

Treasury Officials Decline to Testify at Affordable Care Act Hearing

Sen. Ted Cruz, R-Texas, threatens to subpoena the officials.

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Three U.S. Treasury Department officials declined to testify before a Senate subcommittee hearing on the Affordable Care Act on Thursday, prompting Sen. Ted Cruz, R-Texas, to threaten subpoenas to make them attend at a future date.

With their empty seats in front of him, Cruz (left) said it was "the height of arrogance" for Treasury tax officials Mark Mazur, Emily McMahon and Cameron Atherton to "brazenly" fail to attend. Their absence, Cruz added, demonstrates the Obama administration's "ongoing contempt for the Senate and the American people." Cruz chairs the Senate Judiciary Committee's subcommittee on oversight, agency action, federal rights and federal courts.

The three were asked to testify about the process that led the Internal Revenue Service to draft rules for implementation of the Affordable Care Act that Cruz asserts contradict the plain language of the law. Passed in 2010, the statute's wording limits federal subsidies or tax credits to those whose health care is provided by exchanges "established by the state." The IRS rule allows the subsidies for all states, including those with only federal exchanges.

The controversy is at the heart of the pending U.S. Supreme Court case [King v. Burwell](#). The justices are expected to decide in the next few weeks whether the law can be properly read to allow the broader subsidies.

Democrats on the subcommittee said the Treasury officials stayed away precisely because the case is pending before the high court.

"I find it unremarkable that they did not appear," said Sen. Christopher Coons, D-Delaware, ranking member of the subcommittee. It was his understanding that the officials were "reluctant to attend" because of the ongoing litigation. "I hope we will move past this political theater," apparently referring to the display of the empty chairs.

"It might have been perceived as improper" for them to testify, Sen. Richard Blumenthal, D-Connecticut, added.

After opening statements, the name cards of the absentee witnesses were removed, and a panel of scholars and lawyers stepped in to offer their views of the process behind the disputed four words of the Affordable Care Act.

Jones Day partner Michael Carvin, [who argued against](#) the Obama administration's interpretation before the Supreme Court, said the news media have promoted the idea that the four words were "a giant mistake." Carvin asserted that the wording was intentional, meant to create an incentive for states to create their own exchanges. "The IRS rule dramatically undermines the purpose," he said.

Michael Cannon of the Cato Institute, a key strategist behind the legal challenge before the Supreme Court, told committee members that the IRS had no authority to write the rules as it did, and that the agency is actively trying to hide internal documents that might shed light on the process.

Defending the broader interpretation of the law, Arnold & Porter partner Robert Weiner said Congress could not have intended to write a "self-destructive" or "self-immolating" law that would not work. Weiner, who oversaw the legal defense of the health case law in his previous Justice Department job, asked, "Why would Congress plant a time bomb in the statute?"

Elizabeth Wydra of the Constitutional Accountability Center said that at the time of the passage of the law in 2010, "no one understood the law to preclude the tax credits" for those states using federal exchanges. Acts of Congress must be read in context to make them work, she said.

As an illustration, Wydra said it was probably possible to "pluck a phrase out of Moby Dick" that would make the book seem like it was about "a Sunday whale-watching cruise," but that does not make it so.