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The New Frontier in Anti-Obamacare Challenges: Interstate Compacts

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At today's final American Legislative Executive Council meetings -- semi-annual sit-downs for conservative legislators -- a number of experts pushed the concept of Interstate Compacts. It was, for most observers, a brand new idea. Diana Reimer, a [Pennsylvania Tea Party activist](#) who was attending the sessions this week, told me it was the most interesting new idea she'd heard.

So what is the idea? Several states -- Arizona, Virginia, etc -- have already passed Health Care Freedom laws that prohibit the states from complying in the health care mandate. According to Nick Dranias of the Goldwater Institute, that opens the door for states to form compacts that would supersede federal regulation.

"Take that existing framework," Dranias suggested to a room of state legislators this morning. "Make any violation by anyone of those rights a criminal offense, pair up with a state that thinks like you on the same topics, make sure they criminalize any violation of those rights, and reach a compact. Lodge it with Congress. And then bring on the fight when the IRS comes in and tries to penalize people for not following the individual mandate."

Would this work in a Washington where Republicans only control the House? Dranias said it would. "There is an existing statute, passed by Congress, that gives advance consent to any interstate compact that coordinates and enforces federal law," he explained. "It doesn't say 'so long as it doesn't interfere with federal laws.' It gives blanket, advance consent. This is the only federal statute that does this."

One of the originators of the concept is Ted Cruz, a Republican legal star who heads up the Center for for Tenth Amendment Studies in Texas. He spoke on the compact and made available a paper on it, which explains the legal justification this way:

The Supreme Court has held that such congressional consent trumps prior federal law and may even subordinate federal agencies to agencies created by the interstate compact. Although Congress has generally consented to interstate compacts through regular legislation signed by the president, congressional consent does not necessarily require presidential signature; the Supreme Court has suggested that congressional consent may be inferred by acquiescence.

I've been following up on this idea with Tenth Amendment scholars. It's picking up steam.

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