## Why the Wisconsin Grand*Sons of Liberty* Oppose Selling Insurance Across State Lines – and Why You Should Too.

We have been asked many times why, as an organization, we oppose the idea of selling insurance across state lines. After all, aren't we in favor of free markets and increased competition resulting in lower rates and more choices for consumers? Yes, we are! But that is not what will happen if the federal government allows for the interstate sale of insurance.

The point of contention is between interstate commerce and intrastate commerce. This matter is actually a constitutional issue and that is why it is of such importance to a pro-constitution group such as WiGOL. The Commerce Clause in our United States Constitution covers interstate commerce, specifically "among the several States." This means that the commerce in question must CROSS state lines or at least be conducted by a business that operates across state lines.

With the creation of the Obamacare bill/"law" as the first step toward a government run health care scheme, it is important to examine each component of the changes proposed. Here, we undertake to explain why the idea of selling insurance across state lines is disastrous and will serve only to promote the goal of a complete federal government takeover of the health care industry and the loss of personal freedom in making our own health care decisions. Integral to that takeover is the implementation of a single payer system that will replace the private insurers. Federal regulation in place of state regulation of the private insurers is but an intermediate, subtle step in that odious direction.

For the sake of brevity, we will not undertake here the age-old discussion of the definition of "commerce" in the 18th century sense. Suffice it to say that the Supreme Court ruled in 1869 in *Paul v. Virginia* that "issuing a policy of insurance was NOT a transaction of commerce" although this ruling was overturned in 1944 in *US v. South-Eastern Underwriters Association*. Therefore that discussion, while pertinent at the time, is now moot.

What is not moot is that the South-Eastern Underwriters ruling reflected that the history of risk underwriting, that is, insurance, in these United States had been, historically, the "province of the states" and excepting for the actions of South-Eastern Underwriters, would have remained so. In response to the SCOTUS ruling in South-Eastern Underwriters, the next year Congress passed the McCarran-Ferguson Act of 1945 which granted a limited anti-trust exemption to the insurance industry with a few caveats. Among these were that the states must assume responsibility for the regulation and oversight of the insurance industry, and also that the transactions, or sales, would not be interstate in nature. All insurance business would henceforth be intrastate in nature only. Thus the federal government, in an extremely rare act of ceding power, stepped aside and let the states operate under the federalism that the Framers of our Constitution intended.

Today, along comes the Obamacare bill and the notion that the federal government not only can more efficiently manage health care but has the power to do so under our Constitution. The Patient Protection and Affordable Care Act (PPACA) claims the authority to conduct regulation and operation of

health care insurance on an interstate basis. Clearly, this premise is in direct conflict with the McCarran-Ferguson Act and constitutes an assault on the regulatory and police powers of the 50 state governments. That power to regulate and to oversee was already a state power prior to the 1944 South-Eastern Underwriters ruling as a reserved power outside the enumerated federal powers found in Article 1, Section 8 of our federal Constitution. The SCOTUS ruling was correct in the aspect that South-Eastern Underwriters were operating across state lines and such activity was interstate – again setting aside the argument of whether the activity was indeed commerce as originally defined and thus within the federal government's purview. The McCarran-Ferguson Act merely reinforced what was, and had always been, the federal policy for the previous 158 years.

Recognizing this potential obstruction in the path to Obamacare, Congress attempted to repeal McCarran-Ferguson in both the 111th and 112th Congresses. In 2010, HR 4626, the Health Insurance Industry Fair Competition Act bill, passed the House of Representatives by an astounding bi-partisan vote of 409-16 but failed to get a vote in the Senate. In 2011, the bill was reintroduced as HR 452, the Medicare Decisions Accountability Act. This bill attempted to blindside the American people by doing two opposing things – repealing the Independent Payment Advisory Board (IPAB), which is an unpopular feature of Obamacare, and repealing McCarran-Ferguson. In this manner, Congress Critters could claim to their constituents that they repealed the hated IPAB while secretly removing the roadblock of McCarran-Ferguson which would now make it possible to sell across state lines – another selling point for constituents.

What one must realize is that once insurance companies start selling across state lines and engage in interstate commerce, the federal government has every right and power, under our Constitution's Commerce Clause, to swoop in and regulate the insurance industry and health care. This bill will be reintroduced into the 113th Congress and if it passes, then congratulations, we will have just handed control over to the feds of yet another huge part of our economy and our privacy.

McCarran-Ferguson stands in the way of total federal control over our health care and insurance. Selling across state lines creates a pathway for federal takeover of the health care and insurance industries. Keeping the insurance industry on an intrastate basis preserves another bulwark against federal takeover. Remove McCarran-Ferguson and watch the dominos fall. WiGOL are dead set against any action that empowers the federal government to increase its control over the lives of the American citizens.