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IIT Chicago-Kent College of Law

Matt Gruhn
Assistant Director

mgruhn@oyez.org

 @matthewgruhn



Justice Anthony Kennedy

But just assume hypothetically that it's a wash, that the employer would be in about the same position if he paid the penalty and the employer -- pardon me, an employee went out and got the insurance and that the employee's wages were raised slightly and then it's -- and that it's a wash so far as the employer are concerned, other than the employer's religious objection, but just on the financial standpoint.

Can we assume that as a hypothetical.

Then what would your case be?

I think my case would be that in that case the government might be able to sort of support itself on the compelling interest.

I think there would still be a substantial burden on their exercise.

But again, this all turns on issues that the government hasn't put in issue.

This case hasn't been litigated on this particular theory, so I think -- I'd love to have the opportunity to show how by not providing health insurance it would have a huge burden on my client and their ability to attract workers, and that in fact would cost them much more out of pocket.

But that's not been the nature of the government's theory.



Paul D. Clement



Justice Elena Kagan

Can I ask--

SEARCH:

find in transcript...



SPEAKER LIST:

Anthony Kennedy



27:32 / 88:16







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Supreme Court of Texas
and
Texas Court of Criminal Appeals

 **THE TEXAS TRIBUNE**

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