

# Commentary Nullification is just another waste of time

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Health care could be the defining issue of the 2012 legislative session. But how will lawmakers choose to define the issue?

They should not fixate on revisiting one of the most tiresome and pointless arguments of the 2011 session - making another wrongheaded run at "nullification," pursuing the thoroughly disproven legal notion that states can ignore federal health care law.

There are rumblings that lawmakers will introduce a nullification bill again in 2012.

As long as lawmakers are talking about repeating this folly, it's worth repeating that the nullification concept has been rejected by federal courts since the Civil War era. In the 1950s, in deciding on a public school desegregation, the U.S. Supreme Court said, all but verbatim, that states cannot nullify federal law, Attorney General Lawrence Wasden said.

Let's say, for argument's sake, that Wasden's wrong - since some lawmakers are convinced they know more about the law than their elected lawyer does. What then?

As Wasden calmly and reasonably points out, the state has already pursued every appropriate avenue for exercising its opposition to the 2010 health care law.

The 2010 Legislature passed the Idaho Health Freedom Act, which ordered the state to file a federal lawsuit aimed at overturning the health care law. Twenty-seven states are party to the lawsuit; the U.S. Supreme Court is expected to rule by summer.

The state, meanwhile, has refused to accept federal dollars that the state would have to use to implement Uncle Sam's health care law. This occurred through an executive order signed by Gov. C.L. (Butch) Otter - although he gave himself the ability to approve waivers and accept federal dollars.

This waiver, in turn, dovetails into the one important health care debate that could occur next legislative session. Siding with some of the state's most prominent business groups, Otter wants to establish a state-run health insurance exchange catering to individuals or small businesses seeking coverage.

If the state doesn't establish its own exchange, the feds will step in and do it. But in order to set up a state exchange, Otter would like to use \$20.4 million in federal money.

The nullification debate lends itself to posturing and hack political theater. However, the outcome of the health exchange issue will directly affect Idahoans - their pocketbooks first, and ultimately their health.

Does the state want to chart its own course, crafting a plan to make health insurance more affordable and more easily accessible, or would it rather outsource this vital function to the feds? For the lawmakers who oppose a state-run exchange, what is their vision for making coverage available to the state's uninsured population? Do they have a specific plan?

Any time spent rehashing the nonstarter issue of nullification is time that will not be spent debating health exchanges. Or, put bluntly, it would be wasted time.

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