



NHF Lobbyist's Report

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HEALTH FREEDOM 112th CONGRESSIONAL OUTLOOK

"I can see clearly now... Gone are the dark clouds that had me blind..." - Musician Johnny Nash

The Lobbyist Reports in the Winter editions of *Health Freedom News* for the past two years presented ominous tones for the then-upcoming Congressional agendas for legislation against the exercise of health freedoms, the rolling back of the Dietary Supplement Health and Education Act (DSHEA), the expansion of Federal control over our health-care system, and yet more money and expanded authority for the gluttonous Food and Drug Administration (FDA) – to name just a few issues (see Vol. 26-4; Vol. 27-4).

The 2010 Congressional Elections

The end of the anti-health-freedom Democratic Congressional leadership regime in the House (*the Pelosi/Waxman/Dingell axis*) and the post-election slim Senate majority for next year, their lock on political decisions on legislation assaulting our constitutional rights and protections, and continued march towards higher levels of national bankruptcy could not have come sooner as far as I am concerned. Dealing with Congress is never a "Sun-Shiny Day," but there will be more sunshine than dark clouds starting in the next legislative session. For those like myself who follow political history and party control of Congress, the Democrats held the majority status in the House of Representatives for 40 years (1954-1994); the Republicans had majority status for only 12 years, until 2006; and the Democrats have now lost House majority control in just four years. Lest one forgets, Congressional history has also been made with the election of Senator-elect Rand Paul (R), son of Representative Ron Paul (R-TX). The Pauls are the first father-and-son Congressional member combination in U.S. electoral history.

Unless you are a liberal Democrat or the President, the 2010 election lessons were simple to comprehend. Americans want their elected representatives to share their views and solve social and economic issues, regardless of party affiliation. They don't want more government spending, higher taxes, or increased government command and control over peoples' lives. The Republican take-over of the House, the end of an almost veto-proof Senate, and the demise of the Pelosi-Reed-Durbin-Waxman-Dingell axis of anti-health-freedom viewpoints make the 2011 Congressional session look brighter, at least from my perspective. The people

of the United States are only truly safe when Congress is not in session.

In 2010, the NHF successfully lobbied against S.3002, the so-called "Dietary Supplement Safety Act of 2010," offered by Senators McCain and Dorgan, leading to its withdrawal. The NHF worked with the Sunshine Health Freedom Foundation to successfully get Codex exemption language for dietary supplements in the so-called Food Safety Modernization Act (S.510). The NHF joined with organic and nutritional food producers in opposing the FDA position on adopting Codex guidelines that would have prevented the labeling of foods as being non-genetically modified (GM/GE) food. Like other true health-freedom groups, the NHF strongly opposed the "Food Safety" bills H.R.2749 and S.510, even though, as a fallback position, NHF did successfully lobby to include within S.510 the dietary-supplement-exemption language that is still there. Even with this exemption language, though, both bills would severely constrain our food freedoms. Bad bills are, after all, bad bills.

The NHF also dealt with several FDA and Federal Trade Commission (FTC) regulations, and the Obama Administration's unwarranted and unwanted \$750 million increase in the FDA budget, bringing the Agency's yearly spending to just over \$4 billion. Yes, *billion*. NHF's members and other health-freedom advocates also registered their opposition to the Democrats' legislation leading to the complete Federal government takeover of health-care insurance and health-treatment choices, and Federal centralization and control over individual insurance purchase decisions. The NHF issued numerous legislative alerts and press releases to NHF members and advocates on all of these issues, and others. Thanks to members and other health-freedom advocates there were some successes, but also some failures. Unfortunately, lobbying Congress is not a perfect world and there are others opposing us with bigger wallets and special-interest advantages.

Protection of health freedoms is never guaranteed when it comes to the success or failure of Congressional legislation, or to restricting the out-of-control regulatory practices of FDA bureaucrats seeking to regulate supplements as drugs, or supplements as conventional foods. The new House political lineup improves our access and avenues to bring FDA regulatory issues to the attention of Congress for a fuller airing at the House Government Oversight and Reform Committee, with Dan Burton (R-IN) as

a member. Burton is a long-time FDA critic and dietary-supplement supporter. The political legislative change in environment over the next two years in the House presents a much brighter outlook than had been the case for the last two years. So what might be in store?

Recap on the Lame-Duck Session of Congress

The rest of 2010 included major issues, not the least of which was Senate and House consideration of the FDA Food Safety Modernization Act; its defeat was a priority for the NHF and a few other health-freedom groups in the lame-duck session. In typical Democratic House of Representatives legislative sausage-making, Speaker Pelosi and her Democratic lieutenants used all of the legislative tools and sleight-of-hand to abort the normal legislative processes to pass the legislation. This was done by adding S.510 as an amendment to the 2011 Continuing Resolution; a bill to fund all of the Federal government for 2011 and a must-pass bill to keep the Federal government open. Realistically, shutting down the government when possible is a good thing. Dirty tactics just used included the Democrats holding votes open on S.510 until they could get a slim-vote lead "victory," and then immediately gaveling a vote closed to prevent Republicans from voting. This happened several times with the Continuing Resolution. Tactics included the use of "closed rules" – meaning limited debate and no amendments to a bill as presented to the House floor. This is similar to how legislative bodies in "banana republics" operate and again shows that liberal Democrats forget how persistent America's traditionalism really is. Their treatment of the legislative process shows that they continue to believe that enacted laws cannot be changed when in fact they can and are. The legislative end does not justify the use of heavy-handed means. These tactics are yet another display of why Americans hold their Federal elected representatives in such low esteem. Although I have been at this line of work for many years now, even I was surprised at Pelosi and Company's blatant high-jacking of the legislative process and their low-brow shenanigans so they could pass the Food Safety bill in the House.

The enacted version of S.510 does include clear and concise Congressional language that exempts dietary-supplement manufacturers, distributors, and retailers from coverage otherwise targeted at conventional food manufacturers, and exemption language for dietary supplements from the food-product Codex guidelines called for in the new law. Both of these were policy changes that the NHF lobbied on and was involved with until the bitter end, at least for this year. The NHF was successful in getting "a half a loaf" by preventing FDA from obtaining over-reaching regulatory authority for supplements, but not successful in preventing the whole loaf of a bad law from passing Congress.

Much of the NHF success was attributable to the grassroots lobbying efforts of NHF members, even when not winning on our positions. The Food Safety and Modernization Act is likely to be on the 2011 NHF Congressional session. While it has become law, it still has to be implemented and funded with new monies. There will be more Congressional opportunities to thwart the FDA bureaucrats in the coming years. The new law authorizes another \$1.4 billion in FDA spending, but the House of Representatives controlled by Republicans has to make this happen in the committee and on the House floor. No new money means the FDA will have to take funds from other Agency sources. If and when implemented, S.510 will not make the food system any safer and

will just increase the cost of food. A more layered and complex bureaucracy is not a more efficient bureaucracy.

The slim Democratic majority in the Senate should help health-freedom advocates in that it makes passage of any bad legislation harder to obtain. Senator Harry Reid (D-NV) retains his Majority Leader position, with Senator Dick Durbin (D-IL) continuing as the Assistant Majority Leader. Should Reid not stay in this position, it will most likely mean that Senator Dick Durbin (D-IL) would take over as the Senate Majority Leader. The well-known, anti-supplement protagonist Durbin, while leading a slim Democratic majority, would still be in a key position to sneak in any amendment to Senate bills right before final votes on the floor. If this change in leadership scenario were to occur, then the health-freedom community will have to go on high alert. This legislative process advantage for Durbin would put more pressure on the Senate's pro-supplement supporters Senators Tom Harkin (D-IA) and Orrin Hatch (R-UT). The real good news with the 2011 Senate is that there may well be additional health-freedom supporters like Senator-elect Rand Paul (R-KY) or Senator-elect Mike Lee (R-UT). Senator Harkin will retain his leadership position as the Chairman of the Senate HELP Committee. It is important to keep in mind that official Committee Chairmanships and member assignments will not be made until the new session starts in January.

On the House side, the end of the Democratic-Party-majority status means that the reign of Henry Waxman (D-CA), Nancy Pelosi's political soul mate, as the omnipotent Chair of the Energy and Commerce Committee, has come to an end. This is the House committee through which all things FDA must pass, except for spending bills. Waxman's expected replacement is Joe Barton (R-TX), or Fred Upton (R-MI). Barton has historically voted for less FDA authority and control over individual freedom on committee legislation. Barton has also been a supporter of supplements in the past. The Republican change with the Energy and Commerce Committee should provide a more receptive platform for bills that were effectively blocked by Waxman. For example, Representative Ron Paul (R-TX) sponsored three of these bills. The NHF supported these bills, lobbying for legislation to rein in the out-of-control FTC and FDA on dietary-supplement health claims and FTC advertising authority and regulations. H.R.3394 and H.R.3395, sponsored by Representative Ron Paul (R-TX) are the latest bills that would end the use of "regulatory arbitrage" by both agencies. The Congressional Responsibility and Accountability Act (H.R.3396) sponsored by Representative Paul would give Congress veto authority over proposed Federal regulations, like those of the FDA. With the start of the new session, Committee Chairmanships and memberships will be made and bills will have to be reintroduced for the 112th Congress. These and other Congressional bills in the 111th Congress can be viewed at the NHF website at: <http://www.thenhf.com/page.php?id=124>

There is one health-freedom legislative issue certain to be on the table in 2011 – the repeal or reform of the 2010 healthcare reform law, also called "Obamacare." I hesitate to make predictions on what Congress may or may not do on legislation. Having said this, I would advise anyone thinking that the health-care reform law will be completely repealed should dissuade himself or herself of this idea. My thinking is based upon the legislative and political realities of the new Congress. The Obama Administration is expected to oppose any changes, relying upon Senate Democrats to support a Presidential veto. Moderate Democrats in the House

and Senate, after the 2010 election outcomes, could well align with Republicans to repeal the most-controversial provisions in the new law – like the individual mandate, several individual taxes imposed to fund the expanded Federal health-insurance program, and other similar facets. Piecemeal repeal of the new law is a more realistic political prospect. There may be legislative efforts to “defund” parts of the new health-care law. Health-freedom advocates should be ready to participate in grassroots efforts to proactively help dismantle the government take-over of health care and enact more sensible alternatives – like reining in the voracious special-interest trial attorneys. Also, keep in mind that State nullification of the Federal individual mandate and Medicaid program expansion are yet other prospects to dismantle Obamacare.

Some may want to sit back and rest with the demise of the axis-of-evil Democratic Congressional leadership, but the NHF will not be in this crowd. Instead, we will take advantage of opportunities to constructively oppose legislation and regulations detrimental to our health freedoms, and to support legislation that is favorable to our long-held, health-freedom convictions. Engagement – not retreat – will be our best course of action. And the Democratic leadership is not the only devil in Congress; there are still too many big-government Republicans who need to be watched and opposed as well. Republicans are by no means immune to criticism. Yet, the new Congressional environment does present proactive opportunities to advance our health-freedom views while halting FDA excesses on the regulatory front.

As the NHF lobbyist, I will have to spend time getting to know all of the new Congressional members and their staffs, informing them as to whom the NHF is and what it stands for,

and getting the pulse of the new political atmosphere. There will be continued challenges in the new Congress. Hopefully, some of these will be of positive direction for less government control, more individual responsibility, and improved health freedom of choice. Time will tell. As they always have, NHF members and other respectable health-freedom groups in the community will have to continue to play an important activist role in making things happen in the Congressional legislative arena.

Federal Regulatory Picture

Briefly, the FDA has a pending industry guidance on supplement labeling and the FTC is expected to release new dietary-supplement industry guidelines on product advertising claims. The gist of the FTC action is to require product-specific studies to back claims made for dietary-supplement and functional food products. This embodies a new definition of competent and reliable scientific substantiation. At least two adequate and well-controlled human studies of the product or of a substantially similar product would be required to support any advertising health claims for products. These studies would have to be conducted by different experts, independently of each other, and conform to acceptable designs and protocols. This standard is a *significant* change in the existing administrative law and presents, once more, another example of the “government bureaucrats know more than American consumers” mentality.

The FDA can also be expected to release its own proposed regulations for labeling of dietary-supplement products. This has been on the regulatory agenda list for over ten years. I, for one, am not holding my breath on this happening, but it very well could. And the result will not be pretty, to say the least. 

In Memory Of...

Memorials for Fall 2010

Daniel Winter

Bettie Jenkins

Helen Snodgrass

A Caring Memorial

*Remember your loved ones
by serving the living.*

*Your loving memorial will preserve the
freedom to choose for your children
and grandchildren.*

*The NHF is an organization devoted to
truth. Thank you for caring!*

This gift is in memory of

Your name _____

Address _____

City _____ State _____ Zip _____

Would you like us to send an acknowledgement card?

Yes No

Your name _____

Address _____

City _____ State _____ Zip _____

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