116TH CONGRESS
2D SESSION

S. RES. 638

Expressing the sense of the Senate that the Department of Justice should defend the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119) and halt its efforts to repeal, sabotage, or undermine health care protections for millions of people in the United States in the midst of the public health emergency relating to the Coronavirus Disease 2019 (COVID–19).

IN THE SENATE OF THE UNITED STATES

JUNE 30, 2020

Mr. TESTER (for himself, Mr. SCHUMER, Mrs. SHAHEEN, Mr. MANCHIN, Mr. KAINE, Mr. WARNER, Mr. JONES, Ms. SMITH, Ms. HIRONO, Mr. REED, Mr. VAN HOLLEN, Ms. CORTEZ MASTO, Ms. BALDWIN, Mr. BROWN, Mr. BENNET, Mr. CARPER, Mr. BLUMENTHAL, Mr. MARKEY, Mr. DURBIN, Ms. HARRIS, Mr. CARDIN, Mrs. MURRAY, Ms. ROSEN, Ms. STABENOW, Mr. MURPHY, Mr. WYDEN, Ms. HASSAN, Mr. PETERS, Ms. KLOBUCHAR, Mr. HEINRICH, Ms. WARREN, Ms. SINEMA, Mr. KING, Mr. UDALL, Mr. WHITEHOUSE, Mr. MENENDEZ, Mrs. FEINSTEIN, Mr. SCHATZ, Mr. COONS, Mr. LEAHY, Mr. SANDERS, Mr. BOOKER, Mrs. GILLIBRAND, Mr. MERKLEY, Ms. CANTWELL, Mr. CASEY, and Ms. DUCKWORTH) 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 defend the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119) and halt its efforts to repeal, sabotage, or undermine health care protections for millions of people in the United States in the midst of the public health emer-

gency relating to the Coronavirus Disease 2019 (COVID–19).

Whereas more than 2,500,000 people in the United States have tested positive for the Coronavirus Disease 2019 (referred to in this preamble as ''COVID–19''), with many requiring costly health care;

Whereas, prior to 2010, a diagnosis of COVID–19 likely would have been considered a pre-existing medical condition;

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

Whereas, prior to the enactment of the ACA, more than 133,000,000 nonelderly people in the United States with a pre-existing medical condition were consistently charged unaffordable premiums for health insurance coverage, were subject to exorbitant out-of-pocket costs for care, faced annual and lifetime limits on coverage, or were denied health care coverage altogether;

Whereas, prior to the enactment of the ACA, millions of seniors with Medicare coverage encountered steep out-of-pocket prescription drug costs once those seniors hit a 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 drug costs;

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.) (re-

ferred to in this preamble as ''Texas v. United States''), arguing that the requirement of the ACA to maintain minimum essential coverage is unconstitutional;

Whereas the State and individual plaintiffs in Texas v. United States also seek to strike down the entire ACA as not severable from the requirement to maintain minimum essential coverage;

Whereas, despite the well-established duty of the Department of Justice to defend Federal statutes where reasonable arguments can be made in their defense, Attorney General Jefferson Sessions announced in a letter to Congress on June 7, 2018, that the Department of Justice would not defend the constitutionality of the minimum essential coverage provision;

Whereas, in the June 7, 2018, letter to Congress, then Attorney General Jefferson Sessions announced that the Department of Justice would instead argue that provisions protecting individuals with pre-existing medical conditions (specifically the provisions commonly known as ''community rating'' and ''guaranteed issue'') are not severable from the minimum essential coverage provision and ought to be invalidated;

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

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 central holding of the United States District Court for the Northern District of Texas should be upheld and the entire ACA should be declared inseverable from the minimum essential coverage provision and struck down;

Whereas, on December 18, 2019, the United States Court of Appeals for the Fifth Circuit in Texas v. United States, 945 F.3d 355 (5th Cir. 2019), upheld the decision of the United States District Court for the Northern District of Texas striking down the minimum essential coverage provision, but vacated the decision on severability and remanded the case to the United States District Court for the Northern District of Texas;

Whereas the Supreme Court of the United States granted, on Monday, March 2, 2020, a petition for a writ of certiorari filed by 21 State attorneys general and will review, in California v. Texas, No. 19–804 (U.S.) and Texas v. California, No. 19–19109 (U.S.), the decisions of the United States Court of Appeals for the Fifth Circuit in Texas v. United States, 945 F.3d 355 (5th Cir. 2019);

Whereas, if the ruling of the United States District Court for the Northern District of Texas in Texas v. United States is upheld by the Supreme Court of the United States, seniors enrolled in Medicare would face the reopening of the Medicare donut hole and be subject to billions of dollars in new prescription drug costs;

Whereas, as of June 2020, 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 in Texas v. United States is upheld by the Supreme Court of the United States, the millions of individuals and families who receive coverage from Medicaid could lose access to health care coverage altogether;

Whereas, as of April 2020, more than 7,200,000 consumers who purchase individual health insurance are eligible for tax credits to subsidize the cost of premiums and assistance to minimize out-of-pocket health care 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 in Texas v. United States is upheld by the Supreme Court of the United States—

(1) the individual health insurance marketplaces established under the ACA would be eliminated;

(2) the millions of people in the United States who buy health insurance on those marketplaces could lose coverage; and

(3) the premium expenses for individual health insurance would increase exorbitantly;

Whereas, if the ruling of the United States District Court for the Northern District of Texas in Texas v. United States is upheld by the Supreme Court of the United States, the permanent reauthorization of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) would also be repealed and millions of American Indians and Alaska Natives would have less access to health services, less options for care, and worsened health disparities;

Whereas, if the ruling of the United States District Court for the Northern District of Texas in Texas v. United States is upheld by the Supreme Court of the United States, the nearly 500,000 veterans who have gained health insurance coverage, including the nearly 1 in 10 veterans that have gained coverage through Medicaid expansion, would lose access to care;

Whereas, if the ruling of the United States District Court for the Northern District of Texas in Texas v. United States is upheld by the Supreme Court of the United States, 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;

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

(4) individuals cannot be denied coverage due to, and coverage cannot be medically underwritten to reflect, gender; and

(5) individuals cannot be denied coverage due to, and coverage cannot be medically underwritten to reflect, a pre-existing medical condition;

Whereas, on March 11, 2020, the World Health Organization declared the outbreak of COVID–19 a pandemic;

Whereas, as of June 30, 2020, more than 2,545,000 people in the United States have been diagnosed with COVID–19;

Whereas, during the ongoing COVID–19 pandemic, millions of people in the United States have relied on the ACA for coverage, health care access, and diagnoses;

Whereas, as of June 25, 2020, more than 30,000,000 people in the United States have filed for unemployment benefits;

Whereas a ruling by the Supreme Court of the United States that the ACA must be struck down would cost the United States an estimated 3,000,000 jobs at a time when national unemployment as a result of the global pandemic exceeds 13 percent;

Whereas, in the midst of a global pandemic, the Department of Justice is continuing to pursue a strategy to have the ruling of the United States District Court for the Northern District of Texas in Texas v. United States upheld by the Supreme Court of the United States, which would result in health care coverage being torn away from millions of people in the United States;

Whereas people in the United States who are facing the economic and physical risks of a global pandemic cannot also face an ongoing threat that a ruling by the Supreme Court of the United States could invalidate their health care coverage; and

Whereas dismantling the health care system in the United States in the midst of a global pandemic, when millions of people in the United States have lost work and the ACA provides an alternative to employer-based health insurance, would trigger chaos: Now, therefore, be it

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

(1) defend the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119) rather than doubling down on its position with respect to the decision of the United States District Court for the Northern District of Texas in Texas v. United States, No. 4:18–cv–00167–O (N.D. Tex.); and

(2) protect the millions of people in the United States who newly gained health insurance coverage since 2014 and rely on that coverage in the midst of the public health emergency relating to the Coronavirus Disease 2019 (COVID–19).

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