

THE OKLAHOMAN

In Supreme Court case, hospitals and insurers argue for subsidies while conservatives argue against

Dozens of friend-of-the-court briefs have been filed in Supreme Court case about Obamacare as groups try to sway justices ahead of a critical ruling.

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WASHINGTON — Doctors, hospitals and health insurance companies say the Affordable Care Act is working as planned and that Supreme Court justices should leave it be.

Oklahoma Attorney General Scott Pruitt and five of his Republican colleagues argue that the Internal Revenue Service twisted the intent of the law and that justices should reverse the agency's action.

Dozens of groups have tried to influence the court in the last few weeks as the justices prepare to hear oral arguments in a case that could determine whether the basic framework of the Affordable Care Act survives.

The high court has oral arguments scheduled for Wednesday. If justices strike down the IRS rule, millions of people in 37 states, including Oklahoma, will lose federal aid to buy health insurance.

People and groups who are not parties in a case can submit their written views in what are called friend-of-the-court briefs.

In the Virginia case challenging tax subsidies for people who buy health insurance on federal exchanges, most of the input against the subsidies has come from Libertarian and conservative organizations and elected officials.

Liberal lawmakers — including those who wrote the Affordable Care Act and pushed it through Congress — and pro-health reform organizations have weighed in for the subsidies.

Along with them are the briefs of those who are involved directly in caring and insuring people — and making money off it.

The arguments of large hospitals, family doctors and the nation's health insurance companies are probably irrelevant to the court in regard to the single legal question at issue in the case.

But those arguments are likely aimed at making the justices think twice about dismantling a system that health care and insurance providers support.

Here are excerpts from a few of the briefs submitted in the case.

Who's for subsidies?

Hospital Corporation of America (owner-operator of 155 acute care hospitals and 112 ambulatory surgery centers):

“Nine out of ten uninsured HCA patients pay nothing to HCA or its affiliates for the care they receive. By contrast, HCA’s patients on the federally-facilitated Exchanges who make cost-sharing expenditures pay on average \$390 out-of-pocket per visit for care at HCA facilities.

“Thus, the availability of subsidized coverage is achieving the congressional objective of promoting personal responsibility.

“Together, HCA’s data illuminate the basic structural issue in this case. Interpreted to make subsidies available on the federally-facilitated Exchanges, the ACA functions as a coherent whole and achieves Congress’s goals. Interpreted to withhold subsidies from individuals in states with federally-facilitated Exchanges, the law comes apart at the seams, jeopardizing important achievements and leading to consequences Congress could not possibly have intended.”

America’s Health Insurance Plans (the national trade association representing the health insurance industry):

“First, eliminating the tax credits would result in grossly inequitable treatment of consumers in States with (federal exchanges).

“Those families and individuals would not have the benefit of the tax subsidies available to individual market purchasers in other States with State-based Exchanges (or of the favorable tax treatment available to individuals and families with employer-based coverage). That would make health insurance less affordable — the precise result the tax credits were intended to prevent.

“Second, eliminating the tax credits would inevitably produce significantly unbalanced risk pools in (federal exchange) States, leaving those States with dysfunctional insurance markets.”

Democratic members of Congress involved in writing and passing the Affordable Care Act:

“The purpose of the tax credit provision was to facilitate access to affordable insurance through all Exchanges, state-run or federally-facilitated, and to ensure that all Exchanges could work with other fundamental components of the law in order to provide universal access to insurance.

“It was not...to incentivize the establishment of state Exchanges above all else, and certainly not to thwart the overall statutory scheme and Congress’s fundamental purpose of making insurance affordable for all Americans.”

Who isn’t?

Oklahoma, Alabama, Georgia, Nebraska, South Carolina, and West Virginia:

“If a State elects to establish its own Exchange, the federal government will make “advance payments” of premium tax credits to insurance companies on behalf of some of the State’s residents to subsidize health insurance enrollment through the state-created Exchange.

“Under the plain language of Section 36B of the Affordable Care Act, however, such tax subsidies are not available to individuals who live in States that have chosen not to establish an Exchange. Significantly, the federal government’s payment of a subsidy — for even a single employee — triggers costly obligations for employers within that State (including the States

themselves) as a result of application of the so-called “large employer mandate,” placing such States at a competitive disadvantage in employment.”

Republican members of Congress, including Sen. John Cornyn, of Texas, and Rep. Darryl Issa, of California:

“First, the executive branch’s decision to rewrite the ACA and extend premium subsidies beyond State exchanges improperly encroaches upon Congress’s lawmaking function. The statutory text at issue here was the result of extensive negotiations in the Senate, and the executive should not be able to accomplish through an aggressive interpretation of the ACA’s purpose what it could not accomplish in the halls of Congress.

“Second, the IRS’s erroneous interpretation has immediate, immense, and ongoing implications for the public purse. If the IRS’s regulation is permitted to stand, projections indicate that it will result in tens of billions of dollars in unlawful spending over the next year, and hundreds of billions over the next decade.”

CATO Institute (libertarian think tank) and law professor Josh Blackman:

“Through a series of memoranda, regulations, and even blog posts, executive officials have disregarded statutory text, ignored legislative history, and remade the law on their own terms...Accordingly, this Court should vacate the IRS rule that provides subsidies in states that did not establish exchanges. This rule violates Congress’s limitation of such subsidies to insurance bought through exchanges “established by the State.”