

116TH CONGRESS  
1ST SESSION

# S. RES. 134

Expressing the sense of the Senate that the Department of Justice should reverse its position in *Texas v. United States*, No. 4:18-cv-00167-O (N.D. Tex.).

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## IN THE SENATE OF THE UNITED STATES

APRIL 2, 2019

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

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## RESOLUTION

Expressing the sense of the Senate that the Department of Justice should reverse its position in *Texas v. United States*, No. 4:18-cv-00167-O (N.D. Tex.).

Whereas, on February 26, 2018, 18 State attorneys general and 2 Governors filed a lawsuit in the United States District Court for the Northern District of Texas, *Texas v. United States*, No. 4:18-cv-00167-O (N.D. Tex.) (in this preamble referred to as “*Texas v. United States*”),

arguing that the requirement of the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119) (in this preamble referred to as the “ACA”) to maintain minimum essential coverage is unconstitutional and, as a result, the court should invalidate the entire law;

Whereas, in a June 7, 2018, letter to Congress, then Attorney General Jefferson Sessions announced that the Department of Justice—

(1) would not defend the constitutionality of the minimum essential coverage provision; and

(2) would argue that provisions protecting individuals with pre-existing medical conditions (specifically the provisions commonly known as “community rating” and “guaranteed issue”) are inseverable from the minimum essential coverage provision and should be invalidated;

Whereas, in the June 7, 2018, letter to Congress, Attorney General Sessions also advised Congress that “the Department will continue to argue that Section 5000A(a) is severable from the remaining provisions of the ACA”, indicating a difference from the plaintiffs’ position in *Texas v. United States*;

Whereas, on December 14, 2018, the United States District Court for the Northern District of Texas issued an order that declared the requirement to maintain minimum essential coverage unconstitutional and struck down the ACA in its entirety, including protections for individuals with pre-existing medical conditions;

Whereas the decision of the United States District Court for the Northern District of Texas was stayed and is pending appeal before the United States Court of Appeals for the Fifth Circuit;

Whereas, on March 25, 2019, the Department of Justice, in a letter to the United States Court of Appeals for the Fifth Circuit, changed its position and announced that the entire ruling of the United States District Court for the Northern District of Texas should be upheld and the entire ACA should be declared unconstitutional;

Whereas, prior to 2014, individuals with pre-existing medical conditions were routinely denied health insurance coverage, subject to coverage exclusions, charged unaffordable premium rates, exposed to unaffordable out-of-pocket costs, and subject to lifetime and annual limits on health insurance coverage;

Whereas as many as 133,000,000 nonelderly people in the United States—

(1) have a pre-existing condition and could have been denied coverage or only offered coverage at an exorbitant price had they needed individual market health insurance prior to 2014; and

(2) will lose protections for pre-existing conditions if the ruling of the United States District Court for the Northern District of Texas is upheld in *Texas v. United States*;

Whereas, as of March 2019, employers cannot place lifetime or annual limits on health coverage for their employees, and if the ruling of the United States District Court for the Northern District of Texas is upheld, more than 100,000,000 people in the United States who receive health insurance through their employer could once again face lifetime or annual coverage limits;

Whereas, prior to 2010, Medicare enrollees faced massive out-of-pocket prescription drug costs once they reached a certain threshold known as the Medicare “donut hole”,

and since the donut hole began closing in 2010, millions of Medicare beneficiaries have saved billions of dollars on prescription drugs;

Whereas, at a time when 3 in 10 adults report not taking prescribed medicines because of the cost, if the ruling of the United States District Court for the Northern District of Texas is upheld, seniors enrolled in Medicare would face billions of dollars in new prescription drug costs;

Whereas, as of March 2019, 37 States and the District of Columbia have expanded or voted to expand Medicaid to individuals with incomes below 138 percent of the Federal poverty level, providing health coverage to more than 12,000,000 newly eligible people;

Whereas, if the ruling of the United States District Court for the Northern District of Texas is upheld, the millions of individuals and families who receive coverage from Medicaid could lose eligibility and no longer have access to health care;

Whereas, as of March 2019, many people who buy individual health insurance are provided tax credits to reduce the cost of premiums and assistance to reduce out-of-pocket costs such as copays and deductibles, which has made individual health insurance coverage affordable for millions of people in the United States for the first time;

Whereas, if the ruling of the United States District Court for the Northern District of Texas is upheld, the health insurance individual exchanges would be eliminated and millions of people in the United States who buy health insurance on the individual marketplaces could lose cov-

erage and would see premium expenses for individual health insurance increase exorbitantly; and

Whereas, if the ruling of the United States District Court for the Northern District of Texas is upheld, people in the United States would lose numerous consumer protections, including the requirements that—

(1) plans offer preventive care without cost-sharing;

(2) young adults can remain on their parents' insurance plan until age 26; and

(3) many health insurance plans offer a comprehensive set of essential health benefits such as maternity care, addiction treatment, and prescription drug coverage: Now, therefore, be it

1       *Resolved*, That it is the sense of the Senate that the  
2 Department of Justice should—

3           (1) protect individuals with pre-existing condi-  
4 tions, seniors struggling with high prescription drug  
5 costs, and the millions of people in the United States  
6 who newly gained health insurance coverage since  
7 2014; and

8           (2) reverse its position in *Texas v. United*  
9 *States*, No. 4:18-cv-00167-O (N.D. Tex.).

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