State's impact on health law weighed

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Operating a health care exchange would be "illegal" in Georgia and some states because of legislation passed in those states.

Michael Cannon, director of health policy studies for the Cato Institute, in a Nov. 9 article. Georgians who oppose Obamacare can rest a little easier.

According to one health care expert, they don't have to worry about one particular element of what's officially known as the Patient Protection and Affordable Care Act.

Three days after the presidential election, Michael Cannon, the director of health policy studies for the Cato Institute, wrote an article in the National Review saying that states are under no obligation to create health care exchanges. The Washington-based Cato Institute advocates for limited government intervention on social and business matters.

He then wrote a claim we hadn't heard before.

"[O]perating an Obamacare exchange would be illegal in 14 states," he wrote. "Alabama, Arizona, Georgia, Idaho, Indiana, Kansas, Louisiana, Missouri, Montana, Ohio, Oklahoma, Tennessee, Utah, and Virginia have enacted either statutes or constitutional amendments (or both) forbidding state employees to participate in an essential exchange function: implementing Obamacare's individual and employer mandates."

Is that correct? PolitiFact Georgia decided to conduct an examination of the claim.

Cannon told an Atlanta Journal-Constitution health reporter via email that he based his statement on Senate Bill 411, passed by the Georgia Legislature in 2010 and signed into law by then-Gov. Sonny Perdue. Cannon cited this particular portion of the bill: "To preserve the freedom of citizens of this state to provide for their health care: No law or rule or regulation shall compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system."

Cannon declined via email to comment for our fact check, saying he's continuing his boycott against the PolitiFact franchise.

The federal health care law, passed in March 2010, gives states the opportunity to organize health care exchanges where consumers and small businesses will be able to compare the quality and prices of health plans. If states won't create an exchange, the federal government will do it. Gov. Nathan Deal announced Nov. 16 that he would not set up an exchange.

Most conservatives and libertarians were livid about the provision in the federal health care law known as the "individual mandate," which requires Americans to buy health insurance and the majority of employers to provide it. Twenty-six states, including Georgia, filed a lawsuit to overturn the Patient Protection and Affordable Care Act shortly after President Barack Obama signed it into law in March 2010.

Georgia SB 411 was an attempt to counter the federal law. Senate Republicans pushed for the legislation after Democrats refused to support a similar amendment to the Georgia Constitution. Perdue signed the bill in June 2010.

PolitiFact Georgia has delved into this topic before. In 2010, Sen. Judson Hill, a Marietta Republican, sent a
mailer to potential voters in his district saying he had "stood up to Barack Obama by passing legislation that prevents you from being forced to join government health plans or buy health insurance against your will." Hill was referring to SB 411.

PolitiFact Georgia found experts who noted that the state action would have little impact because the federal government has "extremely broad" power to provide incentives and disincentives through the tax code. With those caveats, and the uncertainty over the federal health care law's future, Hill's claim was rated Half True. In June, the U.S. Supreme Court upheld the health care law in a 5-4 ruling.

Bill Custer, director of Georgia State University's Center for Health Services Research, qualified in his comments that he's not an attorney, but he believes the federal health care law overrides any state legislation.

Other nonpartisan experts we contacted agreed.

"Federal law trumps state law," said Russ Toal, director of the Office of Public Health Practice/Community Service at Georgia Southern University. "I don't think (Cannon's claim) is accurate."

Kathleen Burch, an associate professor at Atlanta's John Marshall Law School, said the state law doesn't prohibit the creation of an exchange.

To sum up, Cannon wrote that creating a health care exchange under the 2010 federal health care law would be "illegal" in Georgia and 13 other states. He wrote that those states have legislation that precludes "implementing Obamacare's individual and employer mandates." The U.S. Supreme Court ruled that the individual mandate was allowable under the Constitution. The experts we spoke to and others note federal law supersedes state law.

We rate this claim False.

This article was edited for length. To see a complete version and its sources, go to www.politifact.com/georgia/.