

By Senator Garcia

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Senate Memorial

A memorial to the Congress of the United States,
urging Congress to defund the health insurance
exchanges required by the Patient Protection and
Affordable Care Act.

WHEREAS, on March 23, 2010, President Barack Obama signed
into law the Patient Protection and Affordable Care Act, Pub. L.
No. 111-148, ostensibly for the purpose of making health
insurance more affordable for American citizens, and

WHEREAS, the Patient Protection and Affordable Care Act
requires the creation of health insurance exchanges in each
state through which health insurance policies that meet certain
requirements determined by the Federal Government may be bought
and sold, and

WHEREAS, these health insurance exchanges may be
established only upon the approval of appointed federal
officials, who are granted the authority to establish exchanges
in any state that fails to win approval of its state-created
exchange, and

WHEREAS, the creation of state health insurance exchanges
pursuant to the Patient Protection and Affordable Care Act
forces states to cede their resources and sovereignty to the
service of the Federal Government and to sacrifice their ability
to flexibly serve their own citizens, and

WHEREAS, in a unanimous opinion in *Bond v. United States*,
131 S.Ct. 2355 (2011), the United States Supreme Court found
that federalism secures the freedom of the individual, allowing
states to respond, through the enactment of positive law, to the

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30 initiative of those who seek a voice in shaping the destiny of
31 their own times and, in doing so, rejected the notion that
32 Americans might be forced to rely upon the political processes
33 that control a "remote central power," and

34 WHEREAS, in *Florida et al v. United States Department of*
35 *Health and Human Services*, 648 F.3d 1235 (11th Cir. 2011), now
36 pending appeal before the United States Supreme Court, 26
37 states, with the support of 22 attorneys general and four
38 governors, brought a constitutional challenge against the
39 Patient Protection and Affordable Care Act on the basis that it
40 creates an unlawful mandate requiring individuals to obtain
41 health insurance coverage, and

42 WHEREAS, on March 3, 2011, United States District Court
43 Judge Roger Vinson issued an order staying his original decision
44 in that case, which held the Patient Protection and Affordable
45 Care Act unconstitutional, and

46 WHEREAS, in that order, Judge Vinson noted that the
47 severity of injury from the Patient Protection and Affordable
48 Care Act is undercut by the fact that, irrespective of his
49 ruling, at least eight of the plaintiff states had represented
50 that they would continue to implement and fully comply with the
51 act's requirements while the case was pending on appeal, clearly
52 implying that, as states continue to plan exchanges in
53 preparation for implementation of the act, the perceived harm to
54 states is reduced, making it less likely it will ultimately be
55 declared unconstitutional, and

56 WHEREAS, in July 2011, the United States Department of
57 Health and Human Services published 61 pages of proposed rules
58 regarding the establishment of health insurance exchanges, which

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59 required 172 pages of commentary and clarification, including
60 numerous references to future rulemaking, bringing into question
61 the proposition that states have any significant flexibility in
62 the establishment of the exchanges, and

63 WHEREAS, the health insurance exchanges are the cornerstone
64 of the individual mandate that is at the heart of the
65 constitutional challenge, and

66 WHEREAS, if the Patient Protection and Affordable Care Act
67 is struck down by the high court, states will have wasted
68 millions of dollars of taxpayer funds in planning irrelevant
69 exchanges that fail to serve a public purpose, and

70 WHEREAS, despite claims by some that states can create
71 health care exchanges that both enjoy the benefits of a free
72 marketplace and comply with the Patient Protection and
73 Affordable Care Act, these exchanges would be, in truth,
74 contrived devices offering insurance products regulated in their
75 essential characteristics by the Federal Government, in effect,
76 eliminating the free market, and

77 WHEREAS, the health insurance exchanges required by the
78 Patient Protection and Affordable Care Act will continue to be
79 subject to the arbitrary whims of the federal bureaucracy that,
80 with its ongoing rulemaking authority, can render any plan for a
81 state exchange, no matter how rational and well-designed it
82 might be today, obsolete and irrelevant at a later date, and

83 WHEREAS, while the Patient Protection and Affordable Care
84 Act does not clearly and unequivocally preempt state law, it
85 contains only a vague provision that can be interpreted as
86 stating that federal law will not preempt state laws that
87 preserve free enterprise health care systems, and

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88 WHEREAS, in fact, the Patient Protection and Affordable
89 Care Act mandates the establishment of health insurance
90 exchanges that are required to conform to federal law, forcing
91 states that establish exchanges to actively participate in the
92 preemption of their own laws, and

93 WHEREAS, states can and should develop and implement state-
94 based health reform solutions that are tailored to the specific
95 needs of their citizens and that are free of the mandates
96 included in the Patient Protection and Affordable Care Act, and

97 WHEREAS, it is not in the best interest of any state for
98 any official of that state to participate in planning or
99 establishing health insurance exchanges as provided for in the
100 Patient Protection and Affordable Care Act, NOW, THEREFORE,

101

102 Be It Resolved by the Senate of the State of Florida:

103

104 That the Congress of the United States is urged to defund
105 planning grants to states for the establishment of health
106 insurance exchanges required by the Patient Protection and
107 Affordable Care Act.

108 BE IT FURTHER RESOLVED that copies of this memorial be
109 dispatched to the President of the United States, to the
110 President of the United States Senate, to the Speaker of the
111 United States House of Representatives, and to each member of
112 the Florida delegation to the United States Congress.