

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel. Scott Pruitt, in his
official capacity as Attorney General of Oklahoma,

Plaintiff,**

v.

**KATHLEEN SEBELIUS, in her official capacity as
Secretary of the United States Department of Health
and Human Services; and JACOB J. LEW, in his
official capacity as Secretary of the United States
Department of the Treasury,

Defendants.**

No. 6:11-cv-00030-RAW

**DEFENDANTS’ RESPONSE TO PLAINTIFF’S
NOTICE OF SUPPLEMENTAL AUTHORITY**

Oklahoma recites “that the Court ‘does not revise legislation ... just because the text as written creates an apparent anomaly as to some subject it does not address.’” ECF 10 (quoting *Michigan v. Bay Mills Indian Community*, Op. 10-11 (Oklahoma’s alterations)). That proposition is not relevant here.

In *Bay Mills*, Michigan “fail[ed] to identify any specific textual or structural features of the statute to support its proposed result.” Op. 10. Here, by contrast, the ACA’s text, structure, purpose and history all show that federal tax credits to defray the cost of health insurance are available on federally-run Exchanges. “Exchange” is a defined term; 42 U.S.C. § 18031(d)(1) provides that “an Exchange shall be a governmental entity or nonprofit entity that is established by a State.” And 42 U.S.C. § 18041(c)(1) directs the Secretary to set up “such Exchange” if a State elects not to do so. When these provisions are read together, as they must be, they make clear that the federally-run Exchange is the same entity as the Exchange that is defined, by

operation of the statute, as the entity “that is established by a State” under Section 18031. The text ensures that the Exchange’s purpose – to offer affordable health coverage – is accomplished. Thus, the nationwide availability of federal tax credits to subsidize the purchase of health insurance certainly is a “subject” that Congress did “address.” Op. 10. And Congress in no sense “legislate[d] by parts” in enacting the ACA, Op. 11; instead, it made clear that federal tax credits are available in every Exchange.

Oklahoma also equates the presumption against tax benefits with the clear statement rule regarding tribal immunity at issue in *Bay Mills*. As the defendants have shown, ECF 91-1 at 42-43; ECF 99 at 28-29, that presumption is not a clear statement rule that could trump *Chevron* deference; the relevant canon instead is the presumption that Congress has established a uniform, nationwide system of taxation. The uniformity canon is a clear statement principle that applies equally to statutes imposing taxes and to statutes conferring tax benefits. ECF 91-1 at 42-43; ECF 99 at 28-29.

DATED this 5th day of June, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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s/ Joel McElvain
JOEL McELVAIN