

## Federal mandate on health care unaffected

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By **Cathy Candisky**

Voters can voice their objections to the new federal health-care law on the Nov. 8 ballot, but a proposed amendment to the state constitution won't exempt Ohioans from a requirement that most Americans buy health insurance by 2014 or face penalties.

Even if it passes, state Issue 3 would have no effect on President Barack Obama's health-care law because federal law supersedes state law, legal experts on both sides agree. The fate of the insurance mandate — the focus of several lawsuits — will be decided by the U.S. Supreme Court, not Ohio voters.

"Issue 3 won't strike down Obama health care in Ohio. Our best shot to do that is through the courts," said Attorney General Mike DeWine, representing Ohio in a 26-state lawsuit seeking to throw out the requirement. The U.S. Supreme Court is expected to decide next month whether to hear the case.

But DeWine, who supports Issue 3, and conservative tea party groups, which led the effort to collect signatures and place the constitutional amendment before voters, insist that the proposal is not merely symbolic.

"It's a real amendment and has real impact," DeWine said.

Issue 3, supporters say, would put Ohio voters on record as being against the federal law and prohibit state legislators from enacting a similar law requiring the purchase of health coverage, which Massachusetts did in 2006 under then-Gov. Mitt Romney.

The constitutional amendment also would lay the groundwork for lawsuits challenging the federal mandate based on a violation of individual rights, said Chris Littleton, a tea party leader from West Chester, Ohio, who helped spearhead the petition drive.

A "yes" vote on Issue 3 would add to the state constitution a provision stating that: "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."

Opponents argue that the proposal would have far-reaching consequences. Conservative extremists, they say, are trying to insert a "Trojan horse" into the state constitution that would jeopardize many laws and regulations that protect public health.

"If no one can be required to participate in a health-care system, how could our courts force deadbeat parents to buy insurance for their children? How could Ohio colleges require students

to have health insurance? And why couldn't any of us refuse to pay taxes for hospital or (mental-health) levies?" Dale Butland asked during a recent Issue 3 debate. He is the communication director for Innovation Ohio, a liberal policy group based in Columbus.

The proposal, he said, would allow anyone who doesn't want to abide by one of these orders or laws to file a lawsuit, forcing taxpayers to foot the bill for the litigation.

An analysis by two law professors at Case Western Reserve University School of Law found that Issue 3 could undermine school-immunization programs, child-support orders, contagious-disease reporting requirements and state efforts to reform the workers' compensation system and crack down on so-called pill mills.

"Laws and rules governing protections for the vulnerable, protecting the public's health and providing oversight of the medical and insurance professions would be frozen in time and could never be changed," professors Maxwell J. Mehlman and Jessie Hill wrote in a seven-page report.

Maurice Thompson, executive director of the 1851 Center for Constitutional Law and author of Issue 3, disputed many of the claims, noting that Issue 3 would not affect any state laws or rules in place as of March 19, 2010. School immunization and health-coverage requirements for college students, he noted, are not compulsory because students, or their parents, can choose where they attend.

But he conceded that it could affect future laws, citing as an example that Ohio lawmakers would be prohibited from requiring girls to get a vaccine for cervical cancer, as Texas Gov. Rick Perry recently attempted.

Critics complain that supporters — despite their public acknowledgments — are confusing voters by equating the proposal with a referendum on the federal health-care law, as Gov. John Kasich did earlier this month. Some speculate that Issue 3 was put on the ballot to draw Republicans to the polls and offset heavy turnout of Democrats opposed to Issue 2, which would repeal a state law restricting collective-bargaining rights of public employees.

"Well, I'm against Obamacare, so I'm for Issue 3," Kasich said after a speech in Columbus to private insurers.

Opponents of abortion rights continued that drumbeat last week when they issued a release in support of Issue 3.

"Citizens for Community Values Action is proud to stand with its partners around the state against government intrusion into our health," said Phil Burress, president of the organization.

Mike Gonidakis, executive director of Ohio Right to Life, said, "We believe its passage will preserve the freedom of Ohioans to choose health-care coverage free of abortion funding and health-care rationing."

An Issue 3 campaign brochure also suggests that the proposal will overturn the federal insurance mandate.

“For the first time in our nation’s history, the federal government is FORCING individuals to purchase health insurance. ... Your healthcare. It’s up to YOU to decide,” reads a brochure financed by Ohioans For Healthcare Freedom.

“They are lying,” said the Rev. Eric Brown, pastor of Woodland Christian Church and co-convener of We Believe Ohio. “If it’s not going to really co-opt the federal mandate, then you need to stop saying so.”

The coalition of moderate and left-leaning church officials opposes Issue 3, arguing that it is misleading and could negatively affect existing health-care programs serving vulnerable Ohioans.

“But it isn’t enough to say no to Issue 3,” said the Rev. Mark W. Diemer, pastor of Grace of God Lutheran Church and co-convener of We Believe Ohio. “We need to come together and talk about health care — access and cost — and budgetary solutions.”

**Original Article:**

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