116TH CONGRESS
1ST SESSION

S. RES. 94

Expressing the sense of the Senate that the Department of Justice should protect individuals with pre-existing medical conditions by defending the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119) in Texas v. United States, No. 4:18–cv–00167–O (N.D. Tex.), in which the plaintiffs seek to invalidate protections for individuals with pre-existing medical conditions.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2019

Ms. HIRONO (for herself, Mr. MANCHIN, Ms. KLOBUCHAR, Ms. DUCKWORTH, Mr. WHITEHOUSE, Mr. TESTER, Ms. HASSAN, Ms. BALDWIN, Mr. MERKLEY, Mr. JONES, Ms. SINEMA, Mr. DURBIN, Mr. BLUMENTHAL, Mrs. FEINSTEIN, Mr. COONS, Ms. ROSEN, Mr. KING, Mr. LEAHY, Ms. SMITH, Mr. BROWN, Ms. CORTEZ MASTO, Mrs. SHAHEEN, Ms. HARRIS, Mr. BOOKER, Mr. REED, Mr. SCHUMER, Ms. WARREN, Mr. MARKEY, Mr. MENENDEZ, Mr. BENNET, Ms. STABENOW, Mr. WYDEN, Mrs. GILLIBRAND, Mr. VAN HOLLEN, Mr. CASEY, Mr. HEINRICH, Mr. KAINE, Mrs. MURRAY, Mr. MURPHY, and Mr. UDALL) 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 protect individuals with pre-existing medical conditions by defending the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119) in Texas v. United States, No. 4:18–cv–00167–O (N.D. Tex.), in which the plaintiffs seek to invalidate protections for individuals with pre-existing medical conditions.

Whereas, in 2010, Congress passed and President Barack Obama signed the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119) (in this preamble referred to as the ''ACA'');

Whereas, prior to the enactment of the ACA, individuals with pre-existing medical conditions were routinely denied health insurance coverage, charged exorbitant rates for health insurance coverage, exposed to unreasonable out-of-pocket costs for health care, or subject to lifetime limits on health insurance coverage;

Whereas the ACA instituted comprehensive protections for individuals with pre-existing medical conditions, including—

(1) the protection commonly known as ''guaranteed issue'', which requires health insurance companies to issue a health plan to any applicant regardless of health status or other factors, under section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1);

(2) the protection commonly known as ''community rating'', which prohibits health insurance companies from varying premiums within a geographical area based on gender or health status and limits the ability of health insurance companies to vary premiums based on age, under section 2701 of the Public Health Service Act (42 U.S.C. 300gg); and

(3) the prohibition on discrimination based on health status, which prohibits excluding from a health plan benefits for pre-existing medical conditions or establishing eligibility rules based on pre-existing medical conditions, under sections 2704 and 2705(a) of the Public Health Service Act (42 U.S.C. 300gg–3, 300gg–4(a));

Whereas, on June 7, 2018, pursuant to section 530D of title 28, United States Code, then Attorney General Jefferson Sessions, under the direction of the President, notified Congress that the Department of Justice—

(1) would not defend the constitutionality of the requirement to maintain minimum essential coverage under section 5000A of the Internal Revenue Code of 1986, as added by the ACA; and

(2) would argue that certain provisions of the ACA, including the provisions protecting an estimated 133,000,000 individuals in the United States with pre-existing medical conditions, are inseverable from the requirement to maintain minimum essential coverage;

Whereas the United States District Court for the Northern District of Texas—

(1) issued an order declaring that—

(A) the requirement to maintain minimum essential coverage is unconstitutional; and

(B) the remaining provisions of the ACA, including protections for individuals with pre-existing medical conditions, are inseverable from that requirement; and

(2) invalidated the remaining provisions of the ACA;

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 the refusal of the Department of Justice to defend the ACA, as even then Attorney General Sessions acknowledged in his notice to Congress, contravened the Executive Branch's "longstanding tradition of defending

the constitutionality of duly enacted statutes if reasonable arguments can be made in their defense'';

Whereas reasonable arguments can be made in defense of the ACA, as evidenced by an amicus brief filed by legal experts, including experts who supported other legal challenges to the ACA; and

Whereas, by arguing that the guaranteed issue, community rating, and other protections prohibiting discrimination are inseverable from the remaining provisions of the ACA and therefore the remaining provisions of the ACA are invalid, the Department of Justice is risking vital protections for the estimated 133,000,000 individuals in the United States with pre-existing medical conditions: Now, therefore, be it

1 *Resolved,* That it is the sense of the Senate that the
2 Department of Justice should protect individuals with pre-
3 existing medical conditions, including by reversing its posi-
4 tion and defending the critically important provisions of
5 the Patient Protection and Affordable Care Act (Public
6 Law 111–148; 124 Stat. 119) in Texas v. United States,
7 No. 4:18–cv–00167–O (N.D. Tex.).

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