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## Nullifying Obamacare

### Here's one more weapon.

**Fred Barnes**

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The vehemence of the opposition to President Obama's overhaul of health care has spawned an assortment of strategies for killing it. The newest and most ambitious would create a health care compact among the states and use it to switch control of health care programs from the federal government to the states.

If that sounds like a long shot, it's no more so than the other schemes for nullifying Obamacare. These include repeal by Congress or by constitutional amendment, lawsuits to strike down Obamacare's individual mandate, and actions by governors and House Republicans to slow down its implementation.

Those are worthy efforts. But a health care compact would do more. If successful—a very big “if”—it would reduce the scope of Washington's power. States, not Congress, the White House, or federal bureaucrats, would set the rules for health care from top to bottom, from Medicare and Medicaid to individual insurance policies.

And as ambitious as that sounds, it's merely the initial goal of the group of conservative activists leading the compact drive. They want to use compacts to return other areas of federal control—the environment, drug and medical device regulation, education, to name three possibilities—to the states or even local governments.

Interstate compacts aren't a wild idea. They just haven't been tapped for such a political purpose before. The authority for compacts was established in the Constitution (Article 1, Section 10), and more than 200 have been set up. One example: the agreement uniting Maryland, Virginia, and the District of Columbia to build and operate the Washington area's Metro subway system.

An issue of interest to two or more states can lead to a compact. It works this way: State legislatures approve a proposal, the states agree on the parts of mutual concern (such as buying insurance across state lines), then the compact is dispatched to Washington for ratification by Congress and the president (though the need for White House assent isn't spelled out in the Constitution). Ratification turns the compact into federal law.

However, there's a bigger reason for forming a compact against Obamacare. By banding together, states would have far more political clout in Washington. Backers of the health care compact figure they need more than 20 states to pressure Washington to go along. Their assumption is members of Congress (even Democrats who support Obamacare) would be inclined to vote for a formal request from their home state. Members who oppose Obama-care would vote for it as well.

The compact strategy grew out of talks last summer among a handful of conservatives worried about the growth in federal power, particularly under President Obama. They chose health care, given its unpopularity, as the issue on which to draw a new line between federal and state authority. Texas attorney Ted Cruz, a former state solicitor general, suggested the use of a compact. “It's certainly a new application” of the compact, Cruz told me.

In October, Eric O'Keefe of the Sam Adams Alliance broached the compact strategy with the leaders of Tea Party Patriots, Mark Meckler and Jenny Beth Martin. And in November, they, in turn, took the idea to their national council, gathered in Washington to conduct an orientation session for newly elected members of Congress (only Republicans showed up).

When O'Keefe and a panel explained the strategy, they got a standing ovation from the 180 members of the council. “I've never heard of a panel getting a standing ovation,” O'Keefe says. At least 37 of them signed up as state coordinators for winning legislative approval of the health care compact. An experienced political consultant, Mike Barnhart, was hired as national coordinator.

“We constantly receive ideas from people on what we should do,” says Meckler, an attorney specializing in Internet law. After hearing O'Keefe's pitch, he read the American Bar Association's guide on interstate compacts. “Despite the fact that it was very boring,” he was struck by how appropriate a tool it could be for slashing the power of the federal government.

The campaign for the compact begins early next month when many state legislatures convene. Texas and Nebraska are among the target states. “There are a lot of good opportunities,” Cruz says.

Like the other efforts to snuff out Obamacare, the compact drive is likely to aid Republicans and conservatives by keeping the health care issue alive. That won't help Obama in his reelection campaign. But it could be an effective tool for Republicans in recruiting volunteers and appealing to voters.

But what attracted conservative organizers like O'Keefe and Tea Partiers is how broadly the compact strategy can be used to shrink the power of the federal government. It's an “unused lever point” with enormous potential, O'Keefe says.

“We picked one of the tougher issues,” health care, he says, and ratification by Congress and the president is “a big hurdle. But we want the fight. We want the clarity. We want to define the lines of the fight” between Washington and the people. Achieving that won't be easy. But not impossible.

*Fred Barnes is executive editor of The Weekly Standard.*

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