TEXAS PUBLIC POLICY FOUNDATION
Testimony

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Center for Tenth Amendment Studies

Testimony before the House Committee on State Sovereignty Regarding Health Care Compacts

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- The Texas Public Policy Foundation supports the development of interstate compacts for reserving health care regulation and other areas of regulation for state authority and shielding them from federal intrusion.

- Interstate compacts are agreements among the states. They were common in the Colonial period and led to the Articles of Confederation and to the Constitution itself. In the last 200 years, hundreds of compacts have been entered into.

- Of the 200 currently in force, about half have secured congressional consent. According to the Supreme Court, the Constitution requires congressional consent for compacts that touch on areas where the federal government has the power to regulate. Congressional consent elevates the substance of the compact to the status of federal law, even to the extent of superseding any pre-existing federal law that might be in conflict with the compact.

- The hundreds of compacts we have as examples provide a treasury of promising devices and arrangements. For example the Washington Metropolitan Area Transit Authority contains a provision for workplace injury liability that is parallel to, but simpler and less expensive than, a similar federal scheme that would otherwise apply to employees of the District of Columbia. The WMATA compact has a provision that specifically suspends the operation of the federal scheme with respect to the members of the compact. When we at the Texas Public Policy Foundation saw that, we realized that if you can do it on a small scale you can do it big. You can shield whole areas of regulation from federal intrusion.

- That's the kind of thinking that went into HB 5 and HB 1008. HB 1008 provides that the states will run the Medicaid programs on their own, with their fair share of federal Medicaid dollars in the form of block grants. It is patterned on the welfare reform laws of 1996 in Congress. HB 5 does something similar, but carves out the whole area of health care regulation and returns it to the states where it belongs. HB 5 also provides for the creation of a commission to foster interstate cooperation.

- Across the country, our fellow citizens are increasingly united in demanding that we return to the founding principles of our Constitution. They can sense that the relentless expansion of the federal government into every area of our lives is incompatible with a Constitution based on local self-government, economic freedom, and shared sovereignty among state, federal, and local authorities. They are right. The historical record—the proceedings of the Constitutional Convention in Philadelphia, the state ratification conventions, the Federalist Papers, the early cases of the Supreme Court, the letters and diaries of the Framers—these sources leave absolutely no doubt that health care was never meant to be regulated by the Federal government. Over and over again the Framers cited the regulation of health care as an example of an area of regulatory authority that would be reserved to the so-called "police power" of the states. In the case of *Gibbons vs. Ogden* (1824) the Supreme Court held that "inspection laws, quarantine laws, health laws of every description, as well as law for regulating the internal commerce of a State" were but a few examples "of that immense mass of legislation" not surrendered to the federal government. "No direct power over these objects is granted to Congress," the Court observed, "and, consequently; they remain subject to State legislation."

- HB 5 and HB 1008 represent a sensible way to start reclaiming the state's proper role in health care regulation. ☆