

United States Senate

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May 7, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Re: Texas v. United States, No. 19-10011 (5th Cir.)

Dear Attorney General Barr:

We are writing to express our grave concern over the Department of Justice's recent decision to not only continue its refusal to defend protections for people with pre-existing conditions in the ongoing litigation challenging the Affordable Care Act (ACA) before the United States Court of Appeals for the Fifth Circuit, but also to argue in favor of repealing the entire ACA. Overturning the ACA will put millions of Americans and hundreds of thousands of West Virginians and Mainers at risk of losing their health insurance, including thousands of our constituents who gained health insurance through the Medicaid expansion, and thousands more who gained insurance through the ACA exchanges. With so much at stake, we urge you and the Administration to reconsider this position and to defend the consumer protections for seniors, young adults, women, children, and working families.

In a brief filed on March 25, 2019, the Department of Justice argued that the Texas federal district court's decision should be affirmed and the entire ACA invalidated. The court decision, by Texas federal Judge Reed O'Connor, concluded that the individual mandate is no longer constitutional after Congress reduced the individual mandate penalty to zero. After determining that the individual mandate is "essential" to and inseparable from the law, Judge O'Connor found that the entire ACA is invalid. Respectfully, we believe that decision is not only legally flawed, but it is contrary to Congress's intentions, a point Senator Collins stressed in her letter to you on April 1.

Judge O'Connor determined that the ACA is invalid because the "2017 Congress had no intent with respect to the Individual Mandate's severability." The 2010 Congress that passed the ACA may have considered the individual mandate penalty to be essential. But, the 2017 Congress that zeroed out the penalty obviously did not. Specifically, by reducing the individual mandate penalty to zero but keeping the rest of the law, the 2017 Congress illustrated its belief that the financial penalty was not an essential provision of the ACA. If Congress intended to eliminate these consumer protections along with the individual mandate penalty, it could have done so.

Furthermore, there are approximately 133 million Americans, 800,000 West Virginians and 590,000 Mainers, living with pre-existing conditions. If Judge O'Connor's decision stands, in

devastating opioid epidemic, millions of Americans suffering from substance use disorders would lose access to the treatment that they need to recover. It is no exaggeration to say that this is a matter of life and death to many of these Americans.


The Constitution requires the Executive Branch to “take care that laws are faithfully executed.” The Office of Attorney General has understood that the “Attorney general has a duty to defend and enforce both the Acts of Congress and the Constitution; when there is a conflict between the requirements of the one and the requirements of the other, it is almost always the case that he can best discharge the responsibilities of his office by defending and enforcing Acts of Congress.” Such a longstanding policy illustrates the fundamental structure of our government: Congress makes the laws and the Executive Branch enforces them. The ACA is quite simply the law of the land, and it is the Administration’s and your Department’s duty to defend it.

Congress can work together to fix legislatively the parts of the law that aren’t working, but we must not let this flawed court decision stand and devastate millions of seniors, young adults, women, children, and working families. We urge the Administration and the Department of Justice to reconsider the decision not to defend the critical consumer protections that have provided healthcare to millions of Americans around the country.

Sincerely,



Joe Manchin III
United States Senator



Susan M. Collins
United States Senator