



State of South Carolina

Office of the Governor

NIKKI R. HALEY
GOVERNOR

1205 PENDLETON STREET
COLUMBIA 29201

July 2, 2012

The Honorable Jim DeMint
United States Senate
167 Russell
Washington, D.C. 20510

Dear Senator DeMint,

Thank you for your letter regarding the Affordable Care Act (ACA) and specifically, the implementation of health insurance exchanges in the aftermath of the United States' Supreme Court's ruling last week. South Carolina stands with you and your cosigners in opposing implementation of state-based insurance exchanges – a decision we have been committed to since it was announced after careful consideration last December.

In the 7-2 Supreme Court opinion striking down Congress' authority to compel states to expand Medicaid, the Chief Justice notes poignantly:

Permitting the Federal Government to force the States to implement a federal program would threaten the political accountability key to our federal system. "[W]here the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision."

In the case of insurance exchanges, the federal government is not coercing states as much as it is luring them with outrageously large and unaccountable "establishment" grants of taxpayer money for what we believe is the same purpose: to insulate federal officials from implementing what is sure to be an expensive, inefficient, and wildly unpopular new federal entitlement program – a program far from the market-based solution exchanges were originally conceived to be.

Our analysis of the exchange law found that, among other things: states have little meaningful flexibility under the Obama administration's concept of "state-based"; exchanges are required to assume many administrative functions now performed by the private insurance market; and most notably, the law's primary intent is to create a new system for delivering federal insurance

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premium subsidies under rules governed by the Internal Revenue Service – a function where the state has no compelling role.

Bottom line? By refusing to implement state-based exchanges, the state is ceding nothing – we were given very little in the first place and, unsurprisingly, asked to give far too much in return.

Critics of our decision sometimes forget that states are given a choice, and the law's authors may now wish that they had not written a federal exchange option into the law. It is increasingly clear that without significant state assistance, it will be unlikely that any insurance exchange solution can be implemented at all.

With the implications of this choice in mind, combined with the Court's decision properly returning Medicaid expansion decisions to the state and the fact that the "state-based" exchanges are state-based in name only, states opposed to ACA should not freely give up the leverage we now have to repeal and replace this bad law.

Thank you again for your letter. As always, I appreciate the work you are doing in Washington, D.C., on behalf of our shared constituents and your continuous fight to return the federal government to its proper and intended role. From the perspective of a governor, few things are more important to America's future than a federal government that stops attempting to dictate how we can and should govern our states.

My very best,

A handwritten signature in black ink, appearing to read "Nikki R. Haley". The signature is written in a cursive, flowing style.

Nikki R. Haley