IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	No. 4:18-cv-00167-O
	§	
UNITED STATES OF AMERICA, et al.,	§	
	§	
Defendants.	§	
	§	

UNOPPOSED MOTION OF FAMILIES USA, COMMUNITY CATALYST, THE NATIONAL HEALTH LAW PROGRAM, CENTER FOR PUBLIC POLICY PRIORITIES, AND CENTER ON BUDGET AND POLICY PRIORITIES TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT-INTERVENORS

Families USA, Community Catalyst, The National Health Law Program, Center for Public Policy Priorities, and Center on Budget and Policy Priorities herby move this court for leave to file an *amicus curiae* brief in the above-captioned case in support of Intervenor-Defendants. The State Plaintiffs, Individual Plaintiffs, Defendants, and State Intervenor-Defendants consent to the relief requested in this motion. The proposed *amicus* brief is attached as Exhibit A and a proposed Order is being filed herewith.

The filing of an amicus brief is authorized with the leave of the court by L.R. 7.2(b). A district court has inherent authority to designate amici curiae to assist it in a proceeding and courts generally grant amicus status where the information proffered is "timely and useful." *Georgia Aquarium, Inc. v. Protzker*, 135 F. Supp. 3d 1280, 1288 (N.D. Ga. 2015); *see also Jin v . Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C.

2008); *City of Dallas v. Hall,* No. 3:07-cv-0060-P, 2008 WL 2622809, at *2-3 (N.D. Tex. June 30, 2008), *aff'd* 562 F.3d 712 (5th Cir. 2009).

As set forth in the proposed brief, Families USA is a national, non-partisan, non-profit organization that has represented the interests of health care consumers and promoted health care reform in the United States for more than 35 years. Community Catalyst is a national, non-profit, non-partisan organization that provides leadership and support to state and local consumer organizations, policymakers and foundations that are working to guarantee access to high-quality, affordable health care for everyone. The National Health Law Program has for nearly fifty years engaged in legal and policy analysis on behalf of limited-income people, people with disabilities, older adults, and children. The Center for Public Policy Priorities was founded in 1985 by the Benedictine Sisters of Boerne, Texas, to advance public policy solutions for expanding access to health care for low-income and other disenfranchised Texans. The Center on Budget and Policy Priorities is a national, non-partisan, non-profit research and policy institute.

The amici have a deep understanding of the importance of the Affordable Care Act to the millions of Americans who could not afford health care without government assistance and of the impact of a preliminary injunction on their ability to obtain health care, and therefore have important information to present for the Court's consideration. In addition, the parties will have sufficient time to respond to this brief since plaintiffs' reply is due July 9, 2018 and defendants' reply is due by July 27, 2018. And, as noted above, all parties have consented to this motion.

For all the foregoing reasons, Families USA, Community Catalyst, The National Health Law Program, Center for Public Policy Priorities, and Center on Budget and

Policy Priorities respectfully request that the Court grant their motion for leave to file a brief as *amici curiae.*

Dated: June 14, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 14th day of June 2018, a true and correct copy of the foregoing document was filed electronically via the CM/ECF system, which gave notice to all counsel of record pursuant to Local Rule 5.1(d).

/s/ Leslie Sara Hyman
Leslie Sara Hyman

Exhibit A

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BRIEF OF FAMILIES USA, COMMUNITY CATALYST, THE NATIONAL HEALTH LAW PROGRAM, CENTER FOR PUBLIC POLICY PRIORITIES, AND CENTER ON BUDGET AND POLICY PRIORITIES, AS *AMICI CURIAE*, IN SUPPORT OF DEFENDANT-INTERVENORS

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF AMICI CURIAE 1

INTRODUCTION 3

ARGUMENT 4

I. The Affordable Care Act Repaired a Health Care System That Was Miserably Failing to Provide Meaningful Health Care to a Large Portion of the U.S. Population. 4

A. The Affordable Care Act Substantially Improved Access to Health Care by Expanding Medicaid. 5

B. The Affordable Care Act Made Insurance on the Individual Market Affordable to Lower-Income Americans and Required All Insurance to Meet Basic Standards. 6

II. Striking Down the ACA Would Have a Devastating Impact on the Nation's Health Care System With a Disproportionate Impact on the Nation's Low-Income Population. 8

A. Almost 12 Million Low-Income Citizens Could Lose Health Care if Medicaid Expansion Is Eliminated. 9

B. Striking Down the ACA Could Deprive More Than 8 Million Americans in the Non-group Market of the Health Insurance Coverage They Gained Under the ACA. 11

CONCLUSION 15

CERTIFICATE OF SERVICE 17

INDEX OF AUTHORITIES

Cases **Page**

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567 U.S. 519, 587 (2012)....................5

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INTEREST OF AMICI CURIAE

Families USA is a national, non-partisan, non-profit organization that has represented the interests of health care consumers and promoted health care reform in the United States for more than 35 years. On behalf of health care consumers, Families USA has addressed the serious medical and financial harms inflicted on the millions of Americans without health insurance. Families USA fought for the Affordable Care Act (ACA) and sponsored studies that helped shape it.[1] Families USA also worked with key stakeholders to promote cooperative support for the legislation. Given the role Families USA played in passing the ACA, the organization has a strong interest in it remaining in effect. Further, having long represented the interests of health care consumers, Families USA offers a valuable perspective on how the statute is operating and how it has unequivocally and substantially improved access to health care in the United States.

Community Catalyst is a national, non-profit, non-partisan organization that provides leadership and support to state and local consumer organizations, policymakers and foundations that are working to guarantee access to high-quality, affordable health care for everyone. Critical to the organization's mission is sustaining a powerful consumer voice in state and national decisions that affect their health. As such, the organization has an interest in representing the consumers who could potentially lose critical consumer protections and access to affordable coverage and health care services should this case be decided in favor of the plaintiff States. Since 1997, in states and communities across the country, the organization has been a catalyst for collaboration, innovation, and action in health care reform.

The National Health Law Program (NHeLP) has for nearly fifty years, engaged in legal and policy analysis on behalf of limited-income people, people with disabilities, older adults, and

[1] *E.g.,* Families USA, *The Dangers of Defeat: The Cost of Failure to Pass Health Reform* 4, 6 (Mar. 2010), http://familiesusa.org/sites/default/files/product_documents/dangers-of-defeat.pdf.

children. NHeLP has provided legal representation, conducted research and policy analysis on issues affecting the health care coverage, including through the Affordable Care Act, as it affects these groups. NHeLP works to assist consumers and their advocates to overcome barriers to health care, including a lack of affordable services or access to health care providers.

The Center for Public Policy Priorities (CPPP) was founded in 1985 by the Benedictine Sisters of Boerne, Texas, to advance public policy solutions for expanding access to health care for low-income and other disenfranchised Texans. CPPP became an independent, tax-exempt organization in 1999, and over time its focus has expanded to include economic opportunity and state fiscal policy. CPPP is based in Austin, Texas, and works statewide. Health care access remains a primary focus of CPPP’s work, and it provides broad community and leadership education on the factors that have left Texas with the highest numbers and percentage of uninsured residents in the nation. CPPP has worked since 1985 to promote more comprehensive Medicaid coverage, the creation of The Children’s Health Insurance Program, affordability and consumer protections in the private health insurance markets, and optimal implementation of the Affordable Care Act in Texas.

The Center on Budget and Policy Priorities (CBPP) is a national, non-partisan, non-profit research and policy institute. CBPP's core mission is to advance fiscally responsible federal and state policies that reduce poverty, hardship, and inequality. That includes working to ensure that Medicare, Medicaid, the Children's Health Insurance Program, and the Affordable Care Act health insurance marketplaces continue to provide coverage that meets the needs of low- and moderate-income people.

INTRODUCTION

Twenty States have brought this lawsuit to invalidate the Affordable Care Act (ACA) in its entirety, a result that would have devastating consequences to millions of Americans. It would deprive as many as 20 million people of adequate health care coverage, including the nearly 12 million on expanded Medicaid and the more than 8 million who purchase insurance in the individual marketplace through subsidies. All 15 million people who purchase insurance in the individual marketplace would lose the protections that the ACA provides, including, significantly, the requirement that insurance companies not deny insurance because of pre-existing conditions and the requirement that insurance companies allow young adults to be covered by their parent's policy until age 26.[2] Consumers who buy insurance outside of the marketplace or receive it through their employers would likewise lose important protections. Invalidating the ACA also would undermine the Medicare Trust Fund, which was significantly strengthened by the ACA.

The Amici endorse the arguments of the Federal Defendants and State Intervenor-Defendants as to why Plaintiffs have not met the legal standards for a preliminary injunction. Amici also endorse the arguments of the State Intervenor-Defendants as to why the Affordable Care Act is constitutional after the recent amendments to the tax laws reducing tax for not obtaining minimum health insurance coverage to $0 in 2019. Finally, Amici endorse arguments of the State Intervenor-Defendants as to why even if the amended minimum coverage requirement is unconstitutional, the rest of the ACA is severable.

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[2] U.S. Cong. Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 20286* (May 2018), https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53826-healthinsurancecoverage.pdf.

Amici disagree with the Government Defendants' argument that the minimum covered will be unconstitutional when the tax is reduced to $0. They also disagree with the Government Defendants' argument that if the minimum health insurance coverage provision is unconstitutional the Guaranteed Issue and Community Rating provisions are not severable from the minimum coverage requirement, but endorse the Government Defendants' argument that the minimum coverage requirement is severable from all the other provisions of the statute.

This brief will focus on the devastating effect on poor people that would result from eliminating Medicaid expansion and the availability of affordable health insurance with adequate protections to those who cannot afford insurance but are not eligible for Medicaid.

ARGUMENT

I. THE AFFORDABLE CARE ACT REPAIRED A HEALTH CARE SYSTEM THAT WAS MISERABLY FAILING TO PROVIDE MEANINGFUL HEALTH CARE TO A LARGE PORTION OF THE U.S. POPULATION.

In 2009, prior to enactment of the ACA, 50 million people in the United States, 17 percent of the population, did not have health insurance.[3] This was frequently because they were denied access or could not afford to buy insurance on the marketplace and did not qualify for Medicaid. Millions of others had purchased health insurance that did not provide adequate medical care.[4] The ACA changed health care in the United States in two major ways: it made Medicaid available to millions of low-income individuals and families; and it reformed the individual insurance market establishing standards that health insurance policies were required to meet and providing subsidies for individuals who otherwise could not afford health insurance.

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[3] U.S. Dep't of Commerce, Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2009* 23 tbl.8 (Sept. 2010), http://www.census.gov/prod/2010pubs/p60-238.pdf.

[4] Three quarters of people shopping on the individual market could not find an affordable plan with the benefits they needed. *See* Michelle M. Doty, et.al., *Failure to Protect: Why the Individual Insurance Market Is Not a Viable Option for Most U.S. Families* 9 (The Commonwealth Fund, July 2009), (http://www.commonwealthfund.org/~/media/files/publications/issue-brief/2009/jul/failure-to-protect/1300_doty_failure_to_protect_individual_ins_market_ib_v2.pdf).

Moreover, everyone who purchases ACA-compliant health insurance in the individual, non-group market can enjoy the benefits and protections that the ACA provides.

C. The Affordable Care Act Substantially Improved Access to Health Care by Expanding Medicaid.

When established in 1965, Medicaid was a program for a limited population, largely for very low-income children, their caretaker relatives, seniors, and people with disabilities. Over time, the program evolved so that Medicaid covered most low-income children whose parents' income was below the poverty level, and selected groups of parents with very low incomes. With limited exceptions, however, impoverished adults without disabilities who had no dependent children were excluded from Medicaid entirely.[5]

The ACA allows states to expand Medicaid to individuals who have income below 133% of poverty, with the federal government paying most of the cost of this expansion. 42 U.S.C §1396.[6] By December 2016, the date of the most currently available information, nearly 12 million people who were newly-eligible for Medicaid had enrolled.[7]

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[5] Christie Provost and Paul Hughes, *Medicaid: 35 years of Service*, 22 Medicare and Medicaid Res. Rev. 141, 142-43 (Fall 2000), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4194689/; Kaiser Family Found., *Medicaid Income Eligibility Limits for Children Ages 6-18, 2002-2018* and *Medicaid Income Eligibility Limits for Parents, 2002-2018,* https://www.kff.org/data-collection/trends-in-medicaid-income-eligibility-limits/ (last visited Jun. 11, 2018). In 2009, the national median eligibility level for parents of dependent children to receive Medicaid was 67 percent of poverty. Working-age, nondisabled adults without dependent children were not eligible for Medicaid coverage in 42 states, regardless of income, leaving individuals in extreme poverty to fall through the cracks in our health care system. Families USA, *Medicaid and the Children's Health Insurance Program (CHIP) Soften the Blow during Tough Economic Times* 1 (October 2009), http://familiesusa.org/sites/default/files/product_documents/medicaid-chip-soften-blow.pdf.

[6] As enacted, the ACA required states to expand Medicaid as a condition to continued participation in the program. In 2012, the Supreme Court held that states had the option of remaining in the program but not opting to expand Medicaid. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 587 (2012). Thirty-one states have expanded. Ctrs. for Medicare and Medicaid Servs., *October-December 2016 Medicaid MBES Enrollment Report* (Sep. 2017), https://www.medicaid.gov/medicaid/program-information/downloads/cms-64-enrollment-report-oct-dec-2016.pdf.

[7] *See October-December 2016 Medicaid MBES Enrollment Report*, *supra* note 6. This resulted in a 9.2 percent reduction in the number of uninsured adults from 2014 to 2016, (a 49.5 percent decline in the uninsured rate) in states that expanded Medicaid. Office of the Assistant Sec'y for Planning and Evaluation, U.S. Dep't of Health and Human Servs., *Medicaid Expansion Impacts on Insurance*

D. The Affordable Care Act Made Insurance on the Individual Market Affordable to Lower-Income Americans and Required All Insurance to Meet Basic Standards.

For most lower-income Americans not eligible for Medicaid, the option of purchasing insurance on the individual insurance market was unaffordable or unavailable prior to the ACA. Hospitals participating in Medicare still had to treat uninsured individuals' emergency medical care, and the hospitals and other providers passed on the cost of these patients' uncompensated care by charging higher prices to other consumers; the cost of health insurance for everyone thus increased, making it even more difficult for consumers to afford the premiums. Before the ACA was enacted in 2010, the average portion of premiums attributable to uncompensated care was $1,000 for a family with private coverage.[8] Moreover, before the ACA, approximately 42.7 percent of people who *applied for coverage* in the individual market were denied insurance due to pre-existing conditions, which ranged from a serious medical condition to a more minor condition such as high cholesterol.[9] The coverage for those who were able to purchase insurance was often inadequate since it did not include important services such as prescription drugs, maternity care and mental health.[10] More than 105 million Americans had health insurance that

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Coverage and Access to Care 2 (Issue Brief, Jan. 18, 2017), https://aspe.hhs.gov/system/files/pdf/255516/medicaidexpansion.pdf.

[8] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §§ 1501(a)(2)(F), 124 Stat. 119, 908 (2010) [hereinafter ACA].

[9] Families USA calculations based on America's Health Ins. Plans Ctr. for Policy Research, *Individual Health Insurance 2009: A Comprehensive Survey of Premiums, Availability, and Benefits* 10 tbl.6 (Oct. 2009), https://kaiserhealthnews.files.wordpress.com/2013/02/2009individualmarketsurveyfinalreport.pdf. Before the ACA went into effect, 45 states and the District of Columbia allowed insurance companies to charge discriminatory premiums or to deny coverage entirely due to pre-existing conditions, and these discriminatory practices and denials and premium increases were standard practice; and only 12 states prohibited insurers from selling policies with elimination riders that *permanently* excluded coverage of pre-existing conditions. Additionally, in forty-four states, issued policies could be rescinded without any state review if an insurer later learned of a policyholder's pre-existing condition. *See* Families USA, *Failing Grades: State Consumer Protections in the Individual Health Insurance Market* 26-27 (Sept. 2008), http://familiesusa.org/sites/default/files/product_documents/failing-grades_1.pdf.

[10] Before the ACA, individually purchased coverage lacked federal benefit standards. For instance, almost 1 in 10 people enrolled in the individual market did not have coverage for prescription

capped their lifetime and annual benefits.[11] Prior to the Affordable Care Act, ten percent of all cancer patients reported that they reached a benefit limit in their insurance policy and were forced to seek alternative insurance coverage or pay the remainder of their treatment out-of-pocket.[12]

The lack of coverage, inadequate coverage and capped benefits caused deaths that otherwise would not have occurred. A Families USA study showed that before the ACA went into effect many uninsured went without needed medical care because of cost, resulting in 26,100 premature deaths in 2010 alone.[13] In addition, by 2007, more than 60 percent of all personal bankruptcies were related to medical costs. [14]

The ACA helped populations with income between 100 and 400 percent of the federal poverty line by providing premium tax credits that allowed them to afford the cost of individual coverage. The ACA also improved individual coverage, providing for guaranteed availability and assuring that it covered essential benefits, such as maternity and newborn care, prescription drugs, mental health services and preventive care services. As a result of the ACA, the drop in

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drugs, more than 3 in 5 enrollees were in plans that did not provide maternity coverage, and plans were only required to include mental health coverage in 17 states. *See* Dania Palanker, et al., *Eliminating Essential Health Benefits Will Shift Financial Risk Back to Consumers* (The Commonwealth Fund, Mar. 24, 2017), http://www.commonwealthfund.org/publications/blog/2017/mar/eliminating-essential-health-benefits-financial-risk-consumers.

[11] *See* Office of the Assistant Sec'y for Planning and Evaluation, U.S. Dep't of Health and Human Servs., *Under the Affordable Care Act, 105 Million Americans No Longer Face Lifetime Limits on Health Benefits*1-2 (Issue Brief, Mar. 5, 2012), https://aspe.hhs.gov/basic-report/under-affordable-care-act-105-million-americans-no-longer-face-lifetime-limits-health-benefits.

[12] USA Today/Kaiser Family Foundation/Harvard School of Public Health, *National Survey of Households Affected by Cancer* 17-18 (Nov. 2006), https://kaiserfamilyfoundation.files.wordpress.com/2013/01/7590.pdf.

[13] Families USA, *Dying for Coverage: The Deadly Consequences of Being Uninsured*, 2 tbl.1 (June 2012), http://familiesusa.org/product/dying-coverage-deadly-consequences-being-uninsured.

[14] From 2001 to 2007, the share of personal bankruptcies that was related to medical expenses rose by almost 50 percent. David U. Himmelstein, et al., *Medical Bankruptcy in the United States, 2007: Results of a National Study*, American Journal of Medicine, 122 Am. J. of Med. 741 (2009), http://www.pnhp.org/new_ bankruptcy_study/Bankruptcy-2009.pdf. Findings are based on a survey of a random national sample of 2,314 bankruptcy filings and interviews with 1,032 filers.

the uninsured rate in 2014 was the largest since Medicare was enacted and Medicaid first ramped up in the early 1970s.[15] By 2016, the ACA helped lower the number of people without health insurance by more than 20.0 million people.[16] Although these gains may be adversely affected by the Tax Cut and Jobs Act of 2017, which eliminated the penalty for failure to meet the ACA requirement that individuals purchase insurance, the gains would be totally undone by an unfavorable ruling in this case. The Medicaid expansion and the various private market protections enacted in the ACA continue to enable millions of people to obtain health insurance, notwithstanding the Tax Cut and Jobs Act of 2017.

II. STRIKING DOWN THE ACA WOULD HAVE A DEVASTATING IMPACT ON THE NATION'S HEALTH CARE SYSTEM WITH A DISPROPORTIONATE IMPACT ON THE NATION'S LOW-INCOME POPULATION.

If this Court were to rule that the ACA is unconstitutional and enjoin its enforcement, the ruling would, among other things, deprive as many as 20 million people of health insurance. Such a ruling also would eliminate the minimum standards that the ACA required of all insurance sold on the individual market, as well as standards applying to coverage provided by small and large employers.

A. Almost 12 Million Low-Income Citizens Could Lose Health Care if Medicaid Expansion Is Eliminated.

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[15] Jason Furman & Matt Fiedler, *2014 Has Seen Largest Coverage Gains in Four Decades, Putting the Uninsured Rate at or Near Historic Lows*, Executive Office of the President Council of Economic Advisors (Dec. 18, 2014, 11:00AM), https://obamawhitehouse.archives.gov/blog/2014/12/18/2014-has-seen-largest-coverage-gains-four-decades-putting-uninsured-rate-or-near-his.

[16] This increase in coverage included 3 million African-Americans, 4 million people of Hispanic origin, and 8.9 million white non-elderly adults. An estimated 6.1 million young adults and 1.2 million children gained coverage between 2010 and early 2016. Office of the Assistant Sec'y for Planning and Evaluation, U.S. Dep't of Health and Human Servs., *Health Insurance Coverage and the Affordable Care Act, 2010 – 2016*, (Issue Brief, Mar. 3, 2016), https://aspe.hhs.gov/system/files/pdf/187551/ACA2010-2016.pdf; Executive Office of the President Council of Economic Advisors, *2017 Economic Report of the President* 196 (2017), https://obamawhitehouse.archives.gov/sites/default/files/docs/chapter_4-reforming_health_care_system_2017.pdf.

Medicaid expansion was a major contributor to the coverage gains attributable to the ACA. As a result of the ACA, low-income citizens in 31 states and the District of Columbia have access to health coverage. Nearly 12 million people who were newly-eligible for Medicaid were enrolled as of December 2016.[17] Eliminating Medicaid expansion will adversely impact the Medicaid population in many ways.

First, many of our most vulnerable citizens are covered by Medicaid and eliminating the expansion would leave them without health care. Among those whose coverage rates increased due to Medicaid expansion are young adults, people with HIV, veterans, rural residents, and racial and ethnic minorities.[18] About 340,000 Veterans who receive coverage through the ACA's Medicaid expansion would likely lose coverage if this Court were to grant the plaintiff States' request.[19] Likewise, over 25 percent of rural residents rely on Medicaid for their health coverage in states that have expanded Medicaid.[20] Many of them would also likely lose coverage.

Second, the elimination of Medicaid expansion would cause an increase in illness and deaths in the United States since Medicaid expansion increased access to primary care and prescription medications, and it increased the rates of diagnosis of chronic conditions, such as

[17] *See supra* note 7.

[18] Larisa Antonisse, et al., *The Effects of Medicaid Expansion Under the ACA: Updated Findings From a Literature Review* 3 (Henry J Kaiser Family Found., Issue Brief, Sept. 2017), https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-september-2017/.

[19] Families USA, *Cutting Medicaid Would Hurt Veterans* 1 (May 2017), http://familiesusa.org/product/cutting-medicaid-would-hurt-veterans (analysis of 2013 and 2015 American Community Survey data).

[20] Families USA, *Cutting Medicaid Would Hurt Rural America* 1 (March 2017), http://familiesusa.org/product/cutting-medicaid-would-hurt-rural-america. Rural hospitals in these states experienced increases in Medicaid revenue and decreases in uncompensated care attributable to the ACA. Brystana G. Kaufman, et al., *Medicaid Expansion Affects Rural and Urban Hospitals Differently*, 35 Health Affairs 1665 (Sept. 2018), https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.0357.

diabetes.[21] Medicaid expansion also significantly improved access to preventive care for low-income, childless adults.[22] One analysis found a 6.1 percent relative reduction in adjusted all-cause mortality in states that had expanded Medicaid before the ACA.[23] In addition, studies have documented improved outcomes for such services as cardiac surgery associated with the ACA's Medicaid policies.[24]

Third, eliminating Medicaid expansion would undercut the treatment of substance abuse disorders during the current national opioid crisis. Medicaid expansion has played a significant role in financing substance use disorder treatment. Though both expanding and non-expanding states have experienced approximately the same increase in overall admissions for substance use disorders, Medicaid has played an important role in paying for treatment in expanding states; and it is a significant payer of outpatient, medication-assisted treatment.[25] It would be devastating to the efforts to address the national opioid crisis, which kills 115 Americans every day, to lose these gains to treat substance abuse.[26]

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[21] *Ibid*; Harvey W. Kaufman, et al., *Surge in Newly Identified Diabetes Among Medicaid Patients in 2014 Within Medicaid Expansion States Under the Affordable Care Act*, 41 Diabetes Care (Mar. 2015), http://care.diabetesjournals.org/content/early/2015/03/19/dc14-2334; Laura R. Wherry & Sarah Miller, *Early Coverage, Access, Utilization, and Health Effects of the Affordable Care Act Medicaid Expansions: A Quasi-Experimental Study*, *Annals of Internal Medicine*, 164 Annals of Internal Med. 795 (June 21, 2016), http://annals.org/aim/article-abstract/2513980/early-coverage-access-utilization-health-effects-associated-affordable-care-act.

[22] Kosali Simon, et al., *The Impact of Health Insurance on Preventive Care and Health Behaviors: Evidence from the 2014 ACA Medicaid Expansions* 3 (Nat'l Bureau of Econ. Research, Working Paper No. 22265, May 2016), http://www.nber.org/papers/w22265.

[23] Benjamin D. Sommers, et al., *Mortality and Access to Care Among Adults After State Medicaid Expansions,* 367 New Eng. J. of Med. 1025, 1028 (2012), http://www.nejm.org/doi/full/10.1056/nejmsa1202099.

[24] Eric J. Charles, et al., *Impact of Medicaid Expansion on Cardiac Surgery Volume and Outcomes,* 104 Annals of Thoracic Surgery 1251-1258 (June 2017), http://www.annalsthoracicsurgery.org/article/S0003-4975(17)30552-0/pdf.

[25] Johanna Catherine Maclean & Brendan Saloner, *The Effect of Public Insurance Expansions on Substance Use Disorder Treatment: Evidence from the Affordable Care Act* (Nat'l Bureau of Econ. Research, Working Paper No. 23342, Sept. 2017), http://www.nber.org/papers/w23342.

[26] Ctrs. for Disease Control and Prevention, *Opioid Overdose: Understanding the Epidemic*, https://www.cdc.gov/drugoverdose/epidemic/index (last visited June 11, 2018).

Fourth, eliminating Medicaid expansion would increase institutionalization of the disabled population since Medicaid is an important source of coverage for people with disabilities. About 10 million people qualify for Medicaid based on their disability.[27] For many Medicaid recipients with disabilities, the ACA extended home and community based care, which allows them to receive service in their own home or community rather than in institutions or other isolated settings. For example, the newly created Community First Choice Option program gives states increased matching funds to provide personal attendant services to people who would otherwise have needed institutional care. States, including Texas, have used this option to reduce their waiting lists for home care services and to provide care to new populations, such as people with intellectual and developmental disabilities.[28] People with disabilities will lose these important benefits if the court invalidates the ACA.

Finally, medical debt will increase if the court eliminates Medicaid expansion. Medicaid expansion has resulted in a significant reduction in unpaid medical bills.[29] One study found that the amount of debt sent to collection was reduced by over $1,000 per person residing in ZIP Codes with the highest share of low-income, uninsured individuals in states that expanded Medicaid compared to those that did not expand the program.[30] Another study found that Medicaid expansion was associated with an average $200 decline in credit card debt and in decreases in third-party collection.[31] If the court invalidates the ACA, the United States would

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[27] Medicaid and CHIP Payment Access Comm'n, *People With Disabilities* (Feb. 2017), available at https://www.macpac.gov/subtopic/people-with-disabilities/.

[28] U.S. Dep't of Health & Human Servs., *Community First Choice: Final Report to Congress* 48 (Dec. 2015), https://www.medicaid.gov/medicaid/hcbs/downloads/cfc-final-report-to-congress.pdf.

[29] Luojia Hu, et al., *The Effect of the Patient Protection and Affordable Care Act Medicaid Expansions on Financial Wellbeing* 5-6 (Nat'l Bureau of Econ. Research, Working Paper No. 22170, Apr. 2016), http://nber.org/papers/w22170.

[30] Hu, et al., *supra* note 29.

[31] Nicole Dussault, et al., *Is Health Insurance Good for Your Financial Health?,* Liberty Street Economics (June 6, 2016), http://libertystreeteconomics.newyorkfed.org/2016/06/is-health-insurance-

be at risk of going back to the pre-ACA conditions when 62 percent of all personal bankruptcies were related to medical costs.[32]

B. Striking Down the ACA Could Deprive More Than 8 Million Americans in the Non-group Market of the Health Insurance Coverage They Gained Under the ACA.

An estimated 15 million people have non-group coverage in 2018. If the ACA is struck down, 8 million of those would lose the subsidies that they now receive and all 15 million would lose the protections that the ACA provides.[33] For example, the ACA's guarantee that health insurance is available regardless of health status offers critical health security to 133 million Americans who have a pre-existing health condition. Without these protections, individuals with pre-existing conditions could be denied coverage entirely, denied coverage of specific services and treatments, or charged higher and often unaffordable premiums due to their pre-existing conditions. The number of people with pre-existing conditions covered by health insurance in the individual market rose by 64 percent between 2010, when the ACA provision barring the denial of insurance because of pre-existing conditions went into effect, and 2014.[34]

Out-of-pocket maximums for cost-sharing cap the amount an insured consumer could face in medical expenses. These maximums are lowered for low- to middle-income people eligible for cost-sharing reductions in certain health insurance marketplace plans. For example, in 2019, the maximum an individual with income under 200 percent of poverty could be charged for covered services in a year is $2600,[35] significantly less than a person with a hospitalization or

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good-for-your-financial-health.html#.V2fhz_krLct.

[32] *See supra* note 14.

[33] *See supra* note 2.

[34] Office of the Assistant Sec'y for Planning and Evaluation, U.S. Dep't of Health and Human Servs., *Health Insurance Coverage for Americans with Pre-Existing Conditions: The Impact of the Affordable Care Act* 15 App. tbl.5 (Issue Brief, Jan. 2017), https://aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf.

[35] HHS Notice of Benefit and Payment Parameters for 2019, 83 Fed. Reg. 16,930, 17,023 (Apr. 17, 2018) (to be codified at 45 C.F.R. pt. 156), https://www.federalregister.gov/documents/2018/04/17/2018-07355/patient-protection-and-affordable-

high drug costs might have faced prior to the ACA. Before the ACA, in most states, a person with an expensive health condition could only buy coverage through a high risk pool. In Missouri in 2009, for example, high risk pool enrollees could be charged up to $10,000 per year for covered services in addition to their premiums; if they exceeded lifetime maximum benefits, their coverage would end.[36] Absent ACA protections, there would be no federal limit to patient cost sharing.

Prior to the ACA, certain essential health benefits, including such services as maternity care and mental health/substance use services were frequently excluded from health insurance.[37] The ACA bars benefit carve-outs and requires all individual and small group market plans to cover essential health benefits, including maternity care. It requires coverage of screening and treatment for substance use disorders, has expanded mental health parity to all health insurance plans, and supports integrating prevention and treatment with mental health, primary care, and other related services.[38] This comprehensive focus is particularly important in combating the opioid crisis as well as other behavioral health disorders. A ruling in favor of plaintiffs would not only eliminate coverage for as many as 8 million people in the non-group, individual market, it also would eliminate all of the important lifesaving consumer protections that the ACA created.

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care-act-hhs-notice-of-benefit-and-payment-parameters-for-2019.

[36]Nat'l Ass'n of State Comprehensive Health Insurance Plans, *Comprehensive Health Insurance for High Risk Individuals: A State-by-State Analysis, 2009-2010* (2009).

[37] In 2011, before the essential health benefit rules went into effect, 62 percent of individual market enrollees lacked maternity coverage, 34 percent lacked coverage for substance use disorders, 18 percent lacked coverage for mental health care, and 9 percent lacked prescription drug coverage. Office of the Assistant Sec'y for Planning and Evaluation, *Essential Health Benefits: Individual Market Coverage*, *Issue Brief* 1 (Issue Brief, Dec. 16, 2011), https://aspe.hhs.gov/basic-report/essential-health-benefits-individual-market-coverage.

[38] Amanda J. Abraham, et al., *The Affordable Care Act Transformation of Substance Use Disorder Treatment*, American Journal of Public Health, 107 Am. J. of Public Health 31-32 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5308192/.

Many lower- and middle-income people, whose income is above the level that qualifies for Medicaid under the ACA, receive tax credits that make comprehensive insurance affordable. Premium subsidies produced 40 percent of the coverage gains attributable to the ACA from 2012-2015.[39] If the ACA is struck down, an estimated 8 million people would lose those subsidies.[40]

Under the ACA, not only are individuals eligible for premium tax credits able to afford insurance, they are also shielded from increasing insurance premiums, which are a serious problem in some states. These tax credits are calculated on a sliding fee scale based on incomes in comparison to the cost of coverage in a "benchmark" plan in their community. In 2018, the net average annual premiums paid by subsidized enrollees actually decreased. In 2017, the average gross premium for subsidized enrollees was about $5,850 but the average net paid after subsidies was $1,240. In 2018, gross premiums grew to an average of $7,650 for subsidized individuals but the net premium paid fell to an average of $1,050 because tax credits also rose.[41]

Eliminating these subsidies in combination with invalidating Medicaid expansion, as the State plaintiffs seek to do, would eliminate all of the progress the U.S. has made since 2010 and take us back to the time when many middle and low-income adults and children were uninsured and went without needed medical care because of cost.

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[39] Molly Frean, et al., *Premium Subsidies, the Mandate, and Medicaid Expansion: Coverage Effects of the Affordable Care Act* 29 (Nat'l Bureau of Econ. Research, Working Paper No. 22213, Apr. 2016), http://www.nber.org/papers/w22213.

[40] *See supra* note 2, at 4, 22.

[41] *See supra* note 2, at 12.

CONCLUSION

The Affordable Care Act allows states to expand Medicaid so that it is available to individuals who have incomes below 133% of poverty. It also has helped populations with incomes between 100 and 400 percent of the federal poverty level, who generally qualify for premium tax credits, afford the cost of individual coverage. As a result of the ACA, the drop in the uninsured rate in 2014 was the largest since Medicare was passed and Medicaid first ramped up in the early 1970s. By 2016, the ACA had lowered the number of people without health insurance by more than 20 million people. Invalidating the Affordable Care Act would reverse these gains with devastating health consequences to millions of adults and children in the United States.

Dated: June 14, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this this 14th day of June 2018, a true and correct copy of the foregoing document was filed electronically via the CM/ECF system, which gave notice to all counsel of record pursuant to Local Rule 5.1(d).

/s/ Leslie Sara Hyman
Leslie Sara Hyman

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	No. 4:18-cv-00167-O
	§	
UNITED STATES OF AMERICA, et al.,	§	
	§	
Defendants.	§	

ORDER

Before the Court is the Unopposed Motion of Families USA, Community Catalyst, The National Health Law Program, Center for Public Policy Priorities, and Center on Budget and Policy Priorities for Leave to Participate, as Amici Curiae (ECF No. __), filed on June 14, 2018. Having considered the motion, and noting that it is unopposed, the Court finds that it should be and is hereby GRANTED.

Accordingly, it is **ORDERED** that said motion is granted. The district clerk is directed to file with the papers in this case the Brief of Families USA, Community Catalyst, The National Health Law Program, Center for Public Policy Priorities, and Center on Budget and Policy Priorities, as Amici Curiae, in Support of Defendant-Intervenors, which was filed as Exhibit A to Docket No. ___).

SO ORDERED on this _____ day of ______, **2018**.

____
Reed O'Connor
UNITED STATES DISTRICT JUDGE