

115TH CONGRESS
2D SESSION

S. RES. 734

Authorizing the Senate Legal Counsel to represent the Senate in Texas
v. United States, No. 4:18-cv-00167-O (N.D. Tex.).

IN THE SENATE OF THE UNITED STATES

DECEMBER 19, 2018

Mr. MANCHIN (for himself, Mr. SCHUMER, Mrs. MURRAY, Mr. WYDEN, Mr. JONES, Mr. CARPER, Ms. BALDWIN, Mr. BROWN, Mr. KAINE, Mr. UDALL, Mr. DURBIN, Mr. REED, Mr. VAN HOLLEN, Mr. SANDERS, Mr. HEINRICH, Mr. BENNET, Ms. KLOBUCHAR, Ms. SMITH, Mr. TESTER, Mrs. MCCASKILL, Ms. HIRONO, Ms. WARREN, Mr. DONNELLY, Mr. CASEY, Mr. MURPHY, Ms. CORTEZ MASTO, Mr. KING, Mr. LEAHY, Ms. DUCKWORTH, Mr. WHITEHOUSE, Mr. MARKEY, Mr. BLUMENTHAL, Mrs. SHAHEEN, Mr. CARDIN, Mr. MENENDEZ, Mr. BOOKER, Ms. HASSAN, Ms. HARRIS, Ms. STABENOW, Mr. PETERS, and Mr. MERKLEY) submitted the following resolution; which was referred to the Committee on Rules and Administration

RESOLUTION

Authorizing the Senate Legal Counsel to represent the Senate in Texas v. United States, No. 4:18-cv-00167-O (N.D. Tex.).

Whereas Texas, Wisconsin, Alabama, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Paul LePage (Governor of Maine), Mississippi (by and through Governor Phil Bryant), Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah, and West Virginia have filed suit in the United States

District Court for the Northern District of Texas, arguing that the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119), is unconstitutional and should be enjoined, by asserting that the Act’s requirement to maintain minimum essential coverage (commonly known as the “individual responsibility provision”) in section 5000A(a) of the Internal Revenue Code of 1986, is unconstitutional following the amendment of that provision by the Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018 (Public Law 115–97) (commonly known as the “Tax Cuts and Jobs Act”);

Whereas these State and individual plaintiffs also seek to strike down the entire Patient Protection and Affordable Care Act as not severable from the individual responsibility provision;

Whereas, on June 7, 2018, the Department of Justice refused to defend the constitutionality of the amended individual responsibility provision, despite the well-established duty of the Department to defend Federal statutes where reasonable arguments can be made in their defense;

Whereas the Department of Justice not only refused to defend the amended individual responsibility provision, but it affirmatively argued that this provision is unconstitutional and that the provisions of the Patient Protection and Affordable Care Act guaranteeing issuance of insurance coverage regardless of health status or pre-existing conditions (commonly known as the “guaranteed issue provision”), sections 2702, 2704, and 2705(a) of the Public Health Service Act (42 U.S.C. 300gg–1, 300gg–3, 300gg–4(a)), and prohibiting discriminatory premium rates (commonly known as the “community rating provi-

sion”), sections 2701 and 2705(b) of the Public Health Service Act (42 U.S.C. 300gg(a)(1), 300gg-4(b)) must now be struck down as not severable from the individual responsibility provision; and

Whereas the district court in *Texas v. United States*, No. 4:18-cv-00167-O (N.D. Tex.) issued an order on December 14, 2018 declaring that the individual responsibility provision in section 5000A(a) of the Internal Revenue Code of 1986 is unconstitutional and that all the provisions of the Patient Protection and Affordable Care Act are not severable and therefore are invalid: Now, therefore, be it

1 *Resolved*, That the Senate Legal Counsel is author-
 2 ized to represent the Senate in *Texas v. United States*,
 3 No. 4:18-cv-00167-O (N.D. Tex.), including seeking to—

4 (1) intervene as a party in the matter and re-
 5 lated proceedings; and

6 (2) defend all provisions of the Patient Protec-
 7 tion and Affordable Care Act, the amendments made
 8 by that Act to other provisions of law, and any
 9 amendments to such provisions, including the provi-
 10 sions ensuring affordable health coverage for those
 11 with pre-existing conditions.

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