

H. Res. 271

In the House of Representatives, U. S.,

April 3, 2019.

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 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 Depart-

ment 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 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 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 million nonelderly people in the United States—

(1) have a pre-existing condition and could have been denied coverage, only offered coverage at an exorbitant price had they needed individual market health in-

insurance prior to 2014, or had coverage for their pre-existing condition excluded 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 contrary to President Trump's public claims that he supports protections for people with pre-existing conditions, he has ordered his Department of Justice to actively pursue the destruction of these protections in Federal court;

Whereas employer-provided health plans cannot place lifetime or annual limits on health coverage, and if the Trump Administration succeeds in its argument before the court, more than 100 million people in the United States who receive health insurance through their employer could once again face lifetime or annual coverage limits;

Whereas if the Trump Administration succeeds in its argument before the court, insurers would be allowed to impose an unlimited "age tax" on the health insurance premiums of older Americans;

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 Trump Administration succeeds in its argument before the court,

seniors enrolled in Medicare would face billions of dollars in new prescription drug costs;

Whereas as of March 2019, 37 States, including the District of Columbia, have expanded or are in the process of expanding Medicaid to individuals with incomes up to 138 percent of the Federal poverty level, providing health coverage to more than 12 million newly eligible people;

Whereas if the Trump Administration succeeds in its argument before the court, 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 Trump Administration succeeds in its argument before the court, 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 coverage and would see premium expenses for individual health insurance increase exorbitantly;

Whereas if the Trump Administration succeeds in its argument before the court, people in the United States would lose numerous consumer protections in their coverage, including the requirements that—

- (1) plans offer preventive care without cost-sharing;
- (2) young adults have the option to remain on a parent's 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;

Whereas pursuant to section 516 of title 28, United States Code, the conduct of litigation in which the United States is a party is reserved to the Department of Justice;

Whereas public reports suggest that the President and his political advisors directed this course of action in direct contravention of the Department of Justice's long-standing policy to defend Acts of Congress and duty to advance reasonable analysis of legal questions, for example—

(1) when the Department of Justice changed its litigating position on June 7, 2018, in the *Texas v. United States* case to ask the court to strike down the ACA's guaranteed issue and community rating requirements, thereby eliminating protections for people with pre-existing conditions and reinstating legal discrimination based on health status, that position was found to be so legally indefensible that three of the four career attorneys representing the Government refused to sign the relevant briefs and removed themselves from the case; and

(2) when the Department of Justice again changed its litigating position on March 25, 2019, in the appeal of *Texas v. United States* to seek the invalidation of every provision of the ACA, it was reported that decision was made over the objections of both the Department of Justice as well as the Department of Health and Human Services; and

Whereas the Trump Administration has proceeded in the *Texas v. United States* lawsuit with total disregard for

the consequences of its actions for the lives of millions of Americans: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the actions taken by the Trump Administration seeking the invalidation of the ACA's protections for people with pre-existing conditions, and later the invalidation of the entire ACA, are an unacceptable assault on the health care of the American people; and

(2) the Department of Justice should—

(A) protect individuals with pre-existing conditions, seniors struggling with high prescription drug costs, and the millions of people in the United States who newly gained health insurance coverage since 2014;

(B) cease any and all efforts to destroy Americans' access to affordable health care; and

(C) reverse its position in *Texas v. United States*, No. 19–10011 (5th Cir.).

Attest:

Clerk.