



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 8, 2011

The Honorable Elfreda Higgins
Idaho State Representative
Statehouse
VIA HAND DELIVERY

Re: Constitutionality of RS 20315 – Our File No. 11-35785

Dear Representative Higgins:

This letter responds to your February 7, 2011 request for “a ruling on the constitutionality of RS 20315.” The Attorney General does not issue such “ruling[s]” with respect to proposed legislation. However, this Office does provide brief analyses of constitutional issues that may be raised by proposed legislation. These analyses are preliminary in nature given the time constraints under which they are prepared and the difficulty that often attends assessing constitutional questions in the absence of a factual record related to a law’s actual application. They do not reflect the formal opinion of the Attorney General and thus have no legally binding significance. The analyses are offered only to assist legislators in determining whether to offer, support or oppose proposed legislation.

RS 20315 has as its overall purpose precluding the State of Idaho and its political subdivisions from enforcing or otherwise participating in the Patient Protection and Affordable Care Act (“PPACA”), Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029 (2010). In carrying out this purpose, RS 20315

- declares the PPACA and amending laws unconstitutional;
- prohibits “the state of Idaho including, but not limited to, any of its departments, political subdivisions, courts, public officers or employees thereof” from enforcing the PPACA through, *inter alia*, “establish[ing] any program” or “promulgat[ing] any rule, policy, guideline or plan”;
- prohibits the State and any political subdivision from entering into any agreement or obligation to enforce the PPACA or providing assistance or resources to the United States to enforce the statute;

- prohibits the State and any political subdivision from accepting or expending monies “related to” the PPACA’s implementation; and
- makes unenforceable in Idaho any “order of judgment, writ or levy of execution” against the State or its residents “to collect amounts adjudged due or assessed . . . for failure to comply with any [PPACA] provision.”

The draft bill additionally would provide a private right of action for injunctive relief, with attorney fees and costs awarded to the prevailing party.

As you are aware, the United States District Court for the Northern District of Florida recently issued a decision that declared the PPACA unconstitutional in its entirety. *Florida v. USDHHS*, No. 3:10-cv-91-RV/EMT, 2011 WL 285683 (N.D. Fla. Jan. 31, 2011). Idaho was among over two dozen States that participated as plaintiffs in that litigation. This Office anticipates that the Federal Government will appeal from this decision to the Eleventh Circuit. Other federal district courts have addressed the statute’s validity with differing or contrary holdings, and there appears little doubt that the United States Supreme Court will be called upon to determine whether the PPACA reflects valid exercise of Congress’ Commerce Clause authority—particularly with regard to the “individual mandate” requirement. The Idaho Legislature has no power to issue a binding determination of the statute’s constitutionality; that is exclusively a judicial function.¹ The legislative declaration of the PPACA’s unconstitutionality in RS 20315 thus would have no legal force or effect.

The Legislature does have substantial control over the exercise of otherwise valid discretion by the State and its political subdivisions. See *Ysursa v. Pocatello Educ. Ass’n*, 129 S. Ct. 1093, 1101-02 (2009). Provisions in RS 20315 that would constrain the power of state or local government to participate in optional provisions of the PPACA, if any such provisions remain after a final judicial determination of the federal law’s validity, could be given effect. This Office cannot predict with assurance which PPACA provisions, again if any, will fall into that category.

One potentially problematic provision in RS 20315 is its denial of enforceability to any judgment or order related to the collection of monies owed by virtue of non-compliance with PPACA. This provision could lead to significant constitutional questions under not only the Full Faith and Credit Clause of the United States Constitution, Art. IV, § 1, but also the Contract Clauses in the federal and state constitutions, U.S. Const., Art. I, § 10, and Idaho Const., Art. I, § 16. See also 28 U.S.C. § 1738 (federal Full Faith and Credit Act); cf. Article VI, cl. 2 (Supremacy Clause). Whether these potential constitutional difficulties actually would arise, however, cannot be assessed in the abstract.

¹ *Marbury v. Madison*, 1 Cranch 137, 177 (1803); *Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958).

An additional legal ramification that must be considered as RS 20315 is contemplated is its effect on existing and future Idaho participation in the Medicaid Program.² As a purely voluntary program,³ Idaho's refusal to comply with the expanded provisions within the PPACA could potentially result in Idaho exiting the program and losing the existent federal matching funds. This could create a situation where individuals presently covered would no longer be covered, yet still require medical treatment, which likely would be required to be provided for and paid for through some non-federal means. This situation, in turn, could create an intense burden on the State's budget. In sum, the Legislature may wish to consider whether its adoption of RS 20315 has the practical and legal effect of opting Idaho out of Medicaid and its attendant federal funding.

Finally, it appears that the State has entered into various grant arrangements with the responsible federal agencies under the auspices of the PPACA. The precise effect of RS 20315, if eventually introduced and enacted in its present form, on those or future grants must be assessed on individual grant-by-grant basis. Such an assessment is outside the scope of your request, but it is a matter that the Legislature may wish to review in the course of considering the proposed bill.

I hope that this brief response to your inquiry is adequate. Please contact me with any questions.

Sincerely,



BRIAN KANE
Assistant Chief Deputy Attorney General

BK/tjn

² This example is illustrative of potential legal ramifications regarding similarly provided for programs within the PPACA. Given the time constraints, it is impossible for this Office to catalog each of these potential issues, and we would recommend consultation with the relevant state agencies as well as with the Governor's Office to determine the ultimate scope and effect.

³ *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 502 (1990); *Fla. Ass'n of Rehab. Facilities v. Florida Dep't of Health & Rehab. Servs.*, 225 F.3d 1208, 1211 (11th Cir. 2000).