

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To express the sense of the Senate that the Senate Legal Counsel should be authorized to represent the Senate in *Texas v. United States*, No. 4:18-cv-00167-O (N.D. Tex.).

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.**

**H. R. 6157**

Making appropriations for the Department of Defense for the fiscal year ending September 30, 2019, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MANCHIN to the amendment (No. 3695) proposed by Mr. SHELBY

Viz:

1 At the appropriate place in division B, insert the fol-  
2 lowing:

3 **SEC. \_\_\_\_ . SENSE OF THE SENATE REGARDING REPRESENTATION BY SENATE LEGAL COUNSEL IN TEXAS V. UNITED STATES.**

6 (a) FINDINGS.—Congress finds the following:

7 (1) Texas, Wisconsin, Alabama, Arkansas, Ari-  
8 zona, Florida, Georgia, Indiana, Kansas, Louisiana,  
9 Paul LePage (Governor of Maine), Mississippi (by  
10 and through Governor Phil Bryant), Missouri, Ne-

1 braska, North Dakota, South Carolina, South Da-  
2 kota, Tennessee, Utah, and West Virginia have filed  
3 suit in the United States District Court for the  
4 Northern District of Texas, arguing that the Patient  
5 Protection and Affordable Care Act (Public Law  
6 111–148; 124 Stat. 119), is unconstitutional and  
7 should be enjoined, by asserting that the Act’s re-  
8 quirement to maintain minimum essential coverage  
9 (commonly known as the “individual responsibility  
10 provision”) in section 5000A(a) of the Internal Rev-  
11 enue Code of 1986, is unconstitutional following the  
12 amendment of that provision by the Act to provide  
13 for reconciliation pursuant to titles II and V of the  
14 concurrent resolution on the budget for fiscal year  
15 2018 (Public Law 115–97) (commonly known as the  
16 “Tax Cuts and Jobs Act”).

17 (2) These State and individual plaintiffs also  
18 seek to strike down the entire Patient Protection  
19 and Affordable Care Act as not severable from the  
20 individual responsibility provision.

21 (3) On June 7, 2018, the Department of Jus-  
22 tice refused to defend the constitutionality of the  
23 amended individual responsibility provision, despite  
24 the well-established duty of the Department to de-

1 defend Federal statutes where reasonable arguments  
2 can be made in their defense.

3 (4) The Department of Justice not only refused  
4 to defend the amended individual responsibility pro-  
5 vision, but it affirmatively argued that this provision  
6 is unconstitutional and that the provisions of the Pa-  
7 tient Protection and Affordable Care Act guaran-  
8 teeing issuance of insurance coverage regardless of  
9 health status or pre-existing conditions (commonly  
10 known as the “guaranteed issue provision”), sections  
11 2702, 2704, and 2705(a) of the Public Health Serv-  
12 ice Act (42 U.S.C. 300gg-1, 300gg-3, 300gg-4(a)),  
13 and prohibiting discriminatory premium rates (com-  
14 monly known as the “community rating provision”),  
15 sections 2701 and 2705(b) of the Public Health  
16 Service Act (42 U.S.C. 300gg(a)(1), 300gg-4(b))  
17 must now be struck down as not severable from the  
18 individual responsibility provision.

19 (b) SENSE OF THE SENATE.—It is the sense of the  
20 Senate that the Senate Legal Counsel should be author-  
21 ized to represent the Senate in *Texas v. United States*,  
22 No. 4:18-cv-00167-O (N.D. Tex.), including seeking to—

23 (1) intervene as a party in the matter; and

24 (2) defend all provisions of the Patient Protec-  
25 tion and Affordable Care Act, the amendments made

1 by that Act to other provisions of law, and any  
2 amendments to such provisions, including the provi-  
3 sions ensuring affordable health coverage for those  
4 with pre-existing conditions.