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## STATE OF KANSAS

### NEWS RELEASE

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Dear Republican Member of Congress from a Health Care Compact Signatory State:

As the Kansas Secretary of State, it is my responsibility to record and publish all official acts of the Kansas State Legislature. As a former professor of Constitutional Law who recognizes the unconstitutionality of the Affordable Care Act (“Obamacare”), I feel that it is my personal duty to do everything possible to stop Obamacare in the wake of the Supreme Court’s two erroneous decisions sustaining it. Accordingly, I am notifying you through this open letter that the Health Care Compact has been joined by nine States including Kansas, and I am urging you to immediately ratify the Compact. It is the only legal path that we have left to end Obamacare and to restore our Constitution, short of a future Act of Congress to repeal it.

The Founding Fathers plainly did not intend for the federal government to have any authority over health care or health insurance, as James Madison’s *Federalist 45* makes clear. Nevertheless, the Supreme Court has twice found a way to make it possible, first by distorting the taxing power of Article I, section 8, then by implausibly reading “exchange established by a State” to mean “exchange *not* established by a State.” These rulings left many who cherish the sovereign authority of states wondering if there was any way left for the States to avoid the overreaching federal mandates and regulations of Obamacare. Fortunately, there is.

#### State Compacts

The Framers created a safety valve in our Constitution when they drafted the document in 1787. Prior to the adoption of the Constitution, there were multiple compacts between the sovereign states—compacts that had the force of law. The Framers wanted these compacts to be possible in the future, but subject to a congressional veto so that the states could not circumvent the federal government. The result is found in Article I, Section 10 of the Constitution, which permits a state to “enter into any Agreement or Compact with another State” only if the states have gained “the Consent of Congress.” It is important to note that Compact Clause does *not* require the President’s signature—only Congress need approve.

The Supreme Court has had occasion to rule on the meaning of the Compact Clause on numerous occasions. The Clause provides for the establishment of formal, binding state agreements that create rights and obligations in the signatory States. The Court has held that state compacts require

congressional approval only if they encroach upon the supremacy of the United States, which the Health Care Compact certainly does. *United States Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452, 459-71 (1978); *see also Virginia v. Tennessee*, 148 U.S. 503, 518 (1893); *Northeast Bancorp, Inc. v. Board of Governors*, 472 U.S. 159, 175-76 (1985); *New Hampshire v. Maine*, 426 U.S. 363, 369-70 (1976). Most importantly, the Supreme Court has held that state compacts have the effect of federal law. The granting of congressional consent to a state compact effectively transforms that compact into a federal law. *New Jersey v. New York*, 523 U.S. 767, 811 (1998); *Cuyler v. Adams*, 449 U.S. 433, 440 (1981).

### The Health Care Compact

The Health Care Compact is an interstate compact that restores the authority to regulate health care to the member States (except for military health care, which remains subject to federal regulation), and provides the funds to the states to fulfill that responsibility. The Compact speaks for itself regarding the specific structure and scope of that authority. Importantly, once Congress has approved the compact, the member states may suspend the operation of Obamacare within their jurisdiction.

There are nine states that have already joined the Health Care Compact. They are: Georgia, Indiana, Oklahoma, Missouri, Texas, Utah, South Carolina, Alabama, and Kansas. The Compact provides that more States may join as signatories after its approval by Congress. H.J.Res. 50, introduced by Rep. Doug Collins of Georgia, would serve to ratify the Health Care Compact. It was referred to the House Committee on the Judiciary on May 12, 2015. I urge you to do everything within your power to speed its adoption, so that the citizens of our States can be spared the economic injuries caused by Obamacare. Every day that Congress delays, more of your constituents will lose their health insurance or see their premiums climb to extraordinarily high levels.

In conclusion, the Health Care Compact is more than a way for the signatory States to protect their citizens from the high costs, regulatory burdens, and loss of coverage caused by Obamacare. It is a means to restore the constitutional framework designed by the Founding Fathers and to return the regulation of health care to the sovereign states.

If you have any questions about this issue, please do not hesitate to contact me.

Kris W. Kobach  
Kansas Secretary of State

#### CC:

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