

Supreme Court, State of Colorado
Colorado State Judicial Building
2 East 14th Avenue, Suite 400
Denver, CO 80203

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2009)
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE FOR 2009-
2010 #45 ("HEALTH CARE CHOICE")

Petitioners: Dr. Mark Earnest, Peter Leibig, Albert
Schnellbacher, Jr., AARP Colorado, the Colorado
Community Health Network, the Colorado Coalition
for the Medically Underserved, and the Colorado
Consumer Health Initiative,

Respondents: Linda Gorman and Jon Caldara,

and

Title Board: William A. Hobbs; Dan Domenico; and
Dan Cartin

Attorney:
Mark G. Grueskin
Isacson Rosenbaum P.C.
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Atty. Reg. #: 14621

FILED IN THE
SUPREME COURT

APR 14 2010

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

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Case Number:

10SA100

**PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2009-2010 #45**

Dr. Mark Earnest, Peter Leibig, Albert Schnellbacher, Jr., AARP Colorado, the Colorado Community Health Network, the Colorado Coalition for the Medically Underserved, and the Colorado Consumer Health Initiative, (hereafter "Petitioners"), registered electors of the State of Colorado and organizations whose members include registered electors of the State of Colorado, hereby submit this petition for review to appeal the decision of the State Title Board in setting the title for Proposed Initiative 2009-2010 #45.

STATEMENT OF THE CASE

A. Procedural History of Initiative #45.

Linda Gorman and Jon Caldara (hereafter "Proponents") proposed Initiative 2009-2010 #40 (hereafter "#40"). A review and comment hearing was held before designated representatives of the Offices of Legislative Council and Legislative Legal Services to address certain technical and substantive issues raised by this proposal. However, the Title Board agreed that the Proponents made substantial changes, not implicated by the memo or dialogue in the review and comment process, and thus refused to set a title for #40.

The Proponents thereafter submitted Initiative 2009-2010 #45 (hereafter "#45"). A review and comment hearing was not held on #45, as Proponents received a letter from the legislative offices that there were no new technical or

substantive questions to consider, given the Proponents' previous session in which such questions were posed as to #40.

The Proponents submitted a final version of Initiative #45 to the Secretary of State, and the Title Board held a hearing on March 17, 2010 to establish the initiative's single subject and set a title. On March 24, Petitioners filed a Motion for Rehearing alleging violations of the single subject requirement and misleading title issues. Colo. Const., art. V, sec. 1(5.5); §§1-40-106 and 107, C.R.S. At the rehearing on April 7, Petitioners raised the issues addressed by the Motion as well as the lack of jurisdiction of the Board when the Proponents changed their statement of the measure's single subject from all other public statements about their proposal. In response to the Motion for Rehearing and oral argument, the single subject statement in the ballot title was changed, but in other respects, the Motion was denied.

The final initiative text and the final ballot title, as certified by the Secretary, as well as materials presented by Petitioners at the Title Board hearing, are attached hereto as **Exhibit A**.

B. Jurisdiction.

Pursuant to § 1-40-107(2), C.R.S., any person who submits a motion for rehearing to the Title Board or any person who appears before the Board in connection with such motion may appeal the decision on the Title to this Court.

Such appeal must contain certified copies of proposed initiative, the motion for rehearing, and the title set, *see* Exhibit A attached hereto, and must be within five days of the Board's decision. That time period excludes a weekend that intervenes between the Board meeting and the expiration of the five-day period. Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-98 #62, 961 P.2d 1077, 1079 (Colo. 1998). Therefore, this appeal is timely filed.

GROUND FOR APPEAL

In violation of §§1-40-106 and 107, C.R.S., the measure violates the single subject requirement. In addition, the title set by the Board is misleading, does not correctly and fairly express the true meaning of the initiative, does not unambiguously state the principle of the provisions to be added to the Constitution, and will lead to voter confusion. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. The initiative addresses multiple subjects, as it deals with:
 - (a) the applicability of state or federal mandates to participate in any public or private health care plan or benefit;
 - (b) the preservation of the ability of an individual to personally pay health care providers;
 - (c) a new constitutional "right" of "choice" that, according to the Proponents at the rehearing, applies to every aspect of health care.

2. The Title Board lost jurisdiction to set a title when, in the debate over the Petitioners' motion for rehearing, the Proponents made a substantial change in the measure by broadening its stated applicability (i.e., its single subject) from choice in health care payment systems (which had been their position prior to rehearing) to include choice in all aspects of health care as a guaranteed constitutional right.
3. The Title Board lacks jurisdiction over proposals that are administrative in nature, and this measure is merely a constraint on the way in which health care related statutes, regulations, resolutions, and policies are applied by state departments and agencies to avoid results specified in Art. II, § 32(1)(a), (b).
4. The ballot title is prejudicial because it contains an established political catchphrase – "the right to health care choice" – that is intended to and will unfairly characterize the matter in voters' minds.
5. The title is inaccurate, as the measure does not actually "prohibit... the state from adopting any statutes, regulations, resolutions, or policies..." or even address the legislative authority of the General Assembly or the rulemaking or policymaking authority of the executive branch of state government; it merely limits the

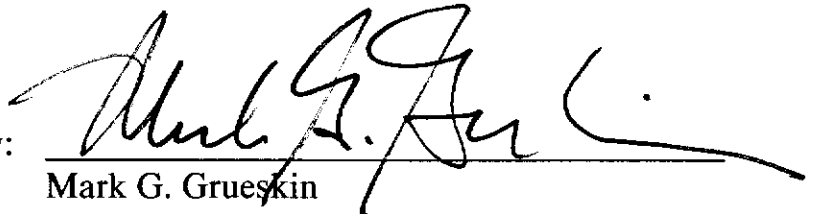
implementation of any adopted measures in manners that would produce the ends listed in proposed Art. II, § 32(1)(a), (b) dealing with insurance mandates and private payments for health care services.

PRAYER FOR RELIEF

Petitioners respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for Initiative #45 comprises multiple subjects or that the Board lacked jurisdiction to set a title and, as such, that such title be remanded to the Board with instructions that the measure be returned to Proponents for failure to comply with the single subject requirement or, alternatively, that the title be corrected to accurately and fairly represent the text of the initiative.

Respectfully submitted this 14th day of April, 2010.

ISAACSON ROSENBAUM P.C.

By: 
Mark G. Grueskin

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Colorado Coalition for the Medically Underserved
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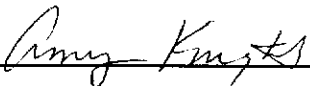
CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2010, a true and correct copy of the foregoing PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2009-2010 #45 was placed in the United States mail, postage prepaid, to the following:

Linda Gorman
5479 S. Locust Street
Englewood, Colorado 80111

Jon Caldara
13952 Denver West Parkway, Suite 400
Golden, Colorado 80401

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 6th Floor
Denver, Colorado 80203



2300802

EXHIBIT A



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **BERNIE BUESCHER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, results of the Title Board hearing, and documents filed by Mark Grueskin for Proposed Initiative "2009-2010 #45".

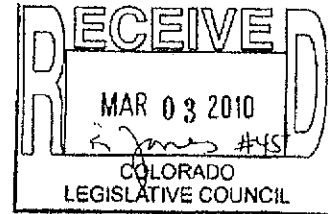
..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 14th day of April, 2010.

A handwritten signature in cursive script that reads "Bernie Buescher". The signature is written in black ink and is positioned above a horizontal line.

SECRETARY OF STATE

Original No
Changes Made
#45

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MAR 05 2010
Colorado Secretary of State



Be it Enacted by the People of the State of Colorado:

Article II of the Constitution of the State of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 32. Right to health care choice.

(1) ALL PERSONS SHALL HAVE THE RIGHT TO HEALTH CARE CHOICE. NO STATUTE, REGULATION, RESOLUTION, OR POLICY ADOPTED OR ENFORCED BY THE STATE OF COLORADO, ITS DEPARTMENTS AND AGENCIES, INDEPENDENTLY OR AT THE INSTANCE OF THE UNITED STATES SHALL:

(a) REQUIRE ANY PERSON DIRECTLY OR INDIRECTLY TO PARTICIPATE IN ANY PUBLIC OR PRIVATE HEALTH INSURANCE PLAN, HEALTH COVERAGE PLAN, HEALTH BENEFIT PLAN, OR SIMILAR PLAN; OR

(b) DENY, RESTRICT, OR PENALIZE THE RIGHT OR ABILITY OF ANY PERSON TO MAKE OR RECEIVE DIRECT PAYMENTS FOR LAWFUL HEALTH CARE SERVICES.

(2) THIS SECTION SHALL NOT APPLY TO, AFFECT, OR PROHIBIT: (A) EMERGENCY MEDICAL TREATMENT REQUIRED BY LAW TO BE PROVIDED OR PERFORMED BY HOSPITALS, HEALTH FACILITIES, OR OTHER HEALTH CARE PROVIDERS; OR (B) HEALTH BENEFITS PROVIDED IN CONNECTION WITH WORKERS' COMPENSATION OR SIMILAR INSURANCE.

(3) "LAWFUL HEALTH CARE SERVICES" MEANS ANY SERVICE OR TREATMENT PERMITTED OR NOT PROHIBITED BY ANY PROVISION OF COLORADO LAW.

(4) THIS SECTION IS INTENDED TO REFLECT AND AFFIRM THE POWERS RESERVED TO THE STATE BY U.S. CONST., amend. X, AND TO IMPLEMENT THE POWERS RESERVED TO THE PEOPLE BY SECTION 1 OF ARTICLE V OF THIS CONSTITUTION.

(5) THIS SECTION SHALL BECOME EFFECTIVE UPON PROCLAMATION BY THE GOVERNOR, SHALL BE SELF IMPLEMENTING IN ALL RESPECTS, AND SHALL SUPERSEDE ANY PROVISION TO THE CONTRARY IN THE CONSTITUTION OF THE STATE OF COLORADO OR ANY OTHER PROVISION OF LAW.

(6) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON, ENTITY, OR CIRCUMSTANCES IS HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED SEVERABLE.

Jon Caldara

13952 Denver West Parkway, Ste 400

Golden, CO 80401

Linda Gorman

5479 S. Locust Street

Englewood, CO 80111

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MAR 24 2010

11:20 AM



Before the Colorado Title Setting Board

ELECTIONS
SECRETARY OF STATE

IN THE MATTER OF THE TITLE AND
THE BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2009-2010 #45 ("HEALTH CARE CHOICE")

Dr. Mark Earnest, Peter Leibig, Albert Schnellbacher, Jr., AARP Colorado, the Colorado Community Health Network, the Colorado Coalition for the Medically Underserved, and the Colorado Consumer Health Initiative, Movants,

v.

Linda Gorman and Jon Caldara, Respondents.

MOTION FOR REHEARING

Dr. Mark Earnest, Peter Leibig, Albert Schnellbacher, Jr., AARP Colorado, the Colorado Community Health Network, the Colorado Coalition for the Medically Underserved, and the Colorado Consumer Health Initiative, registered electors of the State of Colorado and organizations whose members include registered electors of the State of Colorado, submit this Motion for Rehearing, through their counsel, Isaacson Rosenbaum P.C., to reconsider the jurisdiction of the Title Board to act in this matter and to reconsider the language used in the title and ballot title and submission clause, set at the March 17, 2010 meeting of this Board.

1. The Title Board lacks jurisdiction over this measure, as the initiative violates the single subject requirement. Colo. Const., art. V, sec. 1(5.5). The subjects of this measure include:
 - (a) creating a general exception to federal laws dealing with health care payment systems for persons in Colorado;
 - (b) prohibiting implementation of any *state* government mandates to purchase any health insurance product or participate in any public or private health care plan or benefit;
 - (c) prohibiting implementation of any *federal* government mandates to purchase any health insurance product or participate in any public or private health care plan or benefit;
 - (d) prohibiting implementation of any *state* law, regulation, or policy that would limit a person's ability to privately purchase or sell any lawful health care services;
 - (e) prohibiting implementation of any *federal* law, regulation, or policy that would limit a person's ability to privately purchase or sell any lawful health care services; and

(f) expanding accepted lawful health care services to include those that are "not prohibited by Colorado law."

2. The Title Board lacks jurisdiction over a measure that is, by its express terms, contrary to the Supremacy Clause, Art. VI of the United States Constitution. *See Morrissey v. State*, 951 P.2d 911, 914-15 (Colo. 1998) (initiative is void where it is expressly inconsistent with U.S. Constitution); *Brubaker v. Board of County Comm'rs*, 652 P.2d 1050, 1056 (Colo. 1982) ("a veto power (of a valid federal law) is not consistent with the Supremacy Clause" and thus is void).

3. The Title Board lacks jurisdiction over proposals that are administrative in nature, and this measure addresses the application of health care related statutes, regulations, resolutions, and policies by state departments and agencies in ways specified in Art. II, § 32(1)(a), (b). *See Idaho Springs v. Blackwell*, 731 P.2d 1250, 1253-54 (Colo. 1987) (rule limiting pre-election judicial review of initiatives does not apply where "the electorate exceeds the proper sphere of legislation and instead attempts to exercise administrative or executive powers," the latter being "invalid").

4. The Title Board lacks jurisdiction over a proposed measure that addresses legislative resolutions, and this initiative, as a matter of its express terminology, seeks to deprive legislative resolutions of their intended legal effects. *See Prior v. Noland*, 188 P. 729, 731 (Colo. 1920) (Article V, section 1 rights of initiative and referendum rights do not apply to legislative resolutions).

5. The title violates C.R.S. § 1-40-106(3)(b) because it is misleading, likely to create confusion among voters, does not correctly and fairly express the true intent and meaning of the initiative, contains a catch phrase that is intended to prejudice public consideration of the measure, and fails to correctly and fairly express the true intent and meaning of the measure or unambiguously state the principle of the provision sought to be added to the Constitution.

(a) The following omissions render the title misleading:

(I) ", directly or indirectly," after "person" in the fourth line;

(II) "any" (rather than "a") to modify "public or private health" in that line;

(III) "or benefit" after "coverage" in that line;

(IV) "by law" after "required" in the seventh line;

(b) The title is inaccurate, as the measure does not "prohibit... the state from adopting any statutes, regulations, resolutions, or policies..."; it prohibits administration of such measures in a manner to produces the ends listed in Art. II, § 32(1)(a), (b).

(c) The "right of all persons to health care choice" is misleading, as the measure prohibits certain "choices," such as the choices to have universal health care coverage or a single payer health care plan.

(d) The "right of all persons to health care choice" is a prohibited catch phrase.

(e) The inclusion of a new and controversial legal standard through the definition of "lawful health care services" (which would include not only those health care

services that are "permitted" but also those that are "not prohibited by any provision of Colorado law") must be reflected in the title.

WHEREFORE, the Title Board should return Initiative 2009-2010 #45 to its sponsors to be corrected for jurisdictional defects before it is resubmitted for the Board's consideration, or the Board should revise the title, if that is possible, in ways that are consistent with this Motion.

Respectfully submitted this 24th day of March, 2010.

ISAACSON ROSENBAUM P.C.

By. 

Mark G. Grueskin

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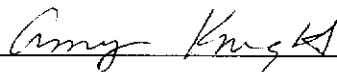
Colorado Consumer Health Initiative
1536 Wynkoop St., #101
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 2010, a true and correct copy of the foregoing **MOTION FOR REHEARING** was served via United States Mail, postage prepaid, to the following:

Linda Gorman
5479 S. Locust Street
Englewood, CO 80111

Jon Caldara
13952 Denver West Parkway, Suite 400
Golden, CO 80401



227860

Ballot Title Setting Board

Proposed Initiative 2009-2010 #45¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning the right of all persons to health care choice, and, in connection therewith, prohibiting the state independently or at the instance of the United States from adopting or enforcing any statute, regulation, resolution, or policy that requires a person to participate in a public or private health insurance or coverage plan or that denies, restricts, or penalizes the right or ability of a person to make or receive direct payments for lawful health care services; and exempting from the effects of the amendment emergency medical treatment required to be provided by hospitals, health facilities, and health care providers or health benefits provided under workers' compensation or similar insurance.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the right of all persons to health care choice, and, in connection therewith, prohibiting the state independently or at the instance of the United States from adopting or enforcing any statute, regulation, resolution, or policy that requires a person to participate in a public or private health insurance or coverage plan or that denies, restricts, or penalizes the right or ability of a person to make or receive direct payments for lawful health care services; and exempting from the effects of the amendment emergency medical treatment required to be provided by hospitals, health facilities, and health care providers or health benefits provided under workers' compensation or similar insurance?

Hearing March 17, 2010:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 9:48 a.m.

Hearing April 7, 2010:

Motion for Rehearing denied.

Hearing adjourned 12:31 p.m.

¹ Unofficially captioned "**Health Care Choice**" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Filed by
Mark Gravesken

Patient Power

Because your health care is too important to be left to politicians.

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Colorado Secretary of State

Health care talking points by Frank Luntz

May 18th, 2009 | by Brian Schwartz |

It's not enough to know how government meddling in medical insurance markets and medical care has driven up costs and leaves us vulnerable to huge medical costs. You have to present it right. Political consultant [Frank Luntz](#) has some suggestions, as reported in [Politico](#). Some points that I liked when addressing how politicians (Democrats in this case) pushing for more government involvement in health care with a "public plan":

—"It could lead to the government setting standards of care, instead of doctors who really know what's best."

—"It could lead to the government rationing care, making people stand in line and denying treatment like they do in other countries with national healthcare."

- "President Obama wants to put the Washington bureaucrats in charge of healthcare. I want to put the medical professionals in charge, and I want patients as an equal partner."

...

(2) Acknowledge the "crisis" or suffer the consequences. If you say there is no healthcare crisis, you give your listener permission to ignore everything else you say. It is a credibility killer for most Americans. A better approach is to define the crisis in your terms. "If you're one of the millions who can't afford healthcare, it is a crisis." Better yet, "If some bureaucrat puts himself between you and your doctor, denying you exactly what you need, that's a crisis." And the best: "If you have to wait weeks for tests and months for treatment, that's a healthcare crisis."

...

(4) The arguments against the Democrats' healthcare plan must center around "politicians," "bureaucrats," and "Washington" ... not the free market, tax incentives, or competition. Stop talking economic theory and start personalizing the impact of a

*Filed by
Mark
Gruenke*

Exhibits used in hearing on Initiative 2009-2010 #45

1. <http://www.youtube.com/watch?v=jnnSymnbno0>
2. <http://www.chcchoices.org/about.html>
3. <http://www.journalgazette.net/article/20090814/EDIT05/308149932/1147/EDIT07>
4. http://www.aurorasentinel.com/articles/2010/01/29/opinion/letters_to_the_editor/doc4b6337200ed28406162129.txt
5. http://www.youtube.com/watch?v=pDfMHA_K39A&feature=player_embedded
6. http://www.youtube.com/watch?v=i9UT9hRN8m0&feature=player_embedded
7. <http://www.factcheck.org/2009/06/more-health-care-scare>
8. http://www.salon.com/news/politics/war_room/2009/05/06/luntz
9. <http://wonkroom.thinkprogress.org/2009/05/26/luntz-does-not-matter/>
10. <http://wonkroom.thinkprogress.org/wp-content/uploads/2009/05/frank-luntz-the-language-of-healthcare-20091.pdf>

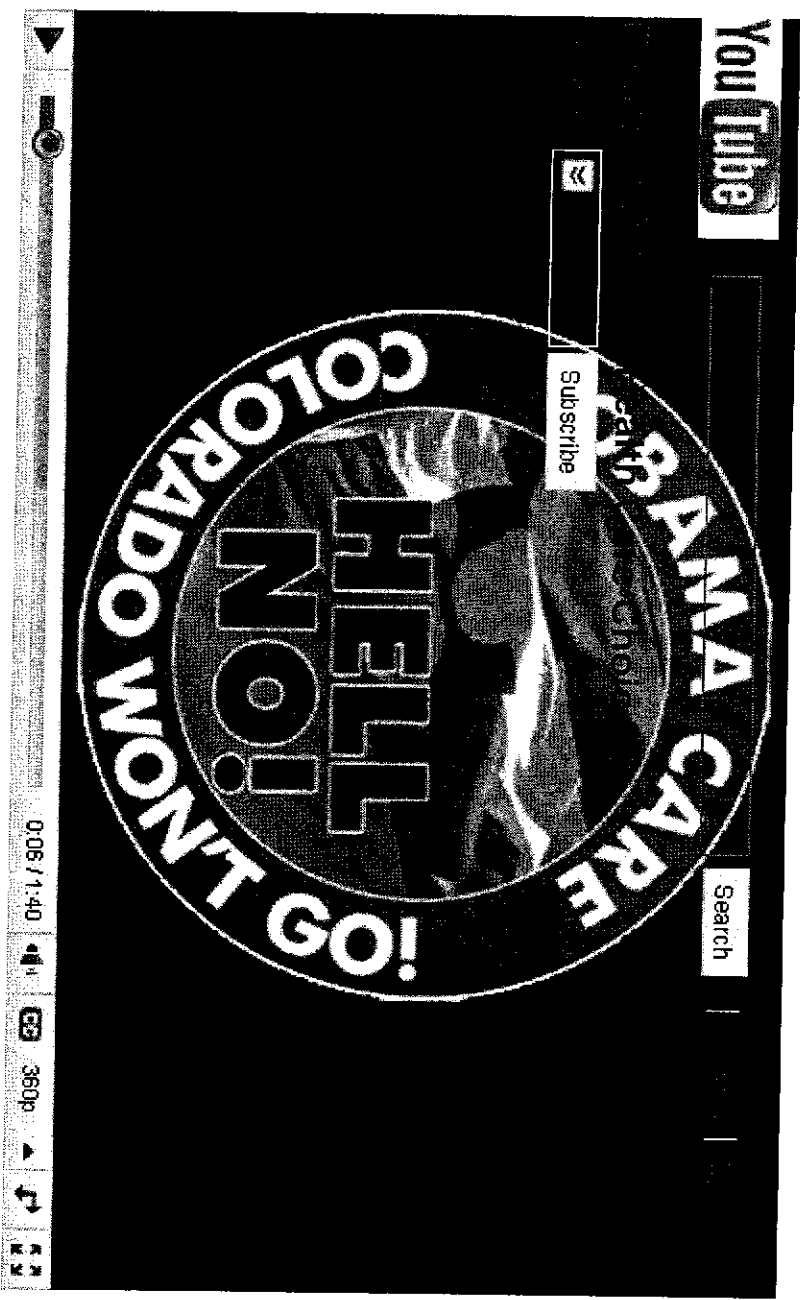
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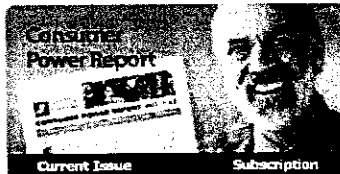
ABOUT CHCC

- Consumer Power Report
- Praise for Consumer Power Report
- Third Annual Members Meeting and Awards Banquet
- Membership Benefits Summary
- Membership Brochure
- Membership Reply Form

CHCC Staff

Scandlen, Greg
Founder and Director

Knox, Robin
Liaison/Assistant



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About Consumers for Health Care Choices

Consumers for Health Care Choices (CHCC) is a national nonprofit organization devoted to empowering health care consumers to preserve individual freedom and the quality of care in America's health care system. CHCC brings doctors, insurers, privacy advocates, health care entrepreneurs, and consumers together in a single organization that communicates effectively to policymakers, civic and business leaders, opinion leaders, and the general public.

CHCC was founded in 2005 by Greg Scandlen. In 2008 it merged with The Heartland Institute, a national nonprofit organization founded in 1984 with a long-standing interest in health care policy. It was a merger of strengths--CHCC's grassroots base, weekly e-newsletter (Consumer Power Report), and Scandlen's expertise, writing, and speaking abilities as a health care expert, and Heartland's national monthly outreach publication, Health Care News, and fully staffed public relations and government relations staffs. Contributions, made payable to The Heartland Institute, are tax deductible.

It's Our Money. It's Our Health!

We Americans have long relied on institutions to organize and administer our health care. We have turned our money over to government, insurance companies, and our employers in the form of taxes, premiums, and lost wages, in the belief that they would do a good job of managing that money to deliver affordable quality health care services to our families. But they have made a mess of it.

Today, we have a health care system that is bureaucratic, inefficient, inconvenient, of questionable quality, and far too expensive. Our trust has been misplaced.

It is time to take our money back so we can spend it on the services and products that will deliver the most value. The institutions we once trusted cannot be trusted to reform themselves. We need to build a system that delivers quality care, conveniently, in keeping with our personal values. No one else cares about the well-being of our own families as much as we do.

Put the Consumer in the Driver's Seat!

Consumers for Health Care Choices is a national grassroots organization of men and women who are dedicated to putting consumers in the driver's seat of the health care system, as we are in all other aspects of our lives. We are small business owners, physicians, insurance brokers, patient advocates, economists, and just plain health care consumers who are united by the urgency of transforming health care -- NOW!

How Do We Go about It?

Change can come only through education based on sound principles and actionable ideas. This is not directed just at politicians, but at all Americans to create a new way of thinking about health care. It relies on consumer choice in a competitive market, as we have in all other areas of our lives. This means:

- The tax code should be neutral on how we finance our health care.
- We should be able to choose the coverage we prefer.
- We should own our own insurance coverage and take it with us when we

Three Ways to Give!

If you have any questions about membership, please contact **John O'Hara**, membership manager, at 312/377-4000.

Mail or Fax -- Click [here](#) for a printer-friendly membership form

Phone -- Have your credit card handy and call 312/377-4000

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One-Time Donation

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ex 7

change jobs.

- There should be a wide variety of service providers to choose from.
- We should know exactly what the prices are of the services we buy.
- Innovation and convenience should be encouraged and rewarded.
- Subsidies should be targeted only at people with special financial or medical needs.

Much of this Is Already Underway

- Insurers are offering Health Savings Accounts and other policies that put consumers in control of their health care choices and spending.
- New ways of delivering care are entering the market, including retail clinics, concierge medicine, specialty hospitals, and even medical tourism.
- Price transparency and information services are growing throughout the system.

The Revolution Has Begun!

But we aren't out of the woods yet. Many politically influential people hate the whole idea of consumer choice. They believe a committee of experts should make all health care decisions, including exactly what services you should be allowed to have, when you should get them, and who should provide them. These "experts" don't trust you to make decisions, even on your own health or how to spend your own money. They believe the problem in health care is not that there isn't enough choice, but that there is too much choice. These people are well organized and very well financed.

This will be the biggest battle of the twenty-first century -- the struggle over who controls health care: you and 300 million other American consumers? Or a small privileged elite of academics and bureaucrats?

Which Side Are You On?

If you believe in freedom and personal empowerment, join us!

Your active support is critical to the success of this revolution in health care. Consumers for Health Care Choices is only as strong as we have members to support us. We often call on our members to speak at events, write letters to the editor, attend hearings and conferences, and provide us with information and intelligence on what is and is not working out in the real world.

We are no mere policy shop, but a national grassroots network of people who are dedicated to restoring freedom of choice and market dynamics to our health care system.

[Click here to see a summary of benefits](#)

Contact Us!

Greg Scandlan
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Published: August 14, 2009 3:00 a.m.

Proposed overhaul would kill health care choice

Peter Ferrara

President Obama says a cornerstone of his health care overhaul plan is that if you like the health insurance you have today, you will be able to keep it.

But if you now have employer-provided insurance, the Obama health plan provides plenty of incentives for your employer to dump you into the proposed public option, government insurance plan, and pay the 8 percent payroll tax for that instead. If the employer's workforce averages \$50,000 a year in wages, the payroll tax will cost the employer only \$4,000 per worker per year, which may be considerably less than the health coverage he or she currently provides employees.

In addition, the health choices commissioner may decide your employer's plan is not "qualified" under the government standards because it doesn't cover all mandated treatments and procedures or requires too much cost-sharing by the employee. Your employer could be fined for every day the "violation" continues and be prohibited from enrolling new employees. This would encourage your employer to dump your coverage.

Even if you purchase health insurance directly on your own, you won't be able to keep it if your insurer is driven out of business by the government health plan. A big reason that will happen is that the government has the power to dictate what it will pay doctors and hospitals. Medicare now pays doctors almost 20 percent below market rates, and hospitals more than 30 percent below market. Medicaid pays 30 percent to 40 percent less than Medicare.

The health reform bills now pending in Congress allow the government public option to pay doctors and hospitals under the Medicare rates to start, and the government is expressly given the power to change that over time and pay even less.

Private health plans will not be able to compete with a government public option plan that has lower costs because it dictates lower payment rates to doctors and hospitals. In addition, the experience with Medicaid and Medicare has been that these government plans drive up the cost of private health plans as doctors and hospitals underpaid by the government plans try to recover the losses by charging more to privately insured patients.

That would further aggravate the competitive disadvantage imposed on private health plans forced to compete with the government plan.

The Lewin Group, an independent health care consulting firm, estimates these factors would push up the cost of private health insurance for family coverage under the House bill by \$2,148 a year in 2010 as compared to the public option. That's a competitive disadvantage of almost 25 percent.

Obama's health plan also will greatly restrict choice, because the government will force you to buy the health plan it decides you must have. That plan would reflect

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| Comcast | 18.72 | -0.10 |
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ex 3

the lobbying of many special-interest groups insisting on coverage for the services or treatments they help to produce or that may benefit them financially. That means you will have to pay for all the benefits the government decisions require even if you don't want them.







Obama also repeatedly says that under his health plan, if you like your doctor, you will be able to keep him or her. But the question is whether under his plan, with the government so sharply underpaying the doctors, your doctor will be willing to keep you.

You'll also lose the choice of any health care the new government bureaucracy decides is waste, or not cost-effective, or that the market no longer provides because the government won't pay enough for it, including new cutting-edge, restorative, pain-relieving or life-saving miracle drugs.

The reality is that the Obama health plan would be the death knell for consumer choice in health care.

Peter Ferrara is director of entitlement and budget policy at the Institute for Policy Innovation in Texas and author of a new Heartland Institute policy study, "The Obama Health Plan: Rationing, Higher Taxes, and Less Care." He wrote this for selected newspapers throughout the country.

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Other Voices: Why we're 'crazy' about health care choice

By LINDA GORMAN AND BRIAN T. SCHWARTZ

Published: Friday, January 29, 2010 12:47 PM MST

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Why we're "crazy" about health care choice

The *Aurora Sentinel* Editor Dave Perry dismisses the Colorado Right to Health Care Choice Initiative as "crazy" and says its supporters "clearly have lost" their minds (Opinion, January 21).

The Initiative would prohibit Colorado government from requiring you to purchase health insurance.

Mr. Perry thinks that mandatory insurance is justified because "those without health insurance are driving up the cost of health care for every American." But these added costs are trivial compared to the amount that mandatory insurance would increase premiums and taxes.

According to a 2008 Urban Institute study, "Private insurance premiums are at most 1.7 percent higher because of the shifting of the costs of the uninsured to private insurers." In Colorado this was about \$85 annually per insured person in 2008. "Uninsured patients actually pay a higher proportion of their emergency department charges than Medicaid does," says Renee Hsia, an ER doctor and co-author of a 2007 peer-reviewed study.

To provide mandatory coverage, ObamaCare expands Medicaid. Medicaid already increases your insurance premiums. "Inadequate reimbursements by programs such as Medicare and Medicaid increase the annual cost of covering a family of four by \$1,788," reports Bloomberg.

Mr. Perry says ObamaCare would benignly "require everyone in the country to sign up for either free Medicaid, cheap Medicare," or "a cheap or expensive private policy."

Mr. Perry's "free Medicaid" costs \$3 billion each year, more than \$850 per Coloradoan filing a tax return. Under ObamaCare, Medicaid spending would increase by an estimated billion dollars from 2014 and 2019.

Nor is Medicaid "free" for recipients. Its reimbursements are so low and its regulations so burdensome that doctors are five times more likely to refuse seeing new Medicaid patients than privately-insured patients. Medicaid also ensnares recipients in a poverty trap, Working toward higher-paying jobs can make them ineligible for "free" benefits and negate any increased income.

As for Mr. Perry's "cheap Medicare," its hospital fund is on track to be insolvent by 2017, according to the 2009 Medicare Trustees' Report. Sustaining solvency for the next 75 years would require the payroll tax to more than double, from 2.9 percent to 6.8 percent, or an immediately cutting benefits by 53%.

Mr. Perry's "cheap private policy" would not exist. Cheap policies become illegal under mandatory insurance. In Massachusetts politicians have so warped health insurance by using it as a vehicle of forced charity, that a policy costing \$308 per month in Ft. Collins costs \$862 a month in Worcester, Massachusetts. Massachusetts has banned individual policies with deductibles exceeding \$2,000. They are not "credible coverage." "More than 200,000 people with health insurance would have to buy additional coverage to meet proposed minimum standards," reports the Boston Globe.

Mr. Perry does not mention that ObamaCare would force young people to pay higher premiums so that older people — who are often wealthier — can pay less. WellPoint estimates that the Senate Bill would increase premiums for younger healthy people by 123 percent and those in average health by 41 percent.

Finally, Mr. Perry claims that the AARP and AMA's endorsements of "reform" demonstrate its merit. A more astute observer would note that both groups have government as their major customer. AARP sells insurance that plugs the holes in Medicare. By killing Medicare Advantage, ObamaCare will increase demand for AARP products.

The AMA enjoys substantial revenues from publications that show people how to bill Medicare. Fewer than three in ten American physicians are members. Three past AMA presidents and eleven state medical societies oppose the Senate Bill, as do professional societies representing neurological surgeons, breast surgeons, and general surgeons.

Along with stopping mandatory insurance purchase, the Right to Health Care Choice allows people to buy more affordable policies sold in other states. Thirty states have less expensive small-group premiums than Colorado. If governments did not shield insurers from interstate competition, "12 million previously uninsured" Americans would have coverage according to University of Minnesota economists.

You have the right to buy the best available insurance policy for you and your family. You also have the right to donate to charities of your choice. The Health Care Choice Initiative would protect you from politicians who want to deprive you of choice and increase your insurance premiums and taxes.

What is so crazy about that?

Linda Gorman directs the Health Care Policy Center at the Independence Institute, and Brian T. Schwartz writes for the Institute's PatientPowerNow.org blog.

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The Late Show - Top Ter

"Old Joke"
YouTube
Posted June 16, 2009

Audio

It's an old joke: "I'm from the government, and I'm here to help." But applied to health care, it can mean taking away your choice.

Some want the government to offer a health insurance plan. But experts say, a government plan could result in 119 million Americans coming off their existing coverage.

They'd end up on a government-run plan, leaving no choice. And that's no joke.

Tell Congress, any plan that takes away your choice in health care is not an option.

Visual

Talking head, Rick Scott, Conservatives for Patients Rights (CPR)

Newspaper article, highlighting "The End of Private Health Insurance" and "119 million coming off coverage" in yellow.

Stamp of "No Choice" in red box.

Rick Scott; background says, "Tell Congress: Any Plan That Takes Away Your Choice is Not an Option. 202-224-3121
CPR logo
Paid for by Conservatives for Patients Rights"

http://www.youtube.com/watch?v=pDfMHA_K39A&feature=player_embedded

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HEALTH CARE CHOICES

www.CPRights.org

0:01 / 0:31 360p

45
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EX 6

The image shows a YouTube video player interface. At the top left is the YouTube logo. To its right is a search bar labeled "Search". Below the search bar, the video content is displayed. The video shows a bulldozer with the words "CPR RIGHTS" written on its side in large, bold letters. Above the bulldozer, there are buttons for "Rights" and "Subscribe". At the bottom of the video frame, the URL "www.CPRights.org" is visible. Below the video frame is a video player control bar with a play button, a progress slider, and a timestamp "0:10 / 0:31". To the right of the slider are icons for volume, resolution "360p", and other video controls.



45
Me

"Bulldozer"
YouTube
Posted June 4, 2009

Audio

There are hundreds of choices in health care plans today.

But imagine this as the massive, government-run insurance plan some in Congress want.

This government-run plan could crush all your other choices, driving them out of existence.

Resulting in 119 million off their current insurance coverage.

Leaving no choices in health insurance.

And government in control of your health care.

It's not too late. Protect your health care choices. Tell Congress to say "no" to a government-run plan.

Visual

"HEALTH CARE CHOICES"
in blue

Bulldozer with words,
"GOVERNMENT-RUN
INSURANCE PLAN"
written on the side

Bulldozer destroys words,
"HEALTH CARE CHOICES"

Bulldozer pushing words,
"119 Million OFF Coverage"

Bulldozer pushing words,
"Leaving NO Choices"

Bulldozer pushing words,
"GOVERNMENT Control"

Rick Scott; CPR logo
Background that reads:
"Tell Congress: No government-
Run Health Care
202-224-3121
Paid for by Conservatives for
Patients Rights"

http://www.youtube.com/watch?v=i9UT9hRN8m0&feature=player_embedded



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More Health Care Scare

Could a public insurance plan spell the end of private insurance companies?

June 11, 2009

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Summary

A new ad from Conservatives for Patients' Rights says that a public health insurance plan now being proposed in Congress "could crush all your other choices, driving them out of existence, resulting in 119 million off their current insurance coverage."

That's misleading. The 119 million figure comes from an analysis of a plan that would mirror Medicare and be open to every individual and business that wanted it. But that's not the type of public plan President Obama has proposed. Nor is such a plan gaining acceptance on Capitol Hill.

The author of the study says that while some have backed the Medicare-like proposal, using the 119 million number "overstates the impact of what now is being considered."

The ad also falsely cites the *New York Times* as the source of a statement that what's being proposed would leave no consumer choices and "government in control of your health care." The *Times* didn't say that at all. The newspaper was just quoting claims made by insurance companies and members of Congress.

Analysis

The group Conservatives for Patients' Rights is spending money on the airwaves again, this time warning Americans that the ability to buy health coverage through a public plan — an idea being debated on Capitol Hill — would leave them with "no choices in health insurance." We wrote about one of CPR's ads in April. The new TV spot is a step up from the last effort, but still misleading.

The ad, which began airing this week on CNN and Fox News, asks viewers to "imagine" that a bulldozer is "the massive, government-run insurance plan some in Congress want." Citing a study by the Lewin Group, it says: "This government-run plan could crush all your other choices, driving them out of existence, resulting in 119 million off their current insurance coverage."

CPR Ad: "Bulldozer"

[Click to expand/collapse the full transcript](#)

The study does include the 119 million number, but "this government-run plan" that the ad refers to is one of six possibilities the Lewin Group analyzed, and the most extreme version of a public plan at that. The type of public plan necessary to cause 119 million people to move from private insurance to a considerably cheaper public option doesn't appear to be gaining traction in Congress. And it isn't what President Obama has proposed. It's certainly true, as the ad says, that "some" legislators have backed a Medicare-like public plan that could undercut private insurers, but casual viewers could easily miss that qualification. As John Sheils, senior vice president of the Lewin Group, says of using the 119 million figure, "In a sense it overstates the impact of what now is being considered on the Hill. But at the same time, it would be really disingenuous for people to say, well, we never meant to do that."

The Lewin Group is part of a subsidiary of UnitedHealth Group, which owns the insurer United Healthcare. It says it operates with "editorial independence," and we've often referred to its studies. This report, published April 6, looked at several options for a public plan, including one that would pay health care providers at Medicare-level rates (i.e., a plan that would pay doctors and hospitals less and have much cheaper premiums than private insurance) and be open to all individuals and all businesses. The Lewin Group said such a plan "would enroll about 131.2 million people (includes some uninsured who become covered). The number of people with private health insurance would decline by about 119.1 million people." Attracted to a less costly insurance plan — premiums would be about 30 percent less than those offered by private insurers — businesses, and individuals, would make the switch first, then some private insurers could go out of business, not the other way around, as the ad says. But the study looked at several variations in how a public plan could be structured — at the low end, one type of plan would cause only 10.4 million to move off their current coverage.

The report prominently notes that the type of public plan President Obama proposed on the campaign trail would be available only to individuals, the self-employed and small employers — not

FACTCHECK RADIO

In **Episode 5** of our podcast, we look into Republican claims that the new health care law will require the IRS to hire 16,500 agents — and GOP Rep. Ron Paul's claim that they'd all be carrying guns. We also discuss health care ads from liberals and conservatives, and claims about the federal student loan program.

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A: The law says individuals who get federal subsidy dollars must use their private money to pay for coverage of abortion except in cases of rape, incest or to save the life of the mother. Claims that the new law will lead to a large increase in the number of abortions lack support.

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FactCheck Mailbag, Week of March 23-March 29

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EX 7