



Dem leaders join HHS defense of subsidies in ObamaCare lawsuit

By Mike Lillis
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Democratic leaders on Tuesday joined the court battle over the validity of certain health insurance subsidies under President Obama's 2010 reform law.

A group of businesses and individuals have challenged the legality of the tax credits going to those who buy their coverage through federally managed insurance exchanges, arguing that the law explicitly limits those subsidies to people enrolling on state-run systems.

But behind Senate Majority Leader Harry Reid (D-Nev.) and House Minority Leader Nancy Pelosi (D-Calif.), the Democrats who authored the law maintain the subsidies were designed to benefit all eligible middle- and low-income people, regardless of where they live or which government entity runs their state's exchange.

"Congress did not provide that the tax credits would only be available to citizens whose States set up their own Exchanges," the lawmakers wrote in an amicus brief filed Tuesday by the Constitutional Accountability Center.

At issue is a provision of the 2010 Affordable Care Act indicating that the federal tax credits central to Democrats' goal of making insurance affordable apply to exchanges that are "established by the State."

The plaintiffs and other critics argue that, because more than 30 states have declined to launch their own exchanges – forcing the federal government to step in – enrollees in those regions are not eligible for the IRS subsidies.

"Contrary to the clear language and purpose of the statute, and without any reasoned basis, the IRS rule attempts to dispense premium-assistance tax credits in the 34 states that have opted not to establish an Exchange," the Cato Institute wrote in its own amicus brief filed last November.

The Democrats charge that the complaint is groundless, because the challengers "isolate a four-word phrase in one provision rather than considering the statute as a whole" and assert motivations "never contemplated by the federal legislators who enacted the law, nor by the state officials charged with deciding whether to establish their own Exchanges."

"The purpose of the tax credit provision was to facilitate access to affordable insurance through the Exchanges — not, as Appellants would have it, to incentivize the establishment of state Exchanges above all else, and certainly not to thwart Congress's fundamental purpose of making insurance affordable for all Americans," the amicus brief reads.

Aside from Reid and Pelosi, the brief was signed by Rep. Sandy Levin (D-Mich.), ranking member of the Ways and Means Committee; Rep. Henry Waxman (D-Calif.), senior Democrat on the Energy and Commerce Committee; Rep. George Miller (Calif.), ranking Democrat on the Education and Workforce Committee; Sen. Tom Harkin (D-Iowa) who heads the HELP Committee; and former Sen. Max Baucus (D-Mont.), who chaired the Finance Committee before leaving Congress this month to become U.S. ambassador to China.

Scores of state legislators also endorsed the brief.

Last month, the U.S. District Court for the District of Columbia sided with the government in the case — *Halbig v. Sebelius* — which is now before the U.S. Court of Appeals for the same circuit.