Nos. 19-840, 19-1019

In the Supreme Court of the United States

THE STATE OF CALIFORNIA, ET AL., PETITIONERS,

v.

THE STATE OF TEXAS, ET AL.

THE STATE OF TEXAS, ET AL., PETITIONERS,

v.

THE STATE OF CALIFORNIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICI CURIAE* FAMILIES USA ET AL. SUPPORTING PETITIONER THE STATE OF CALIFORNIA ET AL.

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INTEREST OF *AMICI CURIAE*[1]

Families USA is a national, non-partisan, non-profit organization that for more than 35 years has represented the interests of health care consumers and promoted health care reform in the United States. 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. 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 its survival and effectiveness. Further, having long represented the interests of health care consumers, Families USA offers a valuable perspective on how the statute has markedly 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 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. The organization has an interest in representing consumers who could potentially lose critical protections and access to affordable coverage and health care

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no one other than *amici curiae*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented in writing to the filing of this brief.

services should this Court uphold the Fifth Circuit's decision. 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 Center on Budget and Policy Priorities is a national, non-partisan, non-profit research and policy institute. Its 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 (CHIP), and the ACA health insurance marketplaces continue to provide coverage that meets the needs of low- and moderate-income people.

Maryland Citizens' Health Initiative Education Fund Inc. is a non-profit, non-partisan organization working to win quality, affordable health coverage for all Marylanders. In 1999, MCHI established the Maryland Health Care for All! Coalition, the state's largest health care consumer advocacy coalition, with hundreds of diverse organizational members, including faith, health, community, labor, and business groups from all across Maryland.

Nebraska Appleseed is a nonprofit, non-partisan public interest law firm formed in 1996 that takes a systemic approach to complex issues, including affordable health care. For over a decade, Nebraska Appleseed has worked to ensure that all Nebraskans have access to quality, affordable health care through policy and legal advocacy and community education. The outcome of this case will directly impact access to health care coverage for the communities with whom Nebraska Appleseed works. These communities include the more than 90,000 Nebraskans eligible for expanded Medicaid and more than 90,000 Nebraskans enrolled in the ACA's marketplace coverage.

The Utah Health Policy Project is a nonpartisan, nonprofit organization advancing sustainable health care solutions for underserved Utahns through better access, education, and public policy. Since 2006, UHPP has worked hard to develop policy solutions to create a health system that provides better, more accessible, and less expensive health care. UHPP's Take Care Utah program provides direct assistance to thousands of Utahns enroll in public insurance options and federal marketplace insurance. Without the ACA, the vast majority of these individuals and families would have no option for health care coverage.

Young Invincibles is a national, nonprofit, nonpartisan organization dedicated to advancing economic opportunities for young adults ages 18-34, and amplifying young adult voices in the political process. Founded 10 years ago by students advocating for the young adult perspective in the debate over the ACA, Young Invincibles is dedicated to ensuring access to affordable, comprehensive health coverage for all young people, accomplished by building a community of young leaders to take action for social change, sharing the stories of young adults, policy research and analysis, and consumer education to provide the tools and resources to make informed decisions.

INTRODUCTION AND SUMMARY OF ARGUMENT

Since its enactment over a decade ago, the Affordable Care Act has revolutionized access to health care for millions of American families. Today, nearly 20 million Americans have health insurance because of the Act: 12 million through state expansions of Medicaid and 8 million more through the individual market using ACA-granted subsidies.

This expanded access to health care has saved countless lives. Uninsured families are no longer forced to delay or do without needed medical care because of cost,

sparing many the agonizing choice between paying for essentials (like food and rent) and obtaining necessary drugs or treatment. Each year, the Act has prevented tens of thousands of premature deaths and improved the quality of life for millions.

For the third time since its enactment, the ACA's opponents attempt to achieve through this Court what they could not achieve in Congress: repealing the ACA. From 2010 to 2016, Congress repeatedly considered and rejected proposals to repeal the Act. *See* Pet. App. 8a.

Texas and other cross-petitioners nevertheless contend that Congress intentionally—yet surreptitiously—torpedoed the entire ACA in the 2017 Tax Cut and Jobs Act (TCJA), Pub. L. No. 115-97, 131 Stat. 2054. Only a single provision of that 185-page bill addresses the ACA: Section 11081 reduced to zero the tax imposed by the minimum-coverage provision in Section 5000A of the ACA. Although *no* member of Congress said so then, cross-petitioners implausibly claim that Congress in fact intended to embed in the ACA a detonator that would destroy it. Petitioners persuasively explain the multiple, independent reasons why cross-petitioners' attempted judicial repeal of the ACA fails.

This brief focuses on the devastating consequences if this Court permits the Fifth Circuit's decision to stand. Congress enacted the ACA expressly to protect patients and their families; the law's far-reaching provisions are now entwined with the lives of hundreds of millions of Americans. Judicial repeal by this Court, amidst a global pandemic that already has strained the health care system and depleted the resources of millions of families, would generate enormous suffering and chaos.

Even before the COVID-19 pandemic, experts predicted that without the protections of the ACA, approxi-

mately 20 million Americans would lose their health insurance. That number will likely be far greater as a result of the tens of millions who have become unemployed during the pandemic. Such a sweeping loss of coverage would lead patients to delay or forgo necessary care. Studies have consistently shown that children without health insurance are less likely to get life-saving vaccines; adults are less likely to get important preventive screenings such as breast or prostate exams; and common conditions such as high blood pressure or diabetes are less likely to be treated. Federal spending on health care would also shrink by billions, putting even more financial strain on the states as they combat the pandemic. The costs of uncompensated care—which governments and health care providers also bear—would nearly double.

The pain inflicted by repeal of the ACA would be felt most acutely by the country's most vulnerable. Millions of Americans with pre-existing conditions would lose insurance. Lower-income Americans would lose coverage in states that have expanded access to Medicaid under the ACA. Americans with depression, addiction, and other mental health challenges would lose the life-saving treatment made available under the ACA.

Even for those with some remnant of coverage, judicial repeal of the ACA would eliminate reforms on which millions of families depend. Insurers would no longer have to cover essential health benefits—including emergency and hospitalization services, maternity care, substance abuse treatment, and mental health procedures. Insurers could limit annual and lifetime benefits, making coverage effectively unavailable for many. Repeal would also permit insurers to charge prohibitively high premiums to people with certain medical conditions and deny payment or rescind coverage after a patient files claims.

Congress well understood all of this, which is why it is "simply unfathomable" that Congress would have "hinged the future of the entire [ACA] on the viability of a single, deliberately unenforceable provision." Pet. App. 103a (King, J., dissenting). Put simply, if Congress intended to repeal the Affordable Care Act, it would have repealed the Affordable Care Act. Instead, while Congress neutralized the enforcement mechanism for the minimum-coverage provision, it left the rest of the Act intact, as it had done some 70 times before. "It is difficult to imagine a plainer indication that Congress considered the coverage requirement entirely dispensable and, hence, severable." *Id.* at 73a.

BACKGROUND

Before the ACA, 50 million Americans—17% of the population—lacked health insurance.[2] Millions were denied access because of pre-existing conditions or the cost of coverage; millions more purchased insurance providing substandard medical care.[3] The ACA dramatically improved life for American families through reforms that made adequate health insurance more available and more affordable.

This brief cannot catalog all the ways that the ACA has improved the health care system, but here are some of its major reforms:

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[2] 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.

[3] 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), https://www.commonwealthfund.org/publications/issue-briefs/2009/jul/failure-protect-why-individual-insurance-market-not-viable.

Pre-existing conditions. Before the ACA, nothing prevented insurers from increasing premiums, limiting benefits, and denying coverage based on a consumer's pre-existing medical condition. According to the Kaiser Family Foundation, almost 54 million Americans—more than a quarter of everyone under 65—have a pre-existing condition that would likely have made them uninsurable in the individual markets in most states.[4] Between 65 million and 129 million non-elderly Americans risked being unable to obtain affordable coverage.[5]

The ACA bars insurers from discriminating based on pre-existing conditions. 42 U.S.C. § 300gg-3. The "guaranteed issue" requirement likewise bars insurers from turning customers away because of their "health status," including medical conditions, claims experience, health care received, medical history, genetic information, evidence of insurability, or disability. *Id.* §§ 300gg, 300gg-1. And the "community rating" requirement prevents insurers from charging people more because of pre-existing health issues. *Id.* § 300g-4.

Health Benefit Exchanges. Even those without pre-existing conditions often could not afford coverage through the individual market. The ACA changed that by creating government-run insurance marketplaces (*i.e.*,

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[4] Press Release, Kaiser Family Foundation ("KFF"), *Nearly 54 Million Americans Have Pre-Existing Conditions That Would Make Them Uninsurable in the Individual Market without the ACA* (Oct. 4, 2019), https://www.kff.org/health-reform/press-release/nearly-54-million-americans-have-pre-existing-conditions-that-would-make-them-uninsurable-in-the-individual-market-without-the-aca/.

[5] Families USA, *Worry No More*, 1 (July 2012), https://familiesusa.org/resources/worry-no-more/; HHS, *At Risk: Pre-Existing Conditions Could Affect 1 in 2 Americans*, 1-2 (Nov. 2011), https://aspe.hhs.gov/system/files/pdf/76376/index.pdf/.

"exchanges") that allow consumers to compare and purchase insurance plans. 42 U.S.C. § 18031. It also provided tax credits to offset the cost of insurance for those with incomes under 400% of the federal poverty line. *See* 26 U.S.C. § 36B; 42 U.S.C. §§ 18081, 18082. In 2019, more than 10 million people received coverage through the exchanges, with over 8 million receiving tax credits to help pay premiums.[6]

Medicaid Expansion. The ACA also improved access to health care by expanding Medicaid. Before the ACA, Medicaid covered a limited population, including most children with parental income below the poverty level and select parents with very low incomes. With limited exceptions, however, Medicaid excluded impoverished adults without disabilities or dependent children.[7]

The ACA allows states, funded mostly by the federal government, to expand Medicaid to individuals with incomes below 133% of the poverty level. 42 U.S.C. § 1396. By September 2019, more than 12 million newly eligible recipients had enrolled.[8] As of May 2020, 36 states and

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[6] KFF, *Marketplace Effectuated Enrollment and Financial Assistance* (2019), https://www.kff.org/other/state-indicator/effectuated-marketplace-enrollment-and-financial-assistance.

[7] Christie Provost and Paul Hughes, *Medicaid: 35 Years of Service*, 22 Medicare and Medicaid Res. Rev. 141, 142–43 (2000), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4194689/; KFF, *Medicaid Income Eligibility Limits for Children Ages 6-18, 2000-2020 and Medicaid Income Eligibility for Parents, 2002-2020*, https://www.kff.org/datacollection/trends-in-medicaid-income-eligibility-limits/.

[8] Medicaid, *Medicaid Enrollment - New Adult Group*, https://data.medicaid.gov/Enrollment/Medicaid-Enrollment-New-Adult-Group/pfrt-tr7q/data.

the District of Columbia—approximately 65% of the population of the United States—have implemented Medicaid expansion.[9]

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In 2014, these reforms produced the largest drop in the uninsured rate since the original enactment of Medicare and Medicaid.[10] By 2017, the number of uninsured had decreased by 19.1 million, compared to the pre-ACA period.[11] And even after the TCJA zeroed out the tax in the minimum-coverage provision, the progress made by the ACA has endured. For 2019 and 2020, enrollment in marketplace plans was only slightly below 2018 levels.[12]

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[9] Families USA, *A 50-State Look at Medicaid Expansion*, https://familiesusa.org/resources/a-50-state-look-at-medicaid-expansion/.

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

[11] Jennifer Tolbert, et al., *Key Facts About the Uninsured Population*, KFF (Dec. 7, 2018), https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/.

[12] *Compare* Ctrs. for Medicare & Medicaid Servs., *Final Weekly Enrollment Snapshot for 2018 Open Enrollment Period* (Dec. 28, 2017), https://www.cms.gov/newsroom/fact-sheets/final-weekly-enrollment-snapshot-2018-open-enrollment-period, *with Final Weekly Enrollment Snapshot for 2019 Open Enrollment Period* (Jan. 3, 2019), https://www.cms.gov/newsroom/fact-sheets/final-weekly-enrollment-snapshot-2019-enrollment-period, *and 2020 Federal Health Insurance Exchange Enrollment Period Final Weekly Enrollment Snapshot* (Jan. 8, 2020), https://www.cms.gov/newsroom/fact-sheets/2020-federal-health-insurance-exchange-enrollment-period-final-weekly-enrollment-snapshot.

The Medicaid expansion and the private-market protections in the ACA continue to make health insurance available to millions.

ARGUMENT

I. This Third Attempt to Overturn the ACA Fares No Better Than the First Two

This is the third challenge that opponents of the ACA have brought seeking to accomplish judicially what they failed to accomplish legislatively. The Court rejected the first challenge in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (*NFIB*), which upheld the constitutionality of the minimum-coverage provision. It rejected a second challenge in *King v. Burwell*, 135 S. Ct. 2480 (2015), declining to accept a self-destructive interpretation of the ACA.

In *NFIB*, the Court indicated that the coverage requirement would be unconstitutional if it were a legal command to purchase insurance, but determined that the requirement was not in fact a command. Instead, the Court held that the ACA "leaves an individual with a lawful choice to do or not do a certain act"—namely, whether to purchase health insurance. 567 U.S. at 574 (opinion of Roberts, C.J.). All that the ACA requires is a "payment to the IRS" if one chooses not to purchase health insurance. *Id.* at 563-64. Significantly, the Court also held that the failure to buy insurance as the statute provided had no "legal consequences" beyond payment of a tax. *Id.* at 568. "Those subject to the [coverage requirement] may lawfully forgo health insurance and pay higher taxes, or buy health insurance and pay lower taxes. The only thing they may not lawfully do is not buy health insurance and not pay the resulting tax." *Id.* at 574 n.11.

In enacting the TCJA in 2017, Congress eliminated the ACA's sole "legal consequence," by zeroing out the tax. Texas and other cross-petitioners—now joined by

the Government, after its latest change of position—claim that by making the requirement to obtain insurance purely precatory, Congress rendered it unconstitutional. Further, according to cross-petitioners, Congress did not intend the ACA to operate without the now-precatory provision; they therefore claim that all of the statute's hundreds of provisions must fall, including sections as far afield as abstinence education and training medical specialists.

The Government and cross-petitioners thus argue that when Congress removed the sole legal consequence for failing to buy insurance—while leaving untouched the protections for pre-existing conditions, the community-rating requirement, and most of the law's other provisions—it intended the survival of all those untouched provisions to hinge on the coverage mandate. No evidence supports this bizarre conjecture. To quote Senator Lamar Alexander, Chairman of the Senate Committee on Health, Education, Labor, and Pensions, which has primary jurisdiction over the ACA insurance market reforms: "What [the Government and cross-petitioners are] arguing is that, when we voted to get rid of the individual mandate we voted to get rid of Obamacare . . . I don't know one single senator that thought that."[13] Absent clear proof that Congress *did* intend that result, it would be unprecedented, improper, and, indeed, unjudicial for this Court to impose such dislocation and suffering; to undermine a national health care system already under extraordinary stress; and to threaten the nation's economic recovery from the COVID-19 pandemic.

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[13] *Meet the Press* (NBC television broadcast May 10, 2020), https://www.nbcnews.com/politics/meet-the-press/blog/meet-press-blog-latest-news-analysis-data-driving-political-discussion-n988541/ncrd1204001#blogHeader.

II. Judicial Repeal of the ACA Would Inflict Chaos and Suffering That Congress Could Not Have Intended

Before the ACA, millions of Americans were uninsured and without needed medical care primarily because of cost. In 2010 alone, more than 26,000 people between the ages of 25 and 64 died prematurely due to lack of health coverage.[14]

Judicial repeal of the ACA would devastate American families. Sweeping coverage losses would hurt those across all locations and demographics, albeit some more than others. Judicial repeal would also directly affect states, hospitals, and health care providers, whose increasingly tenuous financial stability is critical for responding to health crises.

A. Invalidating the ACA Would Cause Nearly 20 Million Americans to Lose Coverage

Without the protections of the ACA, insurance coverage would evaporate for millions of Americans: They would no longer have access to primary care, prescription drugs, and other essential medical care. Even before the pandemic, experts predicted that an estimated 20 million would lose their coverage and that the total number of uninsured would rise to more than 50 million, or 18.3% of the non-elderly population.[15] They estimated that enrollment

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[14] Families USA, *Dying for Coverage: The Deadly Consequences of Being Uninsured*, 2 tbl. 1 (June 2012), https://familiesusa.org/wp-content/uploads/2019/09/Dying-for-Coverage.pdf.

[15] Jessica Banthin, et al., *Implications of the Fifth Circuit Court Decision in* Texas v. United States, 1, Urban Institute (Dec. 2019), https://www.urban.org/research/publication/implications-fifth-circuit-court-decision-texas-v-united-states.

in Medicaid and CHIP would drop by more than 15 million.[16]

Federal spending on health care would shrink by billions of dollars, leaving states to deal with the fallout. One study estimates that federal spending in 2019 would have decreased by approximately $134.7 billion had the ACA been eliminated at the start of the year.[17] The loss of federal funding means that already-beleaguered state governments would have to make up the difference—or face the even greater costs of treating a larger uninsured population.

Judicial repeal of the ACA would also directly affect hospitals and health care providers, by leading to lower spending on services. Total health care spending by the non-elderly population would fall by an estimated $94.6 billion, or 5%.[18] At the same time, an increasing number of uninsured Americans would need to rely on free or reduced-price services—forcing others to shoulder the financial burden. Even without accounting for the COVID-

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[16] Linda Blumberg, et al., *State-by-State Estimates of the Coverage and Funding Consequences of Full Repeal of the ACA*, 5, Urban Institute (Mar. 2019), https://www.urban.org/research/publication/state-state-estimates-coverage-and-funding-consequences-full-repeal-aca. Even more Americans could lose their coverage as a result of the COVID-19 recession; recent estimates have projected that between 25 to 43 million people could lose their coverage if the ACA were repealed. Bowen Garrett & Anuj Gangopadhyaya, *How the COVID-19 Recession Could Affect Health Insurance Coverage*, 1, Urban Institute (May 2020), https://www.urban.org/sites/default/files/publication/102157/how-the-covid-19-recession-could-affect-health-insurance-coverage_0.pdf.

[17] Banthin, *Implications of the Fifth Circuit Court Decision*, *supra* note 15, at 9.

[18] *Id.* at 2.

19 crisis, the estimated costs of this uncompensated care would nearly double, to about $50 billion.[19]

But families would bear the brunt of judicial repeal. Loss of insurance translates directly to worse health outcomes. Multiple studies have shown a higher mortality rate among individuals who did not acquire ACA-based insurance than among their peers who did.[20] People unable to buy insurance are more than twice as likely as the insured to delay or forgo needed care.[21] Studies show that children not covered by insurance are less likely to get immunized or treated, even for conditions as serious as a ruptured appendix.[22] Adults without coverage are less likely to get breast or prostate exams.[23] High blood pressure or diabetes is more likely to be out of control.[24] A stroke is more likely to leave permanent damage.[25]

These are not faceless statistics; they reflect the experience of real people. In 2014, for example, Jamal Lee

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[19] *Ibid.*

[20] Jacob Goldin, et al., *Health Insurance and Mortality: Experimental Evidence from Taxpayer Outreach* (Dec. 2019), https://www.nber.org/papers/w26533.pdf; Sarah Miller, et al., *Medicaid and Mortality: New Evidence from Linked Survey and Administrative Data* (Aug. 2019), https://www.nber.org/papers/w26081.

[21] KFF, *The Uninsured and the Difference Health Insurance Makes*, 2 (Sept. 1, 2012), https://www.kff.org/health-reform/fact-sheet/the-uninsured-and-the-difference-health-insurance/.

[22] Lena Sun & Amy Goldstein, *Beneath health law's botched rollout is basic benefit for millions of uninsured Americans*, Wash. Post (Dec. 28, 2013), https://www.washingtonpost.com/national/health-science/beneath-health-laws-botched-rollout-is-basic-benefit-for-millions-of-uninsured-americans/2013/12/28/8ae8d93e-68e5-11e3-8b5b-a77187b716a3_story.html.

[23] *Ibid.*

[24] *Ibid.*

[25] *Ibid.*

of Maryland found his wife on the floor in medical distress—but coverage made available by the ACA meant that she was able to receive the necessary care and that massive hospital bills did not compound the suffering.[26] Jamal explained: "*I picked her up, called the ambulance, took her to the hospital and she had emergency surgery right there on the spot. We didn't have to think about where to go. We didn't have to think about whether she'd be covered or whether it was going to be concern or an issue, nothing like that because she got the coverage*."

B. The Effects Would Devastate Families and States, Particularly the Most Vulnerable

The effects of judicial repeal would not fall equally on all Americans. Rather, the most vulnerable—including those with pre-existing conditions and low incomes—would face the greatest difficulty maintaining access to affordable coverage. At the state level, judicial invalidation of the ACA would have the most pernicious effect on states with the greatest increases in coverage under the law. Hard-fought coverage gains, access to medical care, and peace of mind would vanish.

1. *Pre-existing conditions*

For many, the ACA's protections for Americans with pre-existing conditions have been life-changing. For example, Peter Morley, a two-time cancer survivor who now has more than a dozen medical conditions, believes that he has "flourished from the continuity of care" provided by the Act.[27] If the law is judicially invalidated, the ability of

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[26] Pat Warren, *Ravens Cornerback Voices His Approval of Affordable Health Care in Radio Ad*, CBS Baltimore (Mar. 19, 2014), https://baltimore.cbslocal.com/2014/03/19/ravens-cornerback-to-be-in-ad-on-health-care/.

[27] Families USA, *Peter Morley, New York*, https://familiesusa.org/stories/peter-morley/.

people like Peter to obtain affordable coverage would again be doubtful. Peter says: "*I am alive because of the ACA. And I am grateful to be here. As someone who has successfully navigated the ACA, I know how essential it is to protect our care*."

2. *Medicaid beneficiaries*

The ACA provided coverage for another group of the most-vulnerable, hardest-to-insure Americans: low-income earners. Thus far, the ACA has expanded Medicaid coverage in 36 states and the District of Columbia. Studies have found that the Medicaid expansion has benefited this population, including for enrollment and coverage, coverage for specific populations, and coverage disparities.[28]

Rachel Hynes is just one of many Americans who benefitted from the ACA's Medicaid expansion before securing her current employer-sponsored coverage.[29] Rachel had superficial melanoma at 29 and, as a result, could not obtain private insurance. Without insurance, she would have faced an average $5,220 for an unexpected day in the hospital; $1,119 for an MRI; and $15,930 if she had needed to have her appendix removed.[30] Were her cancer to recur, the cost of treatment could run to hundreds of thousands of dollars without insurance. But, with the ACA,

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[28] Madeline Guth, et al., *The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review*, KFF (Mar. 17, 2020), https://www.kff.org/report-section/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-report/.

[29] Families USA, *Rachel Hynes, District of Columbia*, https://familiesusa.org/stories/rachel-hynes-district-of-columbia/.

[30] Alice Oglethorpe, *This is How Much Your Health Care Would Cost without Insurance*, Women's Health (Sept. 17, 2019), https://www.womenshealthmag.com/health/a28772069/how-much-health-care-costs-without-insurance/.

she signed up for Medicaid through the DC Health Exchange. Rachel, who taught theater and the arts to students from preschool through college, described how health insurance affected her life: *"Without the ACA, I could not do what I do, because I would not be able to afford health benefits. I'm thankful that I can go to work every day and know that if I have a problem, I can go to a doctor."*

Judicial repeal of the ACA would inflict the biggest coverage losses in states where coverage has increased the most.[31] In Medicaid expansion states, the uninsured population would almost double, increasing by an average 91.8% (versus an average 38.2% in states that did not expand eligibility).[32] In Arkansas, Kentucky, Louisiana, Maine, Montana, New Hampshire, Pennsylvania, and West Virginia, the uninsured population would increase by an average of more than 133%, wiping out hard-fought gains.[33]

Stacy Stanford, a staff health policy analyst at amicus Utah Health Policy Project, was uninsured for years following the loss of her job—and with it her employer-sponsored health insurance—after she became disabled as a result of a car crash in Salt Lake City in 2010.[34] During this period, her health problems included vision and hearing loss, cognitive and memory problems, episodes of partial paralysis, and debilitating daily migraines. Under the ACA's Medicaid expansion—which extended the program

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[31] Linda Blumberg, et al., *State-by-State Estimates*, *supra* note 16, at 2.

[32] *Id.* at 7.

[33] *Ibid.*

[34] Amanda Schaffer, *The Grassroots Activists Who Got Medicaid on the Ballot in Utah*, The New Yorker (Nov. 1, 2018), https://www.newyorker.com/news/dispatch/the-grassroots-activists-who-got-medicaid-on-the-ballot-in-utah.

to adults earning less than about $17,000 per year—she would have qualified for Medicaid, but the Utah legislature had rejected Medicaid expansion. Utah ultimately adopted Medicaid expansion in 2019—too late to undo the hundreds of thousands of dollars of medical debt Stacy had accrued, but just in time for many other Utahns.

States have continued to adopt Medicaid expansion since 2014, protecting additional low-income Americans. In 2018, Nebraska voters approved a ballot initiative to expand Medicaid, and expansion is scheduled to start on October 1, 2020.[35] Nebraskan Amanda Gershon suffers from ischemic colitis, chronic illnesses, and pain in her hands, feet, and joints.[36] Before she had access to Medicaid, Amanda could not afford prescriptions and other treatments; doctors told her that she "was not going to make it" after her colon shut down in January 2016. Ultimately, Amanda's lack of access to health care worsened her condition to the point that she was declared disabled, making her eligible for Medicaid without the expansion. Amanda says: *"Medicaid absolutely saved [my] life."* She fought for expansion in Nebraska to spare others similar pain.

3. *Vulnerable populations*

According to the Urban Institute, the projected increase of 20 million uninsured if the ACA is struck down would come disproportionately from people with the lowest incomes (below 200% of the federal poverty level), young adults, families with at least one full-time worker,

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[35] Nebraska Dep't of Health and Human Servs., *Medicaid Expansion in Nebraska*, http://dhhs.ne.gov/Pages/Medicaid-Expansion.aspx.

[36] Opinion, Joe Davidson, *Medicaid 'absolutely' saved her life, says patient now fighting to expand it*, Wash. Post. (Oct. 22, 2018), https://www.washingtonpost.com/politics/2018/10/22/medicaid-absolutely-saved-her-life-says-patient-now-fighting-expand-it/.

and residents of the South and West.[37] States that have benefitted most from expansion would be hardest hit.

4. *Mental health*

Depression, addiction, and other mental health challenges often go untreated in those without insurance. The ACA has been especially beneficial for Americans with substance-abuse disorders, including victims of the recent opioid crisis.[38]

C. The ACA's Coverage Protections Are Especially Important During Public Health Crises

The COVID-19 crisis—and the economic disruption it has wrought—highlight the risks of returning to the pre-ACA health care system.

1. Access to treatment and preventive care

The cost of COVID-19 care will force uninsured patients into debt—or cause them to avoid treatment altogether. In a recent Gallup poll, 14% of U.S. adults said they would avoid seeking care for themselves or a household member for fever and dry cough—two of the most common symptoms of COVID-19—due to concerns about cost.[39] Nine percent would avoid seeking care if they suspected that they were infected by the coronavirus.[40]

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[37] John Holahan, et al., *The Potential Implications of* Texas v. United States*: How Would Repeal of the ACA Change the Likelihood That People with Different Characteristics Would be Uninsured?*, Urban Institute (June 2019), https://www.urban.org/sites/default/files/publication/100409/qs_txvus_repeal_of_aca_03a_-_near_final_1.pdf.

[38] Guth, *The Effects of Medicaid Expansion under the ACA*, *supra* note 28.

[39] Dan Witters, *In U.S., 14% with Likely COVID-19 to Avoid Care Due to Cost*, Gallup (Apr. 28, 2020), https://news.gallup.com/poll/309224/avoid-care-likely-covid-due-cost.aspx.

[40] *Ibid.*

These numbers are high enough to affect how far and fast the disease spreads.

Without insurance, the estimated average billed cost of a hospital stay for COVID-19 is a staggering $73,300.[41] That is far more than most uninsured consumers can afford, potentially leaving them with serious medical debt.[42] Although the federal relief packages enacted so far have funded a "claims reimbursement program" for health care providers to treat uninsured victims, providers are not required to participate, and uninsured patients cannot seek relief from the fund directly.[43] Further, the fund is limited and likely to leave many uninsured patients without protection.

As for uninsured pandemic victims who need *outpatient* services, non-emergency care may not be available at all. Patients who lack insurance have a right to stabilizing treatment regardless of ability to pay, but not to further treatment to make them well or rehabilitate them.

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[41] Fair Health, *COVID-19: The Projected Economic Impact of the COVID-19 Pandemic on the US Healthcare System*, 2 (Mar. 25, 2020) (estimating based on the cost of pneumonia claims), https://s3.amazonaws.com/media2.fairhealth.org/brief/asset/COVID-19%20-%20The%20Projected%20Economic%20Impact%20of%20the%20COVID-19%20Pandemic%20on%20the%20US%20Healthcare%20System.pdf.

[42] Ann Carns, *Even in Strong Economy, Most Families Don't Have Enough Emergency Savings*, N.Y. Times (Oct. 25, 2019), https://www.nytimes.com/2019/10/25/your-money/emergency-savings.html.

[43] Health Resources and Servs. Admin, *COVID-19 Claims and Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured*, https://www.hrsa.gov/coviduninsuredclaim.

Given these coverage gaps, the inevitable result of knocking millions off of their ACA-facilitated insurance, will be a more dangerous and destructive pandemic.[44]

The public understands the ACA's value during the ongoing pandemic. In states that have opened special enrollment periods during the crisis, including Colorado, Massachusetts, Minnesota, and Washington, sign-ups have surged.[45] Initial Medicaid data shows similar increases. For example, Virginia's enrollment dashboard shows an increase of more than 17,000 adults from March 31 to May 1, 2020—among them more than 14,000 adults who are not parents and thus would not have Medicaid coverage absent the expansion.[46] By May 1, more than

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[44] Opinion, Christina Eibner and Dr. Courtney Gidengil, *What if the Supreme Court strikes down the ACA during the COVID-19 pandemic?*, The Hill (Apr. 4, 2020), https://thehill.com/opinion/judiciary/490860-what-if-the-supreme-court-strikes-down-the-aca-during-the-covid-19-pandemic.

[45] Connect for Health Colorado, *More than 10,000 Coloradans Enrolled* (Apr. 23, 2020), https://connectforhealthco.com/more-than-10000-coloradans-enrolled/; Massachusetts Health Connector, *Massachusetts Health Connector continues extended enrollment as nearly 45,000 people enroll in new plans, update current coverage* (Apr. 28, 2020), https://www.mahealthconnector.org/health-connector-continues-extended-enrollment; Washington Health Benefit Exchange, *Over 16,000 Signed Up for Coverage through Washington Healthplanfinder as Impacts of COVID-19 Pandemic Hits Washington Households* (Apr. 23, 2020), https://www.wahbexchange.org/over-16000-signed-up-for-coverage-through-washington-healthplan-finder-as-impacts-of-covid-19-pandemic-hits-washington-households/; MNsure, *More than 9,400 Minnesotans Enrolled in Private Health Insurance Coverage During MNsure's COVID-19 Emergency Special Enrollment Period* (Apr. 22, 2020), https://www.mnsure.org/news-room/news/index.jsp?id=34-429411.

[46] Virginia Dep't of Medical Assistance Services, *Expansion Dashboard*, https://www.dmas.virginia.gov/#/dashboard.

418,000 adults had newly enrolled in Medicaid since Virginia's expansion took effect in 2019.[47]

2. *Coverage for the recently unemployed*

As the COVID-19 crisis demonstrates, programs established under the ACA are the only affordable path to insurance for millions of people. The ongoing economic and health crisis has caused millions of people to lose jobs, income, and job-based coverage. More than 30 million people filed for unemployment from mid-March through the end of April.[48]

Absent the ACA, many of these recently unemployed workers would have access to only one coverage option: COBRA.[49] At 102% of the cost previously borne by *both* the employer *and* the employee, COBRA is often cost-prohibitive. What's more, an ACA repeal would mean that insurers could deny basic services. As insurers bear their own financial scars from the COVID-19 pandemic, most would take advantage of the withdrawal of protections.

Dwight Armentrout's 48-year career in telecommunications ended with his recent layoff. Until now, Dwight says: *"I've never been without insurance."* Like 60,000 other Californians between March 20 and April 10, Dwight obtained a plan through California's health insurance marketplace.[50] His diabetes, hypertension, and age

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[47] *Ibid.*

[48] Nelson D. Schwartz, Tiffany Hsu, and Patricia Cohen, *Stymied in Seeking Benefits, Millions of Unemployed Go Uncounted*, N.Y. Times (Apr. 30, 2020), https://www.nytimes.com/2020/04/30/business/economy/coronavirus-unemployment-claims.html.

[49] *See* U.S. Dep't of Labor, *Continuation of Health Coverage (COBRA)*, https://www.dol.gov/general/topic/health-plans/cobra.

[50] Denise Dador, *Coronavirus pandemic: Number of Covered California participants soars as newly unemployed seek health insurance*, ABC7 (Apr. 16, 2020), https://abc7.com/covered-california-unemployed-health-insurance-coronavirus/6106790/.

make him particularly vulnerable to diseases such as COVID-19.[51] His access to health care during the pandemic is accordingly crucial and potentially life-saving.

3. *An economic lifeline amid the chaos*

Studies confirm the ACA's key role during a recession. The Urban Institute estimates that, in industries hardest hit by the crisis, 60% of workers are eligible for financial assistance either through ACA marketplaces or through Medicaid.[52]

A separate study found that Medicaid expansion under the ACA significantly increased the program's responsiveness to economic recessions and changes in personal income. Each percentage-point increase in the unemployment rate is associated with a 0.77% increase in the share of people eligible for Medicaid (versus 0.32% under the pre-ACA eligibility rules).[53] In other words, the post-ACA Medicaid program can serve Americans who otherwise would lack affordable insurance—and who would not have had a Medicaid option before the ACA.

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[51] *Ibid.*

[52] Linda Blumberg, et al., *Potential Eligibility for Medicaid, CHIP, and Marketplace Subsidies among Workers Losing Jobs in Industries Vulnerable to High Levels of COVID-19-Related Unemployment*, Urban Institute (Apr. 24, 2020), https://www.urban.org/research/publication/potential-eligibility-medicaid-chip-and-marketplace-subsidies-among-workers-losing-jobs-industries-vulnerable-high-levels-covid-19-related-unemployment.

[53] Paul D. Jacobs, et al., *Adults Are More Likely To Become Eligible For Medicaid During Future Recessions If Their State Expanded Medicaid*, Health Affairs (Jan. 2017), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2016.1076.

That coverage is crucial in the wake of the COVID-19 pandemic, as the unemployment rate has already surged to unprecedented levels.[54]

4. *Combatting the spread of the disease*

As the COVID-19 crisis demonstrates, barriers to affordable coverage have effects far beyond the uninsured. Without the ACA's coverage protections, the pandemic's destructive effects would snowball. Many of the occupations with the highest rates of uninsured workers are service professions that involve increased exposure to COVID-19.[55] As the pandemic has already shown, entire communities suffer when coverage is not available to essential workers—like grocery, delivery, and home health care workers—who are critical to the functioning of our society, but likely to lack access to health insurance through their employers. Mass loss of coverage could cause individuals to delay seeking diagnosis and treatment, leading to the spread of disease.[56]

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Cross-petitioners' attempts to judicially repeal the ACA have never posed a greater threat to American families and communities. The loss of the ACA's coverage protections would trigger unprecedented disruption in a

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[54] Scott Horsley, *One for the History Books: 14.7% Unemployment, 20.5 Million Jobs Wiped Away*, NPR (May 8, 2020), https://www.npr.org/sections/coronavirus-live-updates/2020/05/08/852430930/one-for-the-history-books-14-7-unemployment-20-5-million-jobs-wiped-away.

[55] *Ibid.*

[56] Jennifer Tolbert, *What Issues Will Uninsured People Face with Testing and Treatment for COVID-19?*, KFF (Mar. 16, 2020), https://www.kff.org/uninsured/fact-sheet/what-issues-will-uninsured-people-face-with-testing-and-treatment-for-covid-19/.

time when no economic sector—particularly not the health care sector—can afford it.

III. Even for Those with Some Remaining Coverage, Judicial Repeal of the ACA Would Eliminate Reforms on Which Millions of Families Depend

Repealing the ACA would not just strip health care from millions of Americans; it would also eliminate crucial provisions protecting families nationwide.

A. Protections for Specific Services Ensure That Americans Can Access Essential Care

The ACA's protections for specific services ensure that the types of medical care Americans rely on most are accessible.

1. *Essential Health Benefits*

One of the most widely applicable reforms is the Essential Health Benefits standard. Before the ACA, the private insurance market lacked federal benefit standards. Over 60% of individual market enrollees lacked maternity coverage; more than one-third of enrollees lacked coverage for substance-abuse disorders; and nearly one in five lacked coverage for mental health care.[57] The ACA required all individual and small group market plans to cover ten specified essential health benefits, including emergency and hospitalization services, maternity care, substance use disorders, and mental health procedures. 42 U.S.C. § 18022.

These protections have become important in combatting the COVID-19 pandemic. The Department of Health & Human Services has stated that the diagnosis and treatment of the coronavirus is covered by the system and

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[57] HHS, *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.

that individually purchased plans cannot exclude COVID-19 diagnosis and treatment. The system will also likely cover an eventual COVID-19 vaccine; current law requires certain CDC-designated vaccines to be covered as an essential health benefit, *without* patients being forced to pay out of pocket.[58]

2. *Preventive care*

Not only does the ACA keep insurance companies from denying coverage for preventive services; it prohibits insurance plans from imposing out-of-pocket costs for such care. 42 U.S.C. § 300gg-13. The law thus guarantees access to essential, generally applicable procedures such as blood pressure screenings, basic vaccines, and alcohol abuse counseling. The ACA also eliminates out-of-pocket costs for procedures essential to the health of women (including maternity-related services and breast cancer screenings) and children (including autism screenings, behavioral assessments, and routine medical history tracking).

The ACA's protections for preventive care are not cabined to the private insurance market; Medicare recipients also cannot be charged out-of-pocket costs for many preventive services. ACA §§ 4103, 4104. Without the ACA, insurance plans would be able to exclude coverage or otherwise charge for these essential medical services.

3. *Prescription drugs*

The ACA also helps keep down the cost of prescription drugs for many of the 45 million Americans covered by Medicare Part D. Before the ACA, a gap existed between Medicare's initial coverage limit and the threshold

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[58] Ctrs. for Medicare & Medicaid Servs., *FAQs on Essential Health Benefit Coverage and the Coronavirus (COVID-19)* (March 12, 2020) https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/EHB-Benchmark-Coverage-of-COVID-19.pdf.

cost required to receive catastrophic coverage for prescriptions. The ACA gradually reduced this gap—known as the prescription drug "donut hole"—and finally eliminated it in 2020. As a result, Americans saved more than $20 billion in prescription drug costs in the first six years of implementation.[59] Repealing the ACA could lead to the donut hole reopening, which would be catastrophic for the tens of millions of Americans who rely on Medicare for their prescription drugs.[60]

B. Millions of Americans Depend on the ACA to Regulate Insurance Costs

Repealing the ACA would not only eliminate access to essential services; it would also make the remaining insurance plans far more expensive and restrictive.

1. *Annual and lifetime caps*

Before the ACA's enactment, more than 90 million Americans had health insurance that capped their lifetime and annual benefits.[61] The ACA prohibited these caps. 42 U.S.C. § 300gg-11.

This reform has benefited millions, including Myka Eilers, a nine-year old from California. Myka was diagnosed at birth with pulmonary stenosis, a congenital heart defect. She had two open heart surgeries before her first birthday. By the time Myka was 11 months, her medical

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[59] Ctrs. for Medicare & Medicaid Servs., *More than 10 Million People with Medicare Have Saved Over $20 Billion on Prescription Drugs Since 2010* (Feb. 8, 2016), https://www.cms.gov/newsroom/press-releases/more-10-million-people-medicare-have-saved-over-20-billion-prescription-drugs-2010.

[60] Paul N. Van de Water, *Striking Down ACA Would Weaken Medicare*, Center on Budget and Policy Priorities (July 8, 2019), https://www.cbpp.org/blog/striking-down-aca-would-weaken-medicare.

[61] HHS, *At Risk*, *supra* note 5, at 4.

costs had totaled approximately $500,000. To make matters worse, Myka was later diagnosed with a separate neurological disorder and a tumor was found on her optic nerve.[62]

Were it not for the ACA, Myka's life would be radically different. Myka still requires extensive care—she requires frequent visits to neurologists and ophthalmologists, semi-annual MRIs, and regular cardiological checkups. The MRIs alone each cost $15,000. Her mother says: *"Access to quality healthcare means my child will always be monitored for her ailments. It means she will have access to the doctors who've been treating her literally her entire life keeping her alive."*[63] Were the ACA eliminated, Myka's family would struggle to provide her with the care she needs to survive.

2. *Out-of-pocket maximums*

The ACA also limited out-of-pocket maximums for patient cost-sharing. Before the ACA, in most states, an individual with an expensive health condition could only buy coverage through a high-risk pool. For example, a high-risk pool enrollee living in Missouri in 2009 could be charged up to $10,000 per year for covered services in addition to premiums.[64]

The ACA instituted a nationwide maximum on out-of-pocket expenses for insured consumers. These caps are further decreased for eligible low- to middle-income individuals in certain insurance marketplace plans. 42 U.S.C. § 18071. These reforms have markedly decreased costs for such consumers. In 2019, for instance, the maximum

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[62] Little Lobbyists, *Myka*, https://littlelobbyists.org/myka.

[63] *Ibid.*

[64] 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).

an individual with income under 200% of poverty could be charged in the individual market for covered services in a year was $2,600.[65]

3. *Community Rating*

The ACA's community rating system is also essential to regulating health care costs. Under the ACA, issuers of small-group plans in a particular geographic region may vary rates based only on age, tobacco use, and whether the policy covers an individual or a family. 42 U.S.C. § 300gg(a). This provision helps prevent premium increases if enrollees have pre-existing conditions or other large health claims. It also puts an end to discriminatory practices that ran rampant before the law was implemented. Prior to the ACA, for instance, many states allowed insurers to discriminate based on gender; women in those states paid 10% to 57% more than men for their health insurance.[66]

Barbara Gruber, a 62-year-old from Maryland, benefited from this provision. Barbara suffers from asthma, coronary artery disease, and autoimmune disorders. Prior to the ACA's enactment, Barbara struggled to get health insurance and often paid exorbitant premiums when she did. Without the ACA, she is fearful she may be put in that situation again: *"If it goes back to the way it*

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

[66] National Women's Law Center, *Turning to Fairness, Insurance Discrimination Against Women Today and the Affordable Care Act*, 20 (Mar. 2012), www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf.

was, I might end up with no insurance, in the emergency room and declaring bankruptcy."[67]

C. Overturning the ACA's Medicare Provisions Would Leave a Tangled, Expensive Mess

Medicare would still exist if the ACA is judicially repealed, but the program would be weakened. As noted, overturning the ACA would undermine key Medicare provisions, including programs that reduce or eliminate the costs of prescription medication and preventive care. It would also create massive new financial and administrative burdens for the Medicare program.

Eliminating the ACA would throw Medicare's existing payment-rate infrastructure into chaos. More than 20 different sections of the law instituted changes to payment rates, including by extending a number of payment adjustments that predate the ACA. These changes have already been incorporated, through notice-and-comment rulemaking, into Medicare payment regulations and integrated into nearly every major Medicare processing system.[68] Eliminating these provisions—thereby forcing HHS to devise a new rate structure on the fly that replicates the pre-ACA rate structure of 10 years ago—would impose staggering administrative burdens on the agency and its intermediaries; the likely result would be major delays and errors in processing and payment for the roughly *one billion claims* that Medicare processes each

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[67] Andrea K. McDaniels, *Report: Millions in Maryland Could Lose Health Coverage Or Pay More Because of Feds' Obamacare Stance*, Baltimore Sun (Oct. 2, 2018), https://www.baltimoresun.com/health/bs-hs-pre-existing-conditions-20181001-story.html.

[68] *E.g.*, 75 Fed. Reg. 73,170 (Nov. 29, 2010) (changing the physician fee schedule and revising Medicare Part B); 75 Fed. Reg. 71,800 (Nov. 24, 2010) (changing the outpatient prospective payment system); 75 Fed. Reg. 50,042 (Aug. 16, 2010) (revising Medicare hospital inpatient prospective payment system).

year, plus massive litigation between providers and the U.S. government over how to reconstruct a payment system that no longer exists.

Repealing the ACA's Medicare provisions would also result in an enormous increase in Medicare costs. The Congressional Budget Office has estimated that eliminating the ACA would produce an $802 billion increase in total Medicare spending.[69] Of that increase, $350 billion would come just from eliminating the law's Medicare Advantage reforms. Before enactment, federal payments to Medicare Advantage were 14% higher per enrollee than the cost of covering a similar beneficiary under the traditional Medicare program; the ACA brought costs in line with the traditional program.[70] By 2016, federal payments to the plan were only 2% higher than traditional Medicare spending.[71]

Repealing the ACA would also eliminate the Center for Medicare & Medicaid Innovation, which was established and funded to test and implement new approaches for paying medical providers. These efforts have largely succeeded: By 2016, the Center had launched over 40 new payment and health care service-delivery models; those models affected more than 18 million patients and 200,000

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[69] CBO, *Budgetary and Economic Effects of Repealing the Affordable Care Act*, 10 (June 2015), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50252-effectsofacarepeal.pdf.

[70] Medicare Payment Advisory Commission, *Report to the Congress: Medicare Payment Policy*, 252 (March 2009), http://www.medpac.gov/docs/default-source/reports/march-2009-report-to-congress-medicare-payment-policy.pdf.

[71] Medicare Payment Advisory Commission, *Report to the Congress: Medicare Payment Policy*, 329 (March 2016), http://www.medpac.gov/docs/default-source/reports/chapter-12-the-medicare-advantage-program-status-report-march-2016-report-.pdf.

health care providers across the country.[72] Estimates project that the Center is on track to generate savings of $11 billion to $34 billion between 2017 and 2026.[73]

Both Democrats and Republicans in Congress have long aimed to make Medicare more sustainable and efficient. The ACA, through a series of intricately crafted reforms, finally achieved that goal. Congress could not have intended for that substantial progress to turn on the fate of the minimum-coverage provision.

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[72] Ctrs. for Medicare & Medicaid Servs., *CMS Innovation Center: Report to Congress* 1-2 (Dec. 2016), https://innovation.cms.gov/files/reports/rtc-2016.pdf.

[73] CBO, *Testimony: CBO's Estimates of the Budgetary Effects of the Center for Medicare & Medicaid Innovation*, 1 (Sept. 7, 2016), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51921-cmmitestimony.pdf; Avalere Health, *CMMI's Financial Impact on Medicare Spending Challenging to Project (Updated)* (Jan. 14, 2020), https://avalere.com/insights/cmmis-financial-impact-updated.

CONCLUSION

If the Court concludes that plaintiffs have standing and that the minimum-coverage provision is unconstitutional, the Court should hold that it is severable from the rest of the ACA.

Respectfully submitted,

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