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Summary:

The Oregon House of Representatives has voted for HJR 203, which would add a section to the Oregon Constitution making health care a “fundamental right” of every Oregonian. If it’s passed by the Senate and approved by voters in November, the unintended consequences are almost endless.

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Why Health Care Should Not Be Defined as a “Fundamental Right”

By Steve Buckstein

The Oregon House of Representatives has voted for [HJR 203](#), which would add a section to the [Oregon Constitution](#) making health care a “fundamental right” of every Oregonian. If passed by the Senate, Oregon voters will be asked in November to put this language in our Constitution:

“It is the obligation of the state to ensure that every resident of Oregon has access to cost-effective, medically appropriate and affordable health care as a fundamental right.”

Cascade Policy Institute board member Michael Barton, Ph.D. and I testified in opposition to earlier versions of this legislation. Dr. Barton gave us a history and philosophy lesson, explaining how the American government was founded on the principle that government does not grant rights, it simply protects our inalienable rights such as those to life, liberty and the pursuit of happiness. He explained that our rights define what we are free to do without interference; they are not goods or services that others must provide for us. He expounded on these concepts in his 2006 Cascade Commentary, “[Right to Health Care Violates Individual Rights](#).”

While I object to defining health care as a right on a philosophical level, on a political level I understand that government tries to grant such positive rights all the time. In this case, passing this constitutional amendment will make some people feel good. It may say that we care deeply about the uninsured; but it only gives intellectual lip service, if that, to the matter of future costs.

More and more people will say, “I have a right to not care about the costs, because I have an unqualified right to health care.”

Define health care as a fundamental right, and cost control will go out the window. Witness Oregon’s public school system, where education is supposedly “free” and yet taxpayers are asked to pay more and more for little (if any) improvement in real quality. As in education, health care innovation will become mired in bureaucratic process.

And who will have the task of controlling the economics? Is the Oregon legislature going to assume responsibility for that? An elegantly composed commission? A superhuman future governor? Or do we assume private insurance companies will simply figure it out?



A key argument against this proposal is the recognition that a “fundamental right” to health care would seem to trump everything else in the Oregon Constitution. If the legislature comes up with a plan to make good on this “fundamental right,” what happens when voters reject the new taxes needed to pay for it?

Since neither education, transportation, criminal justice, nor any other state government service is defined as a “fundamental right” in our Constitution, then funding for these services might be cannibalized to fund the one “fundamental right” in that document, health care. But voters won’t be presented with this reality when marking their ballots in November. This potential clash of essential services may make for strange bedfellows in future election battles. Will the teachers union, for example, want to lose funding to the health care providers?

The unintended consequences of this proposal are almost endless. But that’s the way the game is played for now, and the next inning will play out in the Oregon Senate before the end of this [short legislative session](#). Stay tuned....

(This article is an update on a legislative post, [published here](#), regarding an earlier version of this legislation which was considered in 2008.)

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