

Amendment No. 11A

Senators BRIGHT, ROSE, MULVANEY, McCONNELL, SHOOPMAN, L. MARTIN, COURSON, CAMPBELL, O'DELL, GROOMS, DAVIS, FAIR, S. MARTIN, PEELER, CROMER, ALEXANDER, MASSEY, VERDIN, BRYANT, HAYES, RYBERG, CLEARY, RANKIN proposed the following Amendment No. 11A (424R018.MTR):

Amend the concurrent resolution, as and if amended, by striking the Concurrent Resolution in its entirety and inserting:

/ A CONCURRENT RESOLUTION

TO AFFIRM THE RIGHTS OF SOUTH CAROLINA

BASED ON THE PROVISIONS OF THE NINTH AND TENTH AMENDMENTS

TO THE UNITED STATES CONSTITUTION.

Whereas, the United States Constitution and the Bill of Rights established a federal government limited in scope and guarantee of personal liberty so that our citizens will be free to pursue their inalienable rights of life, liberty, and the pursuit of happiness as recognized in the Declaration of Independence; and

Whereas, the Ninth Amendment to the United States Constitution provides that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"; and

Whereas, pursuant to the Ninth Amendment, the people are guaranteed the right to privacy as a basic human right; and

Whereas, the delivery, administration and receipt of medical care affects personal privacy and involves the most intimate and personal of choices; and

Whereas, the Tenth Amendment to the United States Constitution provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; and

Whereas, the Tenth Amendment defines the limited scope of federal power as being that specifically granted by the United States Constitution; and

Whereas, pursuant to the Tenth Amendment, by limiting the scope of federal power to only those specifically enumerated in the United States Constitution, the states retain plenary power to govern; and

Whereas, despite the clear limitations placed upon it by the United States Constitution, the federal government has steadily expanded its reach into the lives of our citizens and, in so doing, violates the very principles upon which this nation was founded; and

Whereas, the United States Supreme Court has said that states have great latitude in regulating medical care and standards, which have historically and constitutionally been primary state responsibilities and affect areas of core state responsibility, yet Congress and the President are reaching agreement over legislation that will result in the federal government absorbing the regulation of medical care, stripping the states of most responsibility, and taking away the free choice of the citizens of the states; and

Whereas, the federal government has spent trillions of dollars of borrowed money to run deficits, to bail out financial institutions, to prop-up auto makers, and to keep afloat other private enterprises that were mismanaged, took unnecessary risks, or were unresponsive to market demands, thus amassing a debt that will loom over and burden our country for generations to come; and

Whereas, the federal government habitually responds to its annual budget shortfalls by burdening the states with unfunded mandates, shifting costs for programs to the states, limiting state flexibility, and interfering with state revenue systems, undermining the constitutionally created balance between federal and state government; and

Whereas, the United States Supreme Court has ruled that Congress may not simply commandeer the legislative and regulatory processes of the states, and that states may provide their citizens with protections that exceed the protections by the federal government; and

Whereas, the United States Supreme Court has ruled that the United States Constitution allows states to grant rights to their citizens in their state constitutions, beyond rights granted in the federal Constitution; and

Whereas, the United States Supreme Court has recognized that federal law restricting certain rights may be ineffective in denying those rights protected in state Constitutions; and

Whereas, the federal government is considering legislation that may, among other things, obligate residents in South Carolina and other states to purchase health insurance; and

Whereas, the federal government is considering legislation that may, among other things, mandate that this State and other states increase its spending for Medicaid; and

Whereas, it is vitally important for the future of our nation that the states stand against the relentless expansion of the federal government and restore the proper balance to our federal system. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the General Assembly of the State of South Carolina, by this resolution, claims for the State of South Carolina sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the United States Constitution.

Be it further resolved that it is the policy of the State of South Carolina that:

No law shall interfere with the right of a person to be treated by or receive services from a health care provider of that person's choice;

No law shall restrict a person's freedom of choice of private health care systems or private health care plans of any type;

No law shall interfere with a person's or an entity's right to pay directly for lawful medical services; and

No law shall impose a tax, penalty, or fine, of any type, for choosing a health care provider, to obtain or decline health care coverage or for participation in any particular health care system or plan.

Be it further resolved that it is the policy of the State of South Carolina that the Attorney General will challenge the constitutionality of any provision enacted by the United States Congress that would violate any of the policies established by this resolution and join with other states that are like-minded to make such a challenge.

Be it further resolved that no state agency, agent, department, instrumentality, or subdivision shall cooperate or participate in any way with any mandate passed by Congress upon notification by the Attorney General that the mandate has been successfully challenged in a court of competent jurisdiction, and further provided that there is not an order to the contrary by a court of competent jurisdiction.

Be it further resolved that copies of this resolution be forwarded to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and each member of South Carolina's Congressional Delegation, all at Washington, D.C., and to the Speaker of the House of Representatives and the President of the Senate of the legislatures of the other forty-nine states. /