
SENATE JOINT MEMORIAL 8022

State of Washington 61st Legislature 2010 Regular Session

By Senators Pflug, Stevens, Carrell, Hewitt, Swecker, Delvin, Holmquist, Honeyford, Schoesler, Parlette, King, and Roach

Read first time 01/19/10. Referred to Committee on Health & Long-Term Care.

1 TO THE HONORABLE BARACK OBAMA, PRESIDENT OF THE UNITED STATES, AND
2 TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF
3 REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE
4 UNITED STATES, IN CONGRESS ASSEMBLED, AND TO THE SECRETARY OF THE
5 UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND TO THE
6 GOVERNOR OF THE STATE OF WASHINGTON:

7 We, your Memorialists, the Senate and House of Representatives of
8 the State of Washington, in legislative session assembled, respectfully
9 represent and petition as follows:

10 WHEREAS, The current iteration of House Resolution 3590, the
11 Patient Protection and Affordable Care Act, affords special treatment
12 for the state of Nebraska under the federal Medicaid program henceforth
13 referred to as the "cornhusker kickback"; and

14 WHEREAS, The attorneys general of thirteen states are contemplating
15 raising a legal challenge to the constitutionality of the cornhusker
16 kickback and have petitioned the House Speaker and Senate Majority
17 Leader to remove this unequal treatment from any final version of
18 federal health care legislation; and

19 WHEREAS, It has been widely reported that Senator Ben Nelson's vote

1 was secured only after receiving the special treatment that guaranteed
2 the federal government would pick up the entire cost of any Medicaid
3 expansion in Nebraska; and

4 WHEREAS, The Seattle Times editorial board has called the
5 cornhusker kickback the "preferential treatment of one state in order
6 to buy a vote from that state's senator" and has called for a court to
7 strike this provision down if passed into law; and

8 WHEREAS, The Walla Walla Union-Bulletin editorial board claims that
9 "Nelson essentially took a \$100 million bribe" and Nebraska's own
10 Lincoln Journal Star editorialized that the deal was "The embodiment of
11 what is wrong with Washington" and further called on Congress to push
12 the reset button on health care reform; and

13 WHEREAS, In *Helvering v. Davis*, 301 U.S. 619, 640 (1937), the
14 United States Supreme Court warned that Congress does not possess the
15 right under the Spending Power to demonstrate a "display of arbitrary
16 power"; and

17 WHEREAS, In *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) the
18 Supreme Court stated "that conditions on federal grants might be
19 illegitimate if they are unrelated to the federal interest in
20 particular national projects or programs"; and

21 WHEREAS, It is obvious that the federal interest in House
22 Resolution 3590 is not simply requiring universal health care, but also
23 ensuring that the states share with the federal government the cost of
24 providing such care to their citizens as evidenced by the fact that
25 this legislation would require every state, except Nebraska, to
26 shoulder its fair share of the increased Medicaid costs the bill will
27 generate; and

28 WHEREAS, The provision of the bill that relieves a single state
29 from this new cost-sharing program appears to be not only unrelated,
30 but also antithetical to the legitimate federal interests in the bill;
31 and

32 WHEREAS, Practically speaking, the deal struck by the United States
33 Senate on the "cornhusker kickback" is a disadvantage to the citizens
34 of forty-nine states because every state's tax dollars, except
35 Nebraska's, will be devoted to cost sharing required by the bill, and
36 will be therefore unavailable for other essential state programs; and

37 WHEREAS, Only the citizens of Nebraska will be freed from this
38 reduction of state resources for critical state services and since the

1 only basis for the Nebraska preference is arbitrary and unrelated to
2 the substance of the legislation, it is unlikely that the difference
3 would survive even minimal scrutiny; and

4 WHEREAS, Other provisions that afford special treatment are
5 prevalent in House Resolution 3590 such as the \$300 million Louisiana
6 Purchase which secured Senator Mary Landrieu's vote for health care
7 legislation, in addition to the favorable treatment of Medicare
8 Advantage plans in Florida, New York, and Pennsylvania;

9 NOW, THEREFORE, Your Memorialists respectfully pray that Congress
10 make haste in removing from health care legislation the cornhusker
11 kickback and other current kickback provisions that afford special
12 treatment to individual states while strictly prohibiting any further
13 provisions that would seek to purchase the votes of members of Congress
14 with disparate treatment of a particular state or congressional
15 district.

16 BE IT RESOLVED, That copies of this Memorial be immediately
17 transmitted to the Honorable Barack Obama, President of the United
18 States, the President of the United States Senate, the Speaker of the
19 House of Representatives, and each member of Congress from the State of
20 Washington, the Secretary of the United States Department of Health and
21 Human Services, and the Governor of the State of Washington.

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