Written by **Joe Wolverton, II, J.D.** on December 23, 2009

Healthcare Vote Scheduled for Christmas Eve

"Something's going to have to give," are the words used by Congressman Bart Stupak (D-Mich.) in describing the shotgun wedding about to take place between the Senate healthcare bill and its companion measure adopted by the House on November 7. Stupak gained fame for penning the provision of the House bill prohibiting the funding of abortion in any policy financed by federal subsidy.

An equally restrictive clause was omitted from the Senate version, despite early declarations by erstwhile pro-life advocate Senator Ben Nelson (D-Neb.) that he would oppose any bill not containing the so-called Stupak language.

As has been widely reported (much to the chagrin of Senator Nelson), the Senator's granite wall of resolve crumbled under the weight of a $100 million subsidy for his home state included in the final version of the package. In his defense, Senator Nelson has reserved the right to vote against the final joint version of the bill, but given the generous bonus it contains for the Cornhusker State, Senate Majority Leader Harry Reid (D-Nev.) isn't likely to lose any sleep over that unlikely defection.

Despite Nelson's conversion, the abortion issue remains a prickly issue that is likely to cause at least momentary friction when the two bills collide later this year or early in 2010. As reported above, the House bill contains an unqualified prohibition on the use of federal money to pay for abortions; the Senate bill, however, provides that if a woman under a federally subsidized policy chooses to have an abortion, she must pay for it out of her own pocket from an account into which she has paid premiums. It is ridiculously complex and has drawn ire from Catholic bishops and other abortion foes as being merely a paper barrier and one that is likely to require court action to enforce.

Surprisingly, in light of all the wrangling and rewrites undergone in the effort to craft some abortion scheme that was acceptable to pro-life senators and those favoring abortion on demand (Senator Barbara Boxer of California represented this bloc in the negotiations with Nelson), the resultant provision has been deemed unacceptable by groups on both sides of the debate. Pro-life organizations such as the Catholic Church decry the availability of abortion in the bill, while perennial pro-abortion groups represented by Planned Parenthood bemoan the compromise as too restrictive. No one, it seems, is happy with the current structure regarding the availability of abortion procedures, and as such they are likely to exert significant pressure on like-minded lawmakers in the days leading up to a final vote on the joint resolution.

Given the ease with which many legislators abandon principle for payments, there is little doubt that the clash over abortion will be mostly sound and fury signifying nothing. To wit, on Wednesday, Congressman Stupak announced that he was huddling with Senator Nelson and to no one's surprise he declared, "I do believe this is not an insurmountable issue. I think it can be worked out." Savvy

observers agree with the Congressman. The only uncertainty is how much money "working it out" will cost the American middle-class.

Another issue that once caused consternation among those even modestly conscious of the cost and consequence of the healthcare overhaul is the new entitlement program it creates for the welfare of the elderly and infirm. The program, a pet project of the late Senator Edward Kennedy of Massachusetts, is called by the acronym CLASS — Community Living Assistance Services and Support. Predictably, supporters claim the act will mercifully provide a way for the disabled to remain in their homes rather than be shuffled off to an institution. Detractors warn that the program will not help the poor and that paying for it will impoverish the entire nation for decades to come through a crushing inflation of the national debt.

Simply put, CLASS would provide a daily cash stipend to those who purchase the policy in the event that they are unable to perform at least two essential activities of daily life such as bathing and eating. Under the version of the program extant in the Senate bill, employees would buy into the program via their employer-provided health care policies. There would be a five year threshold before benefits would be available. The House version would extend coverage not only to workers but to their unemployed spouses, as well.

The cost of the program is difficult to calculate as the benefits provided by the program will most likely attract those whose health points toward the necessity of long-term care, thus the amount paid in to the system will soon exceed the premiums collected, bankrupting the program and making its fiscal sustainability reliant on the greater treasury. "They are creating a new government program that everyone concedes is clearly unsustainable," averred Dennis Smith of the Heritage Foundation. He explained that the absence of a screening process will swell the roster of eager recipients and thus do irreparable harm to the fiscal health of the nation.

CLASS has a swelling roster of supporters as well, so the measure, no matter its forecast of financial disaster, is likely to be included in some form or other in the final version of healthcare "reform" that is now expected to be sent to President Obama for his signature early in the new year.

Another thorny issue that was left out of the Senate bill in order to scrape together the 60 votes without which it would have withered is the national government's panoply of insurance policies known as the "public option." This oft-maligned federally funded scheme was too wide with controversy to pass through the narrow channel of caucus compromise and was thus shed by Senator Reid before the measure was put up for a cloture vote earlier in the week. The House version, however, sailed through the pass despite such encumbrances, and its liberal backers have promised to raise the matter anew when the two chambers' respective bills are combined into one.

"It will be revisited," proclaimed Senator Tom Harkin (D-Iowa). "This is just the beginning," he continued. He is the chairman of the powerful Health, Education, Labor, and Pensions Committee, and with a wink and a nod he has consoled his left-wing constituency that their interests will be defended and that the "public-option" will not be abandoned without a fight.

One powerful pugilist will not be in the liberal corner if push comes to shove, however. President Obama told American Urban Radio that as only "a few million" people would benefit from the program it would be expendable if such a sacrifice were required for the sake of passage of the wider package of healthcare "reforms." Demonstrating his pragmatism and sang-froid in the face of heated ideological scrums, since invocation of cloture in the Senate, President Obama has repeatedly downplayed the

significance of the system and described it as merely “symbolic” and unworthy of unqualified sponsorship, especially, it seems, if such a rigid stance would negatively impact this essential plank of the platform of his larger legacy.

Finally, while most already and lamentably smell the odor of the smoke of false fire so redolent of legislative inevitability wafting through the corridors of the Capitol, there are yet foes of any re-working of the healthcare system determined to fight the matter to the very end of constitutional challenges.

Henry McMaster is the attorney general of South Carolina, a state renowned for its resistance to power it perceives as illegitimate. McMaster declared that he would commence an official investigation into whether or not the apparent purchase of votes in the senate in order to pass the legislation was a violation of the Constitution. A similar question was raised Tuesday by McMaster’s fellow South Carolinian, Senator Jim DeMint (R-S.C.), and co-sponsored by Senator John Ensign (R-Nev.). The Senators raised a constitutional point of order asserting that Article I of the Constitution does not endow Congress with the power to require the purchase of health insurance, nor to punish the failure to do so. Furthermore, the point of order asserts, the imposition of a fine for failure to comply with the act’s mandates may violate the “takings clause” of the Fifth Amendment to the Constitution. By a vote of 60-39, the Senate decided that the point of order was “not well-taken,” that is to say: constitution, schmonstitution. And the beat goes on.

The final version of the bill originally scheduled to be put before the full chamber at 8 a.m. Christmas Eve has been moved forward one hour to ease the burden of travel on Senators heading home for the holidays. In light of the foregoing chronicle of the unparalleled power of legislative largesse to purchase principles, it appears likely that this unconstitutional and unwieldy behemoth will be imposed onto a country whose opposition to it is so well documented. Congress is not confused; they are contrary. The elected representatives of the people are set to disregard the expressed will of the electorate and pass a program into law that by even liberal estimates is quite likely to be so financially burdensome as to make Social Security and Medicare seem thrifty by comparison.

The lesson to be learned was set forth in the morning of our sacred founding document’s birth. James Madison, the man credited by history as the “father of the Constitution,” declared in *The Federalist Papers*: “It is essential to liberty, that the government in general should have a common interest with the people; so it is particularly essential, that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy, by which this dependence and sympathy can be effectually secured.” Therefore, let concerned Americans do with ballots what they thus far have been unable to do with letters and poll responses — that is to remind their representatives that they are answerable to their constituents and that they are required to give an accounting of their actions on their behalf.