



Reps. Blackburn, Roe keep up health care reform battle

TN reps back court brief over law's legality

By Paul C. Barton

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WASHINGTON — Two members of the Tennessee congressional delegation have found a new way to challenge President Barack Obama's health care reforms.

Reps. Marsha Blackburn, R-Brentwood, and Phil Roe, R-Johnson City, are part of a friend-of-the-court brief filed in November that contends the various taxes in the 2010 [Affordable Care Act](#) are unconstitutional because they were put there by the wrong chamber of Congress.

The brief, filed in the case of Sissel vs. U.S. Department of Health and Human Services before the U.S. Court of Appeals for the District of Columbia Circuit, argues Congress violated the "origination clause" of the Constitution in passing health care reform.

The clause — in Article I, Section 7 of the Constitution — says measures to raise new revenues must originate in the House of Representatives.

The brief, filed by 40 Republican House members, points out that the Affordable Care Act was crafted by senators who gutted a House bill — one intended to reduce taxes — and substituted the wording of the 2,074-page health care bill that became law.

The bill contained 17 revenue-related provisions, including a penalty or tax on individuals who fail to comply with the mandate that they buy health [insurance](#).

“The Senate returned the ‘Senate Health Care Bill’ with the H.R. 3590 number affixed to it to the House, whereupon it was rushed into passage by the Democratic-controlled House without a single Republican vote,” the brief says.

It adds: “The legal arguments in this case are straightforward. ... The ‘Senate Health Care Bill,’ which is one the largest tax increases in American history, did not originate in the House simply by virtue of keeping a House bill number.”

The lawmakers’ argument, however, was faulted in a lower federal court.

“Although the plaintiff’s argument may be superficially appealing, it cannot withstand even a cursory review of previous interpretations of the Origination Clause,” U.S. District Court Judge Beryl Howell of the District of Columbia, appointed by Obama, wrote earlier this year.

She added: “The Supreme Court has long held that ‘the practical construction of the Constitution and the history of the origin of the (Origination Clause) prove that revenue bills are those that levy taxes, in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue.’ ”

Howell said the tax law changes associated with the Affordable Care Act were “incidental” to its primary purpose of expanding health care coverage.

But Ilya Shapiro, a legal policy expert at the Cato Institute, a libertarian think tank, said the Republican lawmakers make a compelling argument.

“If the government wins on this, the origination clause is unenforceable,” he said. “We’ll have to see how much steel is in the spine of the (appeals court) judges.”

But Ron Pollack, director of Families USA, a health care advocacy group, said the lawsuit is just the latest in a number of legal challenges “to gum up the works of the Affordable Care Act.”

He added, “I don’t think these lawsuits are going to be considered anything but politically motivated and frivolous litigation.”