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Opinion No. 10-47

Constitutional validity of HB 2622/SB 2560 relative to health care coverage

QUESTION

Is House Bill 2622/Senate Bill 2560 constitutionally valid?

OPINION

Yes, with the exception of the language in the bill that would purport to limit the power of future General Assemblies to pass legislation.

ANALYSIS

House Bill 2622/Senate Bill 2560 would enact the "Health Care Freedom Act." It would amend Title 56, Chapter 7, Part 10 of the Tennessee Code by adding the following new section:

> 56-7-10__. The people of Tennessee have a right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The legislature shall not require any person to participate in any health care system or plan, nor shall it impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan.

As we read the bill, it would prohibit the Tennessee General Assembly from implementing a mandated health care system or plan and from imposing a penalty for nonparticipation in any such system or plan.

As a threshold matter, we note that the bill unconstitutionally would purport to restrict the power of a subsequent General Assembly to pass legislation. While the Legislature may bind itself to statutory provisions, it may not bind a subsequent General Assembly. *Mayhew v. Wilder*, 46 S.W.3d 760, 770 (Tenn. Ct. App. 2001), *perm. to app. denied* (2001). In *Mayhew*, the Tennessee Court of Appeals stated, in pertinent part:

> As a general proposition, "[o]ne legislature cannot restrict the power of its successor, at least on general questions of policy, ..." 72 Am.Jur.2d *States, Territories and Dependencies* § 40 (1974). In *Daughtery v. State*, 159 Tenn. 573, 20 S.W.2d 1042 (1929), the plaintiff challenged a statute on the ground that the

> Legislature did not comply with a *state code section* outlining the procedure to be followed when the Governor held a bill for more than five days without signing it. Because *the Constitution* provided in Article 3, Section 18 that a bill automatically became law if the governor held it for more than five days, the court said, "[E]ach successive General Assembly is a law unto itself in this regard. It is constitutional, and not statutory, prohibitions which bind the legislature. The creator is greater than its creations." 20 S.W.2d at 1043. Binding the Legislature with procedural rules passed by another General Assembly would violate Article II, Section 12's grant of the right to the Legislature to determine its own rules and Article II, Section 22's provision that each House has all the powers necessary for a branch of the Legislature of a free state.

46 S.W.3d at 770 (emphasis in original).

If the language of the bill which purports to limit the authority of future General Assemblies to pass legislation were appropriately modified, it is our opinion that the bill would survive constitutional scrutiny. It would violate no provision of the Tennessee Constitution. Its prohibitions appear to be directed only at the State, and thus it is not contrary to the mandatory obligations imposed by the federal Patient Protection and Affordable Care Act, Pub. Law No. 111-148 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. Law No. 111-152. If HB 2622/SB 2560 were enacted, adherence to both federal and state law would be possible. Finally, the bill would not appear to impede the achievement of the objectives of Congress as stated in the federal Act. Accordingly, unlike amended Senate Bill 3498, House Bill 3433, and House Joint Resolution 745, the constitutional validity of which we have recently questioned, Op. Tenn. Att'y Gen. 10-43 (April 6, 2010), the bill would not be preempted by federal law and thus in violation of the Supremacy Clause of the United States Constitution.

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