the what-ifs all day," he said.

**Original Article:**

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