

Testimony of
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Thank you for the opportunity to speak this morning in support of this very important measure.

I come before you not as an expert on the problem we confront with respect to the uninsured and underinsured in the Commonwealth. I suspect that you yourselves have more than a passing familiarity with those issues.

Nor do I speak as an expert on the complex issues of health care finance. As to those, I am certain that the members of the Committees represented here are quite knowledgeable and have access to those who are even more expert.

Rather, I speak this morning to address concerns about what this proposed amendment to the constitution really means and, if approved by the People, what it really would do.

As important, perhaps, I would also like to address what the measure does not mean and what it would not do.

The language of the amendment itself is very simple:

Upon ratification of this amendment and thereafter, it shall be the obligation and duty of the Legislature and executive officials, on behalf of the Commonwealth, to enact and implement such laws as will ensure that no Massachusetts resident lacks comprehensive, affordable and equitably financed health insurance coverage for all medically necessary preventive, acute and chronic health care and mental health care services, prescription drugs and devices.

The simplicity of the amendment should not be taken to mean that its proponents believe that the problem it seeks to address is likewise simple or easy to solve.

Far from it, the proponents know that the complexity of achieving some form of universal health care coverage makes it foolhardy to attempt a single, one-time solution by means of the popular initiative. For all its virtues, the initiative process is ill-suited to achieving the kind of comprehensive, balanced, and equitable legislation that is called for.

Thus, this amendment should not be viewed as a disparagement of the traditional legislative process, but as an endorsement of that process.

In this way, the amendment constitutes nothing more -- and nothing less -- than a clear statement of what the People require from their elected representatives and executive officials.

It is their instruction to their government as to what its guiding policy should be and it states general standards by which to measure the achievement of the stated objectives, but it leaves to the Legislature and Governor the many details and choices as to how best to attain those objectives.

Thus, it is quite clear that the Amendment would not require that the state become the insurer. Indeed, it would not require any single insurer or single means of providing health care coverage.

Nor does the Amendment specify any particular mechanism, public or private, for financing expanded coverage.

The Amendment would not involve the courts in micromanaging our health care system. The proponents of this measure wish to be quite clear on this point. Nothing in the Amendment affords a basis for judicial dictation of a particular means to achieve the standards of comprehensiveness, equity, and affordability.

It is far more likely that courts will be very reluctant to determine with specificity, as a matter of constitutional law, what it means for insurance to be "comprehensive, affordable, and equitably financed." The SJC would likely uphold any good faith legislative scheme that could reasonably be said to meet those standards.

But, general as they may be, these terms are not incapable of meaningful judicial construction. The meaning of the terms is no more -- and probably much less -- elusive than many other constitutional terms that courts regularly apply.

This kind of provision is not unknown to our Constitution as it now stands. As you know, Pt 2, Chap 5, Sec 2, declares a duty of the legislative and executive branches to provide an education system capable of attaining broadly stated educational outcomes and leaves to the governor and legislature the task of designing the system -- a task that the Legislature has not ignored.

So too would this Amendment have the People say -- in appropriately general but unmistakable terms -- where they want to be and trust their elected officials to get them there.

It is worth noting that the Amendment does not create individual rights to health care. Again, the comparison to Chap 5, sec 2, the education provision, is instructive. In Doe v. Superintendent of Schools of Worcester, 421 Mass. 117, 129-130 (1995), the SJC explained that whatever "rights" to education that corresponded to the Commonwealth's "duty" are rights of the people in the aggregate, not rights that inhere in individuals.

Similarly, the proposed Amendment before you would not afford a platform for individuals to obtain – as a matter of constitutional right – whatever health care coverage they deemed desirable. The proponents of this measure believe firmly that the design of a comprehensive, affordable and equitably financed health care insurance system or systems should occur in the Legislature, not in the courts.

The purpose of the Amendment, therefore, is to state simply and clearly a People's mandate to their elected representatives. The purpose, if you will, is to write the description of your jobs as legislators. The proponents and the over 65,000 voters who signed the petition before do not expect that the job will be easy, but they --- and the voters who will approve the measure in 2006 --- expect that you will get the job done.