

# Wyo. voters get say on Obamacare mandate

THE AMENDMENT THAT APPEARS ON WYOMING BALLOTS NOV. 6 IS UNLIKELY TO HAVE ANY REAL IMPACT OTHER THAN TO SEND A MESSAGE TO D.C., EXPERTS SAY.

By Trevor Brown

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CHEYENNE—A proposal designed to block the federal health-care act's insurance mandate in Wyoming will go before state voters on Nov. 6.

But legal experts say proposed Constitutional Amendment A will have little, or no, real impact.

**Election**  
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"It may play well politically in Wyoming, but it won't have any effect," said Timothy Jost, a law professor and expert in health

care law at Washington and Lee University in Virginia.

"The supremacy clause (of the U.S. Constitution) says that federal laws are supreme over state laws and that any state laws would be pre-empted."

The proposal is one of three proposed constitutional amendments on the general election ballot in Wyoming.

Ballot language on proposed Amendment A reads:

"The adoption of this amendment will provide that the right to make health-care decisions is reserved to the citizens of the state of Wyoming. It permits any person to pay and any health care

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# Mandate: Voters could send a message to D.C.

Continued from A1

provider to receive direct payment for services."

It also says the Legislature can place "reasonable and necessary restrictions on health care" and that the state shall preserve residents' rights from undue governmental infringement.

Lawmakers passed a bill during the 2011 session to create the ballot measure.

According to the National Conference of State

## What's next

Wyoming voters will go the polls on Nov. 6 to decide the fate of proposed Constitutional Amendment A. Among other things, it says Wyoming residents have the right to decide if they want health insurance. However, experts say it is likely to have any legal impact.

Legislatures, 16 states have passed laws or constitutional

changes saying they will not implement or enforce the individual mandate.

Alabama and Florida also have ballot measures to be voted on this November.

Despite this push by mainly Republican-led states, the nonpartisan Congressional Research Service also has said federal law trumps the states' efforts.

In a memo to federal lawmakers, Kathleen Swendiman, a legislative

attorney for the service, wrote:

"Now that the Supreme Court has upheld the individual coverage mandate in the Affordable Care Act in *NFIB v. Sebelius*, this federal law fully applies to individuals, and any contradictory state laws will have no effect on this ACA provision."

But some politicians and legal experts say the proposed amendment can still be consequential.

State Sen. Leslie Nutting, R-Cheyenne, sponsored the bill that created the ballot measure. She said it could be used as a tool in future legal challenges if other federal health care changes are made.

"The American Care Act could still be defunded and something else could replace it," she said. "Wyoming needs to be in a good legal standing when a replacement is decided on."

She added that supporting the proposed amendment also will send a message to Washington that Wyoming voters disapprove of the law.

Steve Klein is a staff attorney with the Wyoming Liberty Group.

He said the proposal also could be used if Wyoming or other states want to challenge the federal act through different methods other than the arguments used in the lawsuit that the Supreme Court ruled on.

Klein added that the proposal could be used to argue that the federal government's authority is limited under the Ninth and Tenth amendments.

"I can't say this will destroy Obamacare," he said. "But there are certain Supreme Court precedents out there."

He added there are more possible uses for the proposed amendment on the

state level. He said legislation, such as one that was proposed to mandate students get meningitis vaccinations, could be challenged.

Additionally, he said, it could give the state cover if it decides not to implement parts of the health care law.

"A lot of the law requires a lot of cooperation with the states on things such as the health insurance exchanges," he said. "But the state's hands would be essentially tied from having to carry those out."

But Stephen Feldman, a professor at the University of Wyoming's College of Law, said the proposal would do little in that regard.

"I'm pretty confident that the Wyoming amendment would be unconstitutional," he said. "The U.S. Supreme Court has already said the Affordable Care Act is a constitutional exercise of Congress power, so states cannot not follow the federal law."

State Sen. Floyd Esquibel, D-Cheyenne, who voted against the bill that created the ballot measure, said he is worried about its potential unintended consequences.

"I really don't know what it will do," he said. "Any constitutional amendment should be looked at very seriously, and time should be taken to consider all the ramifications and consequences of what