Approved: August 25, 2011
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 8:35 A.M. on March 18, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was excused

Committee staff present:
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:
Representative Barbara Bollier, M.D.
Representative John Rubin
Representative Susan Mosier, M.D.
Jim O'Connell
Eric Stafford, The Kansas Chamber
Anna Lambertson, Executive Director, Kansas Health Consumer Coalition

Others attending:
See attached list.

The Chairman re-opened the hearings on **HB 2218 -- Abortion regulation based on capacity of unborn child to feel pain** as a courtesy to Representative Bollier, who was unable to attend yesterday's meeting.

Representative Barbara Bollier, M.D. testified as a neutral party to **HB 2218** (Attachment 1). She stated that she is a board certified anesthesiologist and that she has extensive education and training in pain and pain management. She noted pain is a complex area of medicine that is not completely understood. She expressed concern with the language in Section 1, especially the language in subsections (f) (g) and (h). In order to perceive pain, a fetus needs a functioning cortex and thalamus. She suggested defining a "pain-capable fetus" as a fetus that has reached 26 weeks gestational age and which has a functioning cerebral cortex.

Senator Pilcher-Cook asked, "What is the date of the edition of the books cited in your testimony?"
Representative Bollier responded, "I will have to check on the date. It is not the most recent edition of the book, but the portion of the text quoted or cited in the testimony has not changed.

Senator Pilcher-Cook asked, "Have neonatologists spoken on the issue of when a fetus feels pain?"
Representative Bollier responded, "I will answer after researching the question."

The Chairman closed the hearings on **HB 2218**.

The Chairman announced that the hearings on **SCR 1604 -- Amendment of state constitution; concerning health care** and **HCR 5007 -- Constitutional amendment to preserve right to choose health care services and participate in health insurance plan** would commence at 9:30 following Committee Action on bills previously heard.

Committee Action:
The Chairman called the committee's attention to **SB 159 Parole and postrelease supervision for violent offenders and sex offenders**. He reminded the members that the committee

amended the bill on March 11, but further action on the bill had been delayed until a revised fiscal note was received; the revised fiscal note has been received and distributed (Attachment 2).

Senator Pilcher-Cook renewed her motion, Senator Lynn renewed her second, that **SB 159** be passed as amended in the form of a substitute bill. The motion was adopted.

Senator Haley voted no on the motion and asked that his vote be so recorded.

The Chairman called the committee's attention to **SB 217 -- Civil commitment of sexually violent predators; reimbursement for costs related to habeas corpus actions to the county from the sexually violent predator expense fund**.

Jason Thompson, Staff Revisor, reviewed the bill and reminded the committee that the Attorney General had requested an amendment.

Action on **SB 217** was deferred until March 21, 2011.

The Chairman called the committee's attention to **HB 2008 -- Making identity theft a person felony**.

Senator Bruce expressed concern with making identity theft a person felony. He suggested treating identity theft in the same manner as burglary for the purposes of criminal history.

Senator Bruce moved, Senator Lynn seconded, that the penalty for identity theft, identity fraud, and attempt or conspiracy to commit those crimes would be presumptive imprisonment when the person being sentenced has a prior conviction of identity theft, identity fraud, or attempt or conspiracy to commit those crimes. The motion was adopted.

Senator Bruce moved, Senator Lynn seconded, that **HB 2008** be passed as amended in the form of a substitute bill. The motion was adopted.

The Chairman called the committee's attention to **HB 2010 -- Offenses and conduct giving rise to forfeiture**.

Senator Lynn moved, Senator Schodorf seconded, that **HB 2010** be passed. The motion was adopted.

The Chairman called the committee's attention to **SB 142 -- Kansas Adverse Medical Outcome Transparency Act**.

Senator Vratil moved, Senator Kelly seconded, to amend **SB 142** as follows: On page 1, in line 12, by striking "acknowledges or implies" and inserting "admits". The motion was adopted.

Senator Pilcher-Cook moved, Senator Bruce seconded, to amend **SB 142** as follows: On page 1, in line 8, after "condolence" by inserting ", or waivers of charges for medical care provided,". The motion was adopted.

Senator Vratil moved, Senator Bruce seconded, that **SB 142** be passed as amended. The motion was adopted.

The Chairman called the committee's attention to **HB 2104 -- Medical confidentiality exception for law enforcement at crime scenes**.

Senator Bruce has concern with what the proponents said the bill would accomplish. He believes the language of the bill has Constitutional issues.

Senator Bruce moved, Senator Lynn seconded, to amend **HB 2104** as follows: On page 3, in line 18, by striking "detained" and inserting "arrested". The motion was adopted.

Senator Schodorf moved, Senator Kelly seconded, that **HB 2104** be passed as amended. The motion was adopted.

The Chairman called the committee's attention to **HB 2118 -- Amending the requirements of offender appearance bonds and supervision costs**.

Senator Lynn moved, Senator Bruce seconded, that **HB 2118** be amended by adding the language proposed by Judge Tatum (Attachment 3) that would allow magistrate judges to impose costs up to $15 per week for court services supervision of a person's compliance with conditions of release and any costs in addition to the $15 per week associated with supervision and conditions for compliance. The motion was adopted.

Senator Vratil moved, Senator Lynn seconded, that **HB 2118** be passed as amended. The motion was adopted.

The Chairman called the committee's attention to **HB 2227 -- Allowing for the issuance of arrest warrants based on DNA profiles**.

The Chairman recognized Kyle Smith, Office of the Attorney General, to address concerns of members of the committee. Mr. Smith explained that there is DNA on CODIS but often there is no identifier. He stated the issuance of a warrant identifying a suspect by a description of the suspect's DNA would be useful in cases in which there is a statute of limitations issue. **HB 2227** would allow a prosecutor to file charges against a suspect based solely on a DNA profile, thus staying the statute of limitations, which normally requires charges be filed within a specific time following commission of the crime. If the suspect is later identified through the KBI's Combined DNA Identification System or any other method, prosecution could proceed.

Mr. Smith stated that Senator Vratil was correct when he stated that having a warrant on file, not just charges filed also would be useful in providing a way to place a detainer or hold on a suspect being held elsewhere who was recently identified through their DNA.

Senator Lynn moved, Senator Bruce seconded, that **HB 2227** be passed. The motion was adopted.

The Chairman called the committee's attention to **SB 39 -- Creating the classification of "aggravated sex offender;" creating additional penalties and restrictions for sex offenders**.

The Chairman reminded the committee that Senator Olson previously had distributed balloon amendments to the committee [See Minutes of March 14, 2011, Attachment 14]. The Chairman also noted that Ray Roberts, Secretary of Kansas Department of Corrections, had submitted additional written information (Attachment 4).

Senator Vratil asked, "Would there be cities in which an offender could not live because of the residential restrictions on page 14?"
Senator Olson responded, "It is his intent to prevent offenders from living near schools."

Senator Kelly noted that day care homes are no longer registered; the bill should state "licensed" day care home.

Senator Kelly asked, "Is there a restriction in current law relating to the location of licensed day care facilities?"
Senator Olson responded that he did not know.

Senator Kelly asked, "Would an offender be required to move if a licensed day care home or facility opens after the offender establishes residency?"
Senator Olson responded that he would be willing to delete the day care provision.

Senator Vratil asked, "Would an offender be required to move if a newly-constructed school opens after the offender establishes residency?"
Senator Olson responded, "Yes."

Senator Haley asked, "Would you oppose a grandfather provision?"
Senator Olson responded, "He would not oppose a grandfather provision."

Senator Olson agreed to add, to his balloon, a suggestion by Senator Kelly to delete the day care provision.

Senator Lynn moved, Senator Pilcher-Cook seconded, that **SB 39** be amended in the manner proposed in the balloon distributed by Senator Olson and to delete the residency restrictions as they relate to day care homes and facilities. The motion was adopted.

Senator Lynn moved, Senator Pilcher-Cook seconded, that **SB 39** be passed as amended.

Senator Vratil stated, "The issue of safe-zones had been the subject of extensive hearings in the past. Legislative committees have been told that the creation of safe-zones drives sex offenders underground and to the rural areas of the state."

Senator Pilcher-Cook noted that the provision that imposes the residential restriction applies only to aggravated sex offenders.

Senator Bruce stated that current law provides sufficient information on these offenders in order for people to be aware. He added that safe-zones create a false sense of security because they simply drive the offenders underground.

Senator Kelly asked, "If the safe-zone provision is deleted from the bill, what is left in the bill?"
Jason Thompson, Staff Revisor, responded, "The new class of aggravated sex offender, the driver's license provisions and other policy changes."

Senator Vratil made a substitute motion, Senator Kelly seconded, that **SB 39** be tabled. The motion was adopted.

Hearings:
The Chairman opened the hearings on **SCR 1604 -- Amendment of state constitution; concerning health care** and **HCR 5007 -- Constitutional amendment to preserve right to choose health care services and participate in health insurance plan**.

The Chairman requested that conferees that desired to appear on both resolutions to express their comments and testimony in support of, and opposition to, the resolutions when first recognized.

Jason Thompson, Staff Revisor, reviewed the resolutions.

Senator Schodorf asked, "What would happen if the U.S. Supreme Court upheld the federal law?"
Mr. Thompson replied that he could not say for sure and would respond after researching the

question.

Senator Kelly stated that she would like to know the fiscal impact of the resolutions.

Senator Schodorf noted that certain provisions of the federal law are in effect. The language in the resolutions state that a person cannot be compelled to participate or pay for insurance, but the resolutions do not apply to the requirement that insurance companies offer the insurance.

Representative John Rubin testified in support of **HCR 5007** (Attachment 5). He stated that the resolution would preserve the right and freedom of Kansans to provide for their own health care. He added that the Supremacy doctrine is an issue, but believes the resolution is constitutional.

James J. O'Connell testified in support of **HCR 5007** (Attachment 6). He expressed concerns relating to the constitutionality of the federal Patient Protection and Affordable Care Act as well as for the cost of the Act. He stated that the 10th Amendment to the U.S. Constitution is intended to protect the rights of states.

Eric Stafford testified in support of **HCR 5007** and **SCR 1604** (Attachment 7). He stated that the resolutions offer Kansans the chance to vote on whether the state should comply with the federal Patient Protection and Affordable Care Act.

Representative Susan Mosier, M.D. testified in support of **HCR 5007** (Attachment 8). She stated that the resolution is about the freedom to choose; it provides additional protection of freedoms for patients and doctors at the state level and allows the citizens of the state to have their voices heard.

Written testimony in support of **HCR 5007** and **SCR 1604** was submitted by Ilya Shapiro, CATO Institute (Attachment 9).

Anna Lambertson testified in opposition to **HCR 5007** and **SCR 1604** (Attachment 10). She stated the federal act raises legitimate questions about the limits of federal authority and the relationship between the state and national government. She added that the adoption of the resolutions would add to the confusion surrounding the health care system. The federal act is currently being challenged by 28 states, including the state of Kansas.

Senator Haley asked, "How much money has, or will, the state received under the federal act?" Ms. Lambertson responded, "So far, the state has received, or will receive, a grant of $31.5 million for the health insurance exchange."

Senator Pilcher-Cook submitted petitions, containing over 6,000 signatures, in support of **SCR 1604** and **HCR 5007**.

The Chairman closed the hearings on **HCR 5007** and **SCR 1604**.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for March 21, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 18, 2011

NAME	REPRESENTING
Barbara Bollier	self
PAUL DEGENER	self
Megan Pinegar	KSAG
Tara Mays	KDOT
Dorothy Noblit	KLRD
Melissa Ward	Kin law firm
Judy Parry	self
Randy Harris	Self
Kathie Smith	Self
Phillis Setchell	self
Magen Malbrough	self
Kris Moran	Self
Cynthia Smith	SCLHS
Kunlun Chang	KSC
Brenda Harmon	KSC
Susan Allen	Legis
Whitney Jamison	City of Topeka

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/18/11

NAME	REPRESENTING
Ed Klumpp	KACP/KPOA/KSA
Kyle Smith	KSAG
Lou Zaah	KDHE
marci francisco	KS Senator, 2nd district
Nathan Bainbridge	KDHE
Dustin Bradley	KDOT
Sean Miller	Capitol Strategies
Patrick Vogelsberg	KCDAA
Dustin Meyer	KHPA
Christy Molzen	judicial council
Charley Moore	KDHE
Gilbert Good	Tea Party Patriots
Roger Wood	Tea Party Patriots
Linda Kay Woodworth	Aglow International
John Brown	Aglow Intnl
Lupe Rogers	Aglow International
Dani Criqui	Aglow International
CHUCK HENDERSON	FLINT HILLS TEA PARTY, MANHATTAN KS

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-18-11

NAME	REPRESENTING
Richard D. Fry	November Patriots Tenth Amendment Center
Larry Halford	Wichita 912 Grp.
Diana Long	Wichita 912 GRP
Ron Long	Wichita 912 GRP
Bonnie Kmetz	Wichita 912 Group
Evelyn Keune	Wichita 912 Group
Mary Ince	Wichita 912 "
Eric Stafford	KS Chamber
Steve Kearney	KCDAA
Gene Cramer	myself.
Sammy Peck	Topeka 912
Robynn Tolbert	Topeka 912
[illegible]	KS Jud. Branch
Lindsey Douglas	KDOT
Rep. John Rubin	KS House

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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BARBARA BOLLIER
25TH DISTRICT

Written Testimony for HB 2218

I am a board certified anesthesiologist, which means I am a medical doctor who can practice anesthesia. The medical definition of anesthesia is: general or local insensibility, as to pain and other sensation, induced by certain interventions or drugs to permit the performance of surgery or other painful procedures. An anesthesiologist has extensive education and training in pain and pain management.

Pain in and of itself is a complex medical issue that continues to be intensely studied. It is an area of medicine that is far from having absolute understanding and includes competing theories that various researchers propose as they try to unravel the anatomy, physiology, pathology, and pharmacology of pain and the relief of pain.

As a medical doctor, I am concerned that new Section 1 includes a number of statements that should not be included. Scientific statements must be referenced and substantiated if they are going to be written into the law of the state.

Specifically, new sections 1(g), (f), and (h) claim there is strong evidence leading to the conclusion that a functioning cortex is not necessary to experience pain. However, leading experts in pain report evidence that contradicts many of the statements in new Section 1. Regarding Section 1(g):

- From The Anatomic and Physiologic Basis of Pain by John Bonica, a leading expert in the pain field:

The neural system that performs these complex functions of identification, evaluation, and selective input modulation must conduct rapidly to the **cortex** so that the somatosensory information has the opportunity to undergo further analysis, interact with sensory inputs, and activate memory stores and preset response strategies. The frontal cortex appears essential in maintaining the negative affective and aversive motivational dimensions of pain.

Regarding Section 1(h)

-From Textbook of Pain Chapter 11, The Neurobiology of Pain by Melvack and Wall, two more experts in pain:

Previous reports have led to the misinterpretation that pain sensation occurs in the thalamus, whereas we now know that the thalamus is intimately interconnected with the cerebral cortex and cannot be considered in isolation.

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Attachment 1

Regarding new Section 2(f) ,relying on current scientific evidence, the American College of Obstetricians and Gynecologists have a position stating that before 26 weeks of gestation (26 weeks after the LMP), the fetus does not possess the structural and functional neurological capacity to experience pain. If we as a legislature are going to make medical definitions, Kansas should use the accepted definitions of experts. I ask you to amend this bill to reflect that the definition of a pain capable fetus is a fetus that has reached 26 weeks gestational age and has a functioning cerebral cortex. Thank you for your consideration in this matter.

Barbara Bollier

Rep. Barbara Bollier, MD

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Division of the Budget

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Steven J. Anderson, CPA, MBA, Director
Sam Brownback, Governor

March 16, 2011

REVISED

The Honorable Tim Owens, Chairperson
Senate Committee on Judiciary
Statehouse, Room 559-S
Topeka, Kansas 66612

Dear Senator Owens:

SUBJECT: Revised Fiscal Note for SB 159 by Senator Pilcher-Cook

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 159 is respectfully submitted to your committee.

SB 159 would add conditions of supervision for sex offenders serving on parole or post-release supervision. Offenders must agree in writing to be subject to search or seizure by a parole officer, community correctional services officer, or other law enforcement officer at any time of the day or night with or without a search warrant and without cause. Additionally, sex offenders must agree in writing not to possess pornographic materials. The Kansas Parole Board would be required to obtain the written agreements. The conditions would apply retroactively to any violent sex offender who is on parole or post-release supervision as of July 1, 2011 or to any offender released on or after July 1, 2011.

According to the Sentencing Commission, the impact to prison beds from the passage of SB 159 is not known because no data are available regarding offender parole revocations from possessing prohibited items. Both the Department of Corrections and the Kansas Association of Counties indicate that the expanded search or seizure provisions would have no fiscal effect on parole and local law enforcement operations. The original fiscal note did not contain specific information from the Sentencing Commission, Department of Corrections, or the Kansas Association of Counties. The Kansas Parole Board states that any fiscal effect resulting from the enactment of the bill could be absorbed within existing resources.

Sincerely,

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Marie McNeal, Parole Board
Jeremy Barclay, Corrections
Larry Baer, League of Municipalities
Melissa Wangemann, Kansas Association of Counties

Senate Judiciary
3-18-11
Attachment 2

person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any person shall violate any of the conditions imposed under this paragraph, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the judge of the court in which such person is convicted of violating such conditions.

(4) As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

~~Section 1.~~ **Sec. 2.** K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto; or

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RS - JThompson - 03/10/11

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate.

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug *and alcohol* abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug *or alcohol* abuser or *is* incapacitated by drugs *or alcohol*, to submit to treatment for such drug *or alcohol* abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond pursuant to paragraph (3). Except as provided in paragraph (5), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to paragraph (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at $2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

(A) Is a resident of the state of Kansas;

(B) has a criminal history score category of G, H or I;

(C) has no prior history of failure to appear for any court appearances;

The magistrate may order the person to pay for any costs associated with the supervision provided by the court services department in an amount not to exceed $15 per week of such supervision. The magistrate may also order the person to pay for all other costs associated with the supervision and conditions for compliance in addition to the $15 per week.

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Ray Roberts, Secretary of Corrections

Department of Corrections

Sam Brownback, Governor

Testimony on SB 39
to
The Senate Judiciary Committee

By Ray Roberts
Secretary
Kansas Department of Corrections
March 18, 2011

Per our previous discussion with Senator Olson, the concerns raised by the Kansas Department of Corrections with regard to residential restrictions on the supervision and treatment of sex offenders are reduced with the amendment that reduces the original 2,000 feet prohibition to a prohibition of 500 feet from the covered entities. The department stands ready to execute any legislation that may be enacted that addresses both the prevention of future incidents of sexual offenses as well as the meaningful treatment and supervision of those released offenders based upon best evidence based practices.

Senate Judiciary
3-18-11
Attachment 4

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
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ELECTIONS
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JUDICIARY

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

HOUSE CONCURRENT RESOLUTION 5007

THE HEALTH CARE FREEDOM AMENDMENT

REP. JOHN RUBIN

CHAIRMAN OWENS AND MEMBERS OF THE COMMITTEE:

THANK YOU VERY MUCH FOR THIS OPPORTUNITY TO APPEAR AND TESTIFY BEFORE YOUR COMMITTEE REGARDING HOUSE CONCURRENT RESOLUTION 5007, THE HEALTH CARE FREEDOM AMENDMENT. I'M SURE THIS LEGISLATION IS FAMILIAR TO YOU, AS A SIMILAR RESOLUTION WAS CONSIDERED IN 2010. IT SEEKS TO PLACE ON THE BALLOT FOR VOTER APPROVAL IN NOVEMBER 2012 AN AMENDMENT TO THE KANSAS CONSTITUTION, ADDING A NEW SECTION 16 TO PRESERVE THE RIGHT AND FREEDOM OF KANSANS TO PROVIDE FOR THEIR OWN HEALTH CARE.

THIS AMENDMENT WILL PRESERVE THE RIGHT OF A PERSON, EMPLOYER OR HEALTH CARE PROVIDER IN KANSAS TO BE FREE FROM FEDERAL OR STATE LAWS OR RULES COMPELLING PARTICIPATION IN ANY HEALTH CARE SYSTEM OR COMPELLING THE PURCHASE OF HEALTH INSURANCE. IT WILL PRESERVE THE RIGHT OF A PERSON OR EMPLOYER TO PURCHASE LAWFUL HEALTH CARE SERVICES DIRECTLY FROM A HEALTH CARE PROVIDER. IT WILL PRESERVE THE RIGHT OF A HEALTH CARE PROVIDER TO ACCEPT DIRECT PAYMENT FROM A PERSON OR EMPLOYER FOR LAWFUL HEALTH CARE SERVICES. AND IT WILL PRESERVE THE RIGHT TO PURCHASE OR SELL HEALTH INSURANCE IN PRIVATE HEALTH CARE SYSTEMS.

SENATORS, MAKE NO MISTAKE – YOUR VOTE ON THIS MEASURE IS NOTHING LESS THAN A REFERENDUM ON THE CONTINUED VIABILITY IN KANSAS OF THE 10TH AMENDMENT TO THE UNITED STATES CONSTITUTION. AS YOU KNOW, OUR FEDERAL GOVERNMENT IS ONE OF SPECIFICALLY ENUMERATED POWERS. THE 10TH AMENDMENT PROVIDES THAT "THE POWERS NOT DELEGATED TO THE UNITED STATES BY THE CONSTITUTION, NOR PROHIBITED TO IT BY THE STATES, ARE RESERVED TO THE STATES RESPECTIVELY, OR TO THE PEOPLE."

THROUGH EXPANSIVE APPLICATION OF THE INTERSTATE COMMERCE CLAUSE OF THE U.S. CONSTITUTION, THE FEDERAL GOVERNMENT HAS ALREADY INTRUDED INTO VIRTUALLY EVERY ASPECT OF OUR LIVES – FROM TELLING US WHAT KIND OF LIGHT BULBS WE CAN PUT IN OUR LAMPS TO HOW MUCH WATER OUR TOILETS CAN FLUSH. BY MANDATING, WITH SANCTIONS, THAT ALL KANSANS MUST PURCHASE HEALTH INSURANCE, THE FEDERAL AFFORDABLE CARE ACT MAKES THIS INVASION OF OUR PERSONAL LIBERTIES COMPLETE. IN SO DOING, IT EXPANDS THE COMMERCE CLAUSE BEYOND ALL RECOGNITION AND THOROUGHLY VITIATES THE 10TH AMENDMENT.[1] FOR IF THE FEDERAL GOVERNMENT CAN ORDER INDIVIDUAL KANSANS TO PURCHASE HEALTH INSURANCE TODAY UNDER PENALTY OF FINES FOR NONCOMPLAINCE, THERE IS TRULY NO LIMIT TO WHAT ELSE IT CAN ORDER US TO DO TOMORROW – WHAT CAR TO BUY, HOW MUCH TO SPEND ON GROCERIES OR HOUSING – ALL IN THE NAME OF THE NATIONAL ECONOMY.

OUR VOTE FOR THIS RESOLUTION WILL SPEAK LOUDLY AND CLEARLY THAT THE 10TH AMENDMENT IS ALIVE AND WELL IN KANSAS, THAT *NO* GOVERNMENT AUTHORITY – IN WASHINGTON OR TOPEKA -- CAN TELL KANSANS WHAT HEALTH CARE OR HEALTH INSURANCE TO BUY, AND THAT THERE ARE *LIMITS* ON THE FEDERAL AND STATE GOVERNMENTS' POWER TO INVADE OUR PRIVACY AND INTERFERE WITH OUR PERSONAL LIBERTIES AND FREEDOM.

FINALLY, VOTERS IN KANSAS AND ACROSS AMERICA HAVE THEMSELVES ALREADY SPOKEN LOUDLY AND CLEARLY ON THE SUBJECT OF LIMITED GOVERNMENT LAST NOVEMBER AT THE POLLS. WE OWE IT TO OUR CONSTITUENTS, THE CITIZENS OF KANSAS, TO GIVE THEM THE OPPORTUNITY TO VOTE UP OR DOWN THE QUESTION OF WHETHER THEY WANT TO PRESERVE THEIR RIGHT TO BE FREE FROM THE HEALTH INSURANCE MANDATE OF THE AFFORDABLE CARE ACT OR ANY OTHER FEDERAL OR STATE LAWS OR RULES COMPELLING THEIR PARTICIPATION IN ANY HEALTH CARE SYSTEM OR COMPELLING THEIR PURCHASE OF HEALTH INSURANCE.

AND WITH THAT I WILL BE PLEASED TO STAND FOR QUESTIONS.

REP. JOHN RUBIN
DISTRICT 18, KANSAS HOUSE OF REPRESENTATIVES

[1] INTERESTINGLY, IN RESPONSE TO THE EXPLOSIVE EXPANSION OF THE POWER OF THE FEDERAL GOVERNMENT TO REGULATE AND TAX EVERY ASPECT OF OUR DAILY LIVES WHICH OCCURRED DURING THE NEW DEAL, THE U.S. CONGRESS IN 1945 PASSED THE MCCARREN-FERGUSON ACT, WHICH EXPLICITLY EXEMPTED THE INSURANCE INDUSTRY FROM FEDERAL REGULATION UNDER THE COMMERCE CLAUSE. AN ATTEMPT BY THE CONGRESS TO REPEAL THIS ACT IN 2010 WAS UNSUCCESSFUL.

Testimony of James J. O'Connell
on
The Health Care Freedom Amendment

I appreciate the opportunity to offer comments in support of the Health Care Freedom Amendment. By way of background, I am retired from law practice and previously spent 30 years in health care administration in military and civilian settings. I also served as Secretary of Health and Environment under Governor Bill Graves.

There are a good many reasons for the Legislature to place the Amendment before the voters. They include both legal and constitutional issues and very serious concerns about deterioration in the quality and availability of health care services, to say nothing of cost.

The media focus at the moment is largely on the legal issues and lawsuits challenging the constitutionality of the Patient Protection and Affordable Care Act ("Obamacare"). This focus is well-deserved because the legal challenges are very serious with 28 states, including Kansas, joining in one of these actions which represent broad support and wide public interest. It is not an overstatement to say that the Constitutional issues are so serious that they can permanently change the way this country is governed.

Supporters of Obamacare contend that Congress acted properly under the commerce clause of the Constitution. It is not possible to find among the enumerated powers of the Congress the power to impose a financial obligation on its citizens by requiring the purchase of insurance. The commerce clause has been applied very broadly indeed since the 1930s so that almost nothing is beyond the control of the federal government. Any activity that even remotely relates to interstate commerce has come under the purview of the federal government. The key word here is "activity". This is the first time Congress has attempted to impose financial obligations on citizens not engaged in any activity, interstate or otherwise, solely because they are alive! Federal Judge Vinson's recent decision rested on this point.

It is well established law that government may not interfere in legal contracts made between persons and entities. What Obamacare attempts to do is the converse of that legal principle---that is, it mandates that all of us enter contracts of insurance against our will. In the ordinary course of events

contracts require mutual consent to be valid and a contract between private individuals that is entered as a result of oppression or coercion is not a valid contract. Another way to look at this is that Obamacare requires people to give their property---their money--- to someone else in a transaction coerced by the government. That is nearly analogous to the taking of private property without just compensation in violation of the 5th Amendment.

Another serious constitutional issue is whether Congress has the power to impose a tax for the purpose of forcing people to act in a way that they would not otherwise act. At the outset supporters claimed that the Obamacare penalty for not buying health insurance was not a tax, but was a fee to be enforced and collected by the IRS. In legal briefs the Administration now acknowledges that it is a tax. The question is whether it is constitutional for Congress to tax, not for the purpose of raising revenue to run the government, but to compel the citizenry to act in a certain way. This is different from other tax policies that design specific provisions of the tax code with incentives to encourage certain behaviors. The difference here is that it is not an incentive but is an absolute mandate with a penalty imposed for non-compliance.

While the validity of the Obamacare statute will be determined in the Supreme Court, I believe it would be a mistake for this Legislature to withhold action on the Health Care Freedom Amendment awaiting the outcome in the Court. Instead you should allow your constituents to give voice to their views of this action by the federal government. You should provide the people of Kansas with the opportunity to state their position in clear and unambiguous terms. You should give us the opportunity set down a marker as to what Kansans will accept in terms of federal mandates.

Perhaps I am wrong and Kansans will vote to reject the Amendment, but I don't think they will. The voters recently elected a Governor who opposed Obamacare and an Attorney General who ran, in part, on a promise to join in legal challenges to the law. Assuming that the recent election did reflect the views of Kansans, I believe the Legislature would be derelict if it denied the electorate the opportunity to express its will in formal and legally effective terms. Perhaps my reading of the last election is wrong. Let's find out.

I believe that Obamacare is not only unconstitutional, it will be destructive to the quality and availability of health care services in Kansas and elsewhere. It is against all common sense to claim that the cost of health care will be reduced by providing health insurance to an additional 30 million people. In fact, on March 7 former Governor Sebelius admitted in testimony before Congress that the purported $500 billion dollar Medicare savings in the Obamacare statute is being counted twice; once to underwrite the cost of the new requirements under the statute and again as projected reduced cost of Medicare. I submit that the law will do neither.

Much of the argument for Obamacare is that the cost of care for the uninsured is being passed on to those with insurance or who pay directly for their care. That assertion is correct, but it does not take into account the effect of increased demand created by 3rd party payment for care. While some of that demand will be due to the proper and correct provision of needed care, the same critics of American health care that support Obamacare also complain that health care services are over-utilized. They recognize that when a third party pays for goods or services, the demand for them will increase. Some of that demand will be for unnecessary services and there is nothing in Obamacare that will influence individuals to avoid seeking unnecessary care. The inevitable outcome will be a reduction in the availability of services in order to attempt to control costs.

I can tell you that many techniques have been tried to control or reduce over-utilization of services, from so-called "utilization review", to peer review to standardized treatment protocols. Yet demand moves ever upward. I do not believe there will be the infamous "death panels" looking at individual patients and deciding whether they get care. It is more likely to be scarcity created by reduction in the capital available to providers and reduction of the number of providers, i.e. physicians, nurses and hospitals.

Supporters of Obamacare often contend that "rationing" is already practiced by insurance companies with respect to denying coverage for certain procedures or drugs. They usually don't say so, but if insurers are "rationing" so are Medicare and Medicaid. The difference between the current situation and the likely outcome of Obamacare is that there are now competing and independent

participants in health care and standards of care benefit from this competition and independence. Once a monolithic program is fully in place, competition and independence are no more and standards become monolithic as well.

We are told that surveys by international organizations rank U.S. health care as low as 37th in the world. This is pure and utter nonsense. Where in the world do most of the breakthroughs in medicine occur? Where do people from all over the world come for health care? For example, recently King Abdullah of Saudi Arabia, who can certainly afford to go anywhere for care, came to New York. Several months ago, the Provincial Governor of Newfoundland, Canada, went to Tampa for heart surgery. When asked why he did not rely on the Canadian health system he said that though he was a politician he still had a right to seek the best care possible!!!!!! Does it make sense to undercut this level of quality as Obamacare will unavoidably do?

I can give you a real life example of the likely results of Obamacare in the experience of my younger brother in the Massachusetts system, sometimes called "Romney Care". He had a broken bone in his foot and was treated "conservatively " for several months. When it was finally determined that he needed an MRI to find out what was going on, the first appointment he could get was 10 days later, on Friday night, at 10 pm!!!! Why? Because the universal coverage plans drive up demand while they have a financial impact on government and providers that forces restraint on capital investments, training of medical personnel, etc. Therefore, not enough MRIs or personnel to run them.

When I was a hospital CEO in Kansas several years ago, the Medicaid program announced a restriction on payment to hospitals for women who had experienced a miscarriage. The program would not pay for a hospital admission unless there were unusual circumstances and it decreed that the woman should be sent home immediately after initial treatment, regardless of the time of day or night. We did not send women home at 2 a.m. as the program demanded, but simply did not bill for the admission. This as an example of what can happen to quality of care, especially that part of quality that is not reflected in the statistics.

Finally, the design of Obamacare does not reduce costs. It will shift the "pass through" of the costs of what is now uninsured care by transferring those costs to the insurance premiums to be paid by coerced purchasers of health insurance along with the attendant added overhead and mark-ups. The plan will, and is probably intended to, cause employers to drop health insurance for employees. In the long run, this will result in private health care and private insurance being declared a failure. The unavoidable conclusion will be that we must have a single payer, i.e. federal government, health plan paid with tax dollars. That conclusion will make the constraints on availability and quality that exist today seem like Utopian circumstances that we will then wish could return. It will be too late.

The Tenth Amendment provides that powers not delegated to the federal government by the Constitution are reserved to the states or the people. If the Tenth Amendment is to mean anything there must be effective ways for states and the people to establish their rights under it. The Health Care Amendment provides an opportunity for Kansans to do so if they choose. I urge you to give Kansans that opportunity---however they might ultimately decide the Health Care Amendment question. You have nothing to lose if you do so, but we all have much to lose if you do not.

Respectfully submitted,

James J. O'Connell

Testimony before Senate Judiciary
SCR 1604, HCR 5007- Health Care Freedom Amendment
Presented by Eric Stafford, Senior Director of Government Affairs
Friday, March 18, 2011

We appreciate the opportunity to provide written testimony in support of SCR 1604 and HCR 5007 which offers Kansans the chance to vote on whether their state should comply with the federally mandated health care legislation passed in 2010. Our neighboring state, Missouri, overwhelmingly supported a state constitutional amendment in November 2010 with 70% of voters supporting the measure.

The Kansas Chamber opposes the use of mandates to regulate the market and impose further cost on the health care system. The growing cost of health care is already prohibitive to employers. Managing health care costs ranked second behind lowering taxes on businesses when asked what has the largest impact on profitability in the 2011 Chamber CEO poll of 300 member AND non-member businesses across the state.

Kansas business owners tell us that they want to provide health insurance and remain competitive, but the cost is too high. Already the cost of health care puts business owners at a competitive disadvantage. The Patient Protection and Affordable Care Act will actually result in higher health care costs and restrict individual's access to free choice according to testimony before the House Budget Committee in January, something businesses of all sizes cannot afford.

Business owners are forced to either spend investment capital to provide health benefits or risk the inability to attract top employees if they cannot meet the expectation of providing competitive benefits.

As our economy remains weak, businesses are forced to make tough decisions and more small businesses are opting not to offer health insurance – because they can no longer afford coverage. The more mandates added on to our health care system, the more expensive it will become.

The Pacific Research Institute found that if the cost of insurance premiums rises by 1 percent, the number of uninsured people increases by 0.5 percent. This illustrates the detrimental impact of even minor increases in premium price on the market.

The Kansas Chamber supports the Health Care Freedom Act because mandates increase the cost of health care and reduce affordable options for those purchasing health benefits.

Thank you for the opportunity to offer these comments today.

The Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to do business. The Chamber represents small, medium and large employers all across Kansas.

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SUSAN MOSIER
67TH DISTRICT

Testimony to the Senate Judiciary Committee

Regarding HCR 5007, Health Care Freedom Amendment

By Susan Mosier, MD, MBA, FACS
Kansas House of Representatives, District 67

Thank you Chairman Owens and members of the Committee for the opportunity to offer testimony to you today regarding HCR 5007, the Health Care Freedom Amendment

In talking with people about this Amendment in my district and in the House of Representatives, the vast majority are in support. In fact, in the House, more than half of the members co-sponsored this amendment and HCR 5007 passed the House with a resounding 91- 27 majority. For those that are unsure or opposed to the amendment, I have found through discussion three primary areas of misconception.

The first misconception is that this bill is a referendum on the federal health reform bill, the "Affordable Care Act". This is not about any of the details of that act – pro or con. This amendment was triggered by the mandate to purchase health insurance in this act.

The second misconception is that we should wait until the federal court case is settled. This bill is not just about freedom from a federal mandate. It goes much deeper by preserving health care freedom of choice at the state level.

The last misconception is that this issue is too narrow to be a constitutional amendment when, in reality, nothing is more broad, nonpartisan or foundational in this country than our liberty.

The key points I would like to reiterate on this amendment are:

1. This is about our freedom to choose. Any level of government mandating that we must purchase a good or service simply because we live in this country represents a tectonic shift. It truly changes the foundation of this nation and state. This transfers power from citizens to government. We will no longer be a government by the people, of the people and for the people.

2. This bill goes much deeper than the federal court cases by providing additional protection of freedoms for patients and doctors at the state level.

3. Today, we as legislators are not choosing to add an amendment to our state Constitution. We are being asked today whether or not we will allow the citizens of the state of Kansas to have their voices be heard.

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I will close with this – attached to this document you have a copy of an Eisenhower Bicentennial Dollar. Until 2007, one word was on every single U.S. coin. What word was that?

I'm sad to report that starting in 2007 with the Presidential Series dollars, the word "liberty" has been removed.

Today, we have before us a decision… not of removing liberty from our coins, but of removing essential liberty from ours, our children and our children's children lives.

I end with this question for those of you who may still be in opposition or unsure – when you cast your vote on this very important issue… will you deny the people of Kansas their voice?

Thank you and I will stand for questions.

March 15, 2011

Ilya Shapiro
Senior Fellow in Constitutional Studies

Sen. Mary Pilcher-Cook
Kansas Senate Judiciary Committee
Kansas State Capitol
300 SW 10th St.
Topeka, KS 66612

Dear Sen. Pilcher-Cook,

Thank you very much for the invitation to share my thoughts on Kansas's Health Care Freedom Amendment (HCFA), and how it relates to the Patient Protection and Affordable Care Act (PPACA, commonly known as "Obamacare"). In my capacity as a senior fellow in constitutional studies at the Cato Institute—a nonpartisan public policy foundation dedicated to advancing the principles of individual liberty, free markets, and limited government—I have been speaking and writing about how Obamacare destroys federalism and fundamentally transforms the relationship between citizen and government. I have also been extensively involved with the lawsuits challenging the constitutionality of various parts of the law, including having filed several *amicus curiae* ("friend of the court") briefs.

The HCFA seeks to protect two essential rights. First, it protects a person's right to participate or not in any health care system and prohibits the government from imposing fines or penalties on that person's decision. Second, it protects the right of individuals to purchase—and the right of doctors to provide—lawful medical services without government fine or penalty.

No one questions the need for serious health care reform. Regardless of how such reform is fashioned, however, either at the state or federal level, the essential rights protected by the HCFA should be preserved. Indeed, **supporters of provisions like the HCFA have a variety of perspectives on the form that health care reform should take, but they agree that no matter what legislation is passed, it should not take from Americans their right to control their own medical affairs.** It is that precious right which is at stake here, for in many countries where the government plays a larger role in regulating or providing health insurance—including compelling individuals to join government-approved health plans—health care is rationed and individuals are prevented or discouraged from obtaining otherwise lawful medical services.

Now, as a matter of law, it is well established that the U.S. Constitution provides a baseline for the protection of individual rights, and that states may provide additional

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protections—and all of them do. For instance, some states provide greater protections of freedom of speech or due process rights.

Still, there is serious tension between the HCFA and certain parts of Obamacare. The Supremacy Clause establishes the Constitution as the supreme law of the land and provides that federal law prevails over conflicting state law where Congress has the legitimate authority—from its enumerated powers—to enact the legislation and where it does not impermissibly tread upon state sovereignty. The various lawsuits challenging the constitutionality of Obamacare assert a number of claims relating to these principles. The Florida-led suit, which now boasts 26 state plaintiffs, is perhaps most famous, but the separate cases brought by Virginia and Oklahoma, respectively, are notable because they are based largely on those states' HCFAs (the former enacted as state law, the latter as a popularly ratified state constitutional amendment).

As should by now be clear, the state lawsuits, among others, are serious challenges maintained by serious lawyers and public officials. They question an unprecedented assertion of power—literally without legal precedent both in its regulatory scope and its expansion of federal authority—that, if left unchecked, would gravely alter the relationship of the federal government to the states and to the people. Nobody would ever again be able to claim plausibly that the Constitution limits federal power.

The strongest legal argument—implicitly supported by the HCFA—attacks the constitutionality of the individual mandate to buy health insurance. "The government has never required people to buy any good or service as a condition of lawful residence in the United States." Cong. Budget Office, *The Budgetary Treatment of an Individual Mandate to Buy Health Insurance* 1 (1994). Nor has it ever said that every man and woman can be fined for declining to participate in the marketplace. And never before have courts had to consider such a breathtaking assertion of raw power under the Commerce Clause. Even at the height of the New Deal, in the infamous case of *Wickard v. Filburn*, 317 U.S. 11 (1942), the federal government claimed "merely" the power to regulate what farmers grew, not to *mandate* that people become farmers or require people to buy farm products.

But that should not be surprising, because ours is a government of delegated and enumerated powers and the Constitution does not grant Congress the power to force private commercial transactions. Even if the Supreme Court has broadened the scope of congressional authority under the Commerce Clause—it can now reach local activities that have a substantial effect on interstate commerce—never before has it allowed people to face a civil penalty for not buying a particular product.

Stated another way, *every* exercise of Congress's power to regulate interstate commerce has involved some form of action or transaction engaged in by an individual or legal entity. **The government's theory—that the *decision* not to buy insurance is an economic one that affects interstate commerce in various ways—would, for the first time ever, permit laws commanding people to engage in economic activity.**

Under such a reading, which two judges in other Obamacare cases have alas accepted, Congress would be the sole arbiter of its own powers, the only checks on which would be political. The federal government would have plenary authority to compel activities ranging from eating spinach and joining gyms (in the health care realm) to buying GM cars (as part of an auto bailout). **Authority so novel and sweeping would be indistinguishable from a general "police power," which is irreconcilable with the established principle that Congress has only limited and enumerated powers.** As Judge Henry Hudson said in striking down the individual mandate in the Virginia case, "This broad definition of the economic activity subject to congressional regulation lacks logical limitation and is unsupported by Commerce Clause jurisprudence."

But the individual mandate is only the highest-profile tip of an iceberg that, if not avoided, will sink our constitutional vessel. For example, going beyond the HCFA for a moment, it should concern you, as state legislators, that Obamacare impermissibly coerces states by forcing them to accept a greatly expanded and fundamentally transformed Medicaid program. States such as Kansas face an all-or-nothing proposition that is effectively a Hobson's Choice: either accept the new Medicaid regime and suffer devastating consequences to your already-strained budget, or forgo access to many billions of dollars annually which the federal government collects from all taxpayers and then returns only to those states that remain in Medicaid. Neither Obamacare nor any other existing federal statute provides a mechanism for states to withdraw from Medicaid, and no process exists to protect the health and welfare of the poorest residents of states that wish to transition away.

Thus, contrary to the government's suggestion in the Florida case, **opting out of Medicaid is not a viable option by which states can avoid Obamacare's ruinous effects.** Accordingly, the legislation's impositions on states, including Kansas, "pass the point at which, 'pressure turns into compulsion.'" *South Dakota v. Dole*, 483 U.S. 203, 211 (1987) (quoting *Steward Machine Co. v. Davis*, 395 U.S. 548, 590 (1937)).

In short, **passing the HCFA would be a step toward protecting both individual liberty and state sovereignty as defined by our Constitution.** I am gratified that Kansas has joined the Florida lawsuit as it works its way to the Supreme Court. Should you need more information, I have found two websites to be invaluable resources regarding all of the Obamacare lawsuits: healthcarelawsuits.org and acalitigationblog.blogspot.com. I am also happy to answer any further questions you may have and can be reached at (202) 577-1134 or ishapiro@cato.org.

Cordially,

Ilya Shapiro

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KANSAS HEALTH CONSUMER COALITION

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Testimony in Opposition to SCR 1604 and HCR 5007
Senate Judiciary Committee
Anna Lambertson, Executive Director, Kansas Health Consumer Coalition
March 18, 2011

Mr. Chair and Members of the Committee,

I appreciate the opportunity to speak to you this morning. My name is Anna Lambertson and I am the Executive Director of the Kansas Health Consumer Coalition (KHCC). We are a statewide non-profit, non-partisan advocacy organization. A significant portion of our work consists of educating consumers about their options and rights as they navigate our complex health care system.

That's a daunting task under any circumstances. Our work is currently even more challenging with the Affordable Care Act, which was passed by Congress and signed into law last year. Now, in addition to educating consumers about the options presented by the law, we also engage them in shaping the regulations that put the law into effect. Yet while many portions of the new law have already gone into effect, the law is being actively challenged in district courts and by state legislatures. These complex processes are often confusing for consumers.

I am not here to debate the merits of the Affordable Care Act. But I am here to urge you not to add to the confusion by passing HCR 5007 or SCR 1604, either of which could be misleading for consumers in our state.

I acknowledge that the Affordable Care Act raises some legitimate questions about the limits of the federal government's authority and the relationship between the federal government and the states. There is an important place for healthy political discourse and the debate happening across our country can, and should be part of that discourse.

But I would like to point out that the state of Kansas is already actively engaged in this debate. Our newly-elected Attorney General has added Kansas to the list of states that are challenging the constitutionality of the Affordable Care Act in district court.

A number of district court judges have already ruled on the constitutionality of the health reform law – some have said the law is constitutional, while others have ruled it is not. But the ultimate decision will be made by the U.S. Supreme Court. It is almost certain that the U.S. Supreme Court will agree to consider the constitutionality of the Affordable Care Act and decide whether, under our federal constitution, Congress has authority to take such action in the health care arena.

In closing, I wish to reiterate that KHCC recognizes that the Affordable Care Act raises legitimate questions about the limits of federal authority and the relationship between the state and national governments. But we believe the proper place for resolving those questions is through the legal process that is already underway – and which is being initiated by the state's duly-elected Attorney General.

Thank you again for this opportunity to speak and I would be happy to stand for questions.

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