

Idaho Statesman, Thursday, Jan. 20, 2011 – by Brian Murphy (2 pages)

## Idaho GOP may try to ‘nullify’ health care law

*The last time a state tried that tactic, the president sent the Navy.*

One day after the U.S. House of Representatives voted to repeal President Barack Obama’s Patient Protection and Affordable Care Act, Republicans in the Idaho Legislature plan to unveil a bill that would nullify the health care reform package in the state.

“We’re simply saying, as a sovereign state of Idaho, we respectfully decline to recognize the federal government’s action in this area,” said Sen. Russ Fulcher, R-Meridian.

Sen. Monty Pearce, R-New Plymouth, said the proposal was undergoing last-minute changes and should be ready Thursday with committee introduction in the House on Friday or Monday. Gov. Butch Otter foreshadowed the legislative action during his State of the State speech last week. “We are exploring all our options, including nullification,” he said.

In his speech, Otter said the state faced exorbitant costs from the legislation passed in 2009. But later, Otter said the law has no impact on the 2012 budget. Nullification is a theory that states are allowed to declare federal law null and void within their territory if they deem it unconstitutional — and it’s not a new idea. Thomas Jefferson and James Madison created the concept in the Kentucky Resolutions in 1798, repudiating the Alien and Sedition Acts.

“Nullification ... a rightful remedy,” read the Kentucky Resolutions of 1799.

In 1832, South Carolina passed an ordinance of nullification in response to federal tariffs the state felt were too high.

President Andrew Jackson sent ships and said the state was on “the brink of insurrection and treason.” A compromise on the tariff was eventually reached. Several Southern states pursued nullification in response to the landmark 1954 *Brown v. Board of Education* decision desegregating public schools. The Supreme Court later ruled states could not nullify court decisions.

But the impetus for Idaho’s proposed action comes from Thomas E. Woods Jr., the author of “Nullification: How to Resist Federal Tyranny in the 21st Century.” Woods spoke at Boise State on Nov. 10 in a speech sponsored by the Idaho Freedom Foundation and the BSU Conservative Student Coalition.

The book is a hot topic around the Legislature. In it, Woods writes, “Nullification begins with the ... point that a federal law that violates the Constitution is not law at all. It is void and of no effect. ... “It is up to the states, the parties to the federal compact, to declare it so and thus refuse to enforce it.”

He writes: “It would be foolish and vain to wait for the federal government or a branch thereof to condemn its own law. Nullification provides a shield between the people of a state and an unconstitutional law from the federal government.”

Idaho is among the states already suing the federal government over the health care legislation. In a separate case, a federal judge in Virginia declared part of the law unconstitutional. “The states created the Constitution and the federal government. Why should the creature be more powerful than the creator when it comes to deciding what the Constitution really meant?” asked Rep. Pete Nielsen, R-Mountain Home.

“If you leave it up to the federal government to decide what that Constitution really means, they will invoke more power and more power and more power because that’s the nature of man.”

This is just the latest attempt by Idaho lawmakers to fight back against a federal government they say has overstepped its bounds on issues from environmental protection and endangered species to eminent domain and health care.

Generally, lawmakers pass nonbinding resolutions that call on Congress to change federal law. This would go one step further — and could set up a battle, though more likely one in court than on the high seas.

At least six other states are talking about similar measures.

“You’ll see other states follow suit. Idaho will be on the front end,” Fulcher said. “Statewide there is support for it. Constituents by and large across the state of Idaho support this process.”