No. 19-7538

IN THE

SUPREME COURT of the UNITED STATES

PETITIONERS VICTORIA CARLSON, ET VIR,

v.

JODI HARPSTEAD, in her official capacity as Commissioner of the Minnesota Department of Human Services, et al.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioners, Victoria and Stephen Carlson, are both appellants from the Minnesota state courts and MNDHS administrative agency appeals from a Ramsey County action which--based on age alone--placed each of us, in July 2016, in a medical assistance program for the aged--*terminating* Victoria's on-going cancer treatment coverage of MA-BC that she was receiving and was promised through the end of her treatment.[1] She is still denied MA-BC benefit payments and is still in treatment albeit seriously degraded.

Petitioners hereby petition this Court to **(1)** GRANT certiorari; **(2)** REVERSE the overtly and impermissibly age-based judgments of the Minnesota court below[2]; **(3)** REMAND all the age-based eligibility decisions and age-based procedural decisions throughout this case, back to the Minnesota Supreme Court to review and remedy in light of (a) the intervening controlling precedent *Babb v. Wilkie* 18-882 U.S. Apr. 2020 (Slip opinion)("*Babb*") which now utterly bars age discrimination in federal programs, activities and decisions; and (b) the grave danger of COVID19 exposure for Victoria which will remain for the foreseeable future.

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[1] Minn.Stat.§256B.057subd.10*Certain persons needing treatment for breast or cervical cancer.*(b)"Medical assistance provided for an eligible person under this subdivision shall be limited to services provided during the period that the person receives treatment for breast or cervical cancer."; See also 42 U.S.C. § 1396(a)(10)(G)(XIV) the medical assistance made available to an individual described in subsection (aa) who is eligible for medical assistance only because of subparagraph (A)(10)(ii)(XVIII) shall be limited to medical assistance provided during the period in which such an individual requires treatment for breast or cervical cancer; See also MNDHS website "When will my [MA-BC] coverage end? Your coverage will end when your doctor says you no longer need treatment for your cancer" (https://mn.gov/dhs/people-we-serve/adults/health-care/health-careprograms/programs-and-services/breast-cervical-cancer.jsp)

[2] Minn.App.A-1380 App.a1:a15

REASONS FOR GRANTING THE PETITION

For the reasons below, the new *Babb* protections[3] against age discrimination extend in principle and through the Age Act[4] should cover the federal-funded breast cancer program MA-BC of Victoria's from which (1) she was terminated based on age, as well as the MA-EP elderly program on which (2) both Victoria and Stephen were placed July 2016, based on age. This is in addition to the Medicaid Act and procedures enacted under it and standards listed in *Hauser*.[5] We think (1) MA-BC is not a federal age-based program exempting it from the age basis prohibition and allowing it to "age out" women from cancer treatment under the Age Act; and (2) that MA-EP is an age-based federal program in part, but Congress did not intend to "transfer" recipient from MA-BC or to impose punitive spenddowns on them and their spouses and this cannot be justified anywhere in the Age Act and *Babb* forcefully rejectsprocedural justifications for federal age-discrimination.

These adverse actions, as those that followed, were both taken solely on the basis of age. These two federal-funded programs[6] impose spending obligations on the government. By the Medicaid statute 42 U.S.C. §1396a; and by the Age Act *inter*

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[3] *First*, a strict standard of violation of prohibitions against age basis in federal decisions (not even a taint) extending in this case to the Ramsey county MA-BC deprivations, the Minnesota DHS administrative actions and proceedings upholding age-based injurious acts,, and the judicial review in the Minnesota courts below upholding age-based injuries and denial of *Goldberg* protections; *second*, an enforceable remedy to age-based discrimination in courts and administrative fair hearings and determinations, based on 42 U.S.C. §1983, remedies that are in addition to any statutory remedies provided by the Medicaid Act, Minnesota Human Services statutes Minn.Stat.§§256.045,256.0451 and 14th Am,U.S. Const. themselves. *Hauser infra* also applies §1983 to find a colorable claim for wrongful termination of BCCPTA coverage.

[4] 42 U.S.C. §§6101-6103.

[5] *Hauser v. Idaho DPW* CV-03-04943 (1st Jud. Dist. 2004)

[6] See App. 3aN.: "Medical Assistance for the Aged is a type of Medicaid, not Medicare....'The state scheme, the Minnesota Medical Assistance program is a part of the federal scheme, the federal Medicaid program.'"

alia, they prohibit any age-based discrimination,[7] exclusion from participation in the coverage, or denial of payment of MA-BC benefits. On rehearing we ask the Court to apply the same strictness in finding age-based violations in federal-funded programs under the Age Act[8] as you announced in your prior case *Babb*.[9]

COVID19 pandemic: Intervening medical circumstance

The coronavirus pandemic is relevant to the question of Victoria's automatic age-based removal from MA-BC because this peril interferes with and defeats the normal operation and statutory objective of the breast cancer treatment coverage program. See "Exceptions" *infra.* The unlawful age discrimination during ongoing treatment based on age 65 just underscores the risks for those older cancer patients who are in the MA-BC program but then summarily removed and effectively barred from any medical assistance by the spenddown. They are at greater risk than the younger patients favored by respondents on the basis of age. Moreover those with cancer as a pre-existing condition are eight times as likely, according to CDC data provided to Victoria by her employer, to die from COVID19 if she contracts it because of her pre-existing condition. See App.i(v)*1s CDC notice to Whelan*

[7] "No one" includes even those women who have not complained about removal based on age to the HHS within 180 days of the alleged discrimination, utilizing the provisions brought online in the 1978 amendments (Pub. L. 95-478) and so not thereafter filed in the federal district court. Even these may *not* be excluded, denied or discriminated against under federal-funded programs including Minnesota's MA-BC under the command of the Age Act.

[8] The Age Act, 42 U.S.C. §§6101-6107 and related federal regulations, results in a demand in §6102 that "*No person* in the United States...on the basis of age...shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." It therefore works to bar any shred of age basis in Victoria's MA-BC.

[9] 29 U.S.C.§633a(a) "All personnel actions affecting employees or applicants for employment who are at least 40 years of age...shall be made free from any discrimination based on age."

employees). She's been in treatment with degraded care since 2016 and now during coronavirus.

I. Age discrimination law after *Baab*: Age basis violation standard

This Court's newly-applied *Babb* mandate that certain federal decisions be made entirely "free-from" any taint of age basis applies as well via the Age Act to health care actions of Ramsey County and Minnesota DHS barring age-based exclusion, denial of benefits or discrimination in the State's MA-BC federal-funded program

Babb followed on the Court's decisions in *Azar*[10] (H.H.S. Secretary) and *Kizor*[11] (VA) not to defer to federal agencies. Instead of deferring to VA's interpretation of the ADEA in its administrative hearings, *Babb* imposed on the government a *higher* standard of age non-discrimination than on private employers *Babb*.C.11-12;[12]

Under *Babb*, if age is a factor in an adverse federal decision, if it even taints any part--including administrative proceedings[13]--of the entire decision process the age discrimination provision 29 U.S.C.§633a(a) has been violated.Id.2. It does not require proof that an employment decision would have turned out differently if age had not been taken into account.[14] Age does not need to be shown the key factor. *Babb* enforcement relies on 42 U.S.C. §1983 to remedy unwanted consequences of a violation this new clear standard of age discrimination and not restricted to remedies spelled out in the statute violated. *Babb* 13-4.

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[10] *Azar v. Allina Health Servs.*, No. 17-1484, 587 U.S. __, 2019

[11] *Kisor v. Wilkie*, No. 18-15, 588 U.S. ___ (2019)

[12] See *Babb*, pp. 12-13 conducting judicial inquiry into higher standard of non-age-discrimination in federal employment protections versus private sector Title VII actions.

[13] "Those claims center on the following personnel actions." at Id2.

[14] The analogy to "other factors" in the employment decision in *Babb* is normal operation and statutory objectives in this Petition. See discussion of 42 U.S.C.§6103(b) infra.

Petitioners have invoked §1983 at every stage from the first administrative appeal.[15] We said there was a colorable §1983 claim[16] by the July 2016 MA-BC termination without any notice or justification (except the improper basis of change in age that was provided during discussions with the county in October 2016).[17]

As the court below found "Respondents do not dispute that appellant's entitlement to MA-BC benefits *represents a protected interest.* For purposes of this appeal, we therefore accept that *a protected interest is at stake.* We next determine whether the procedures used were sufficient. To determine the adequacy of the procedures the Supreme Court, in *Mathews v. Eldridge,*"It.added. The Minn.App.Ct. dropped *Goldberg* to measure adequacy of procedures, and of the notice.

So in addition to the Age Act which is directly applicable under *Babb*, in the proceedings below we alleged the Medicaid Act, the 14th Am. procedural and substantive due process, equal protection, arbitrary and capricious clause as our cause of action in the administrative proceedings and claimed a violation of §1983.

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[15] "Nor was this the first time this County department has acted recklessly and with reckless disregard for Vikki's federal protected rights, to deprive her of needed and prescribed treatment she is entitled to, under SAGE (state program) and NBCCEDPT (federal program)." App.C ***Note***:Petitioners inadvertently referred here to MA-BC and SAGE as one state program and NBCCEDP and BCCPTA as one federal, mixing the screening and treatment coverage programs.

[16] "Such a hearing is required not only by 42 U.S.C. 1396a for any state health program, but also by U.S. Supreme Court based on the 14th Am. dating back to *Goldberg v. United States,* 425 U.S. 94 (1976). In the hearing required, appellees Ramsey County DHS must show that they are complying with the Treatment Act, that they understand it, and that essentially they are not terminating benefits for medical assistance required by the Act and intended by Congress for Vikki. They may not say Medicare is a breast cancer screening and treatment program and that by following the manual citing Medicare they are complying with the Act. Medicare is not equivalent coverage in any way to an ongoing MABC benefit supporting a health disparities breast cancer program." App.C

[17] "DHS and the county conceded that, although appellant became ineligible for MA-BC benefits on November 31, 2016, she was entitled to those benefits through June 2017." She really lost the benefits July 2016 admittedly wrongfully and never got them back.

(Contrary to the court below, Minn.Stat.§14.69 does give jurisdiction over §1983 to the Minnesota courts to remedy wrongful deprivation of cancer care).[18]

The record clearly shows an Age Act violation requiring §1983 remedy. In *Babb* at 2, the majority found "[The government]..draws the unwarranted conclusion that the statutory text [of the ADEA] requires something more than a federal employer's mere consideration of age in personnel decisions." Id. The *Babb* ruling "imposes liability if an agency's personnel actions are at all tainted by considerations of age." Dissent 19. "This rule is so broad that a plaintiff could bring a cause of action even if he is ultimately promoted or hired over a younger applicant." However the statute provides no remedy for the age discrimination violation and you relied on §1983 finding a colorable claim.

Exceptions of Age Act do not support "aging out" of MA-BC

None of the exceptions[19] or limitations of coverage in The Age Act 42 U.S.C. §6103[20] or 43 CFR §17.311 apply to justify the respondents' use of age to remove Victoria or to deny her MA-BC benefits during the time she requires treatment, and the law post-*Babb* puts the burden on the government to justify every taint of their age discrimination.[21] And they have not met this burden and cannot.

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[18] "[T]he court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are [affected by error of law including the Age Act or other legal and Constitutional questions we raised]."

[19] See e.g. *45 CFR § 91.1.* "The Act also permits federally assisted programs or activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations."

[20] Regulations (b) Nonviolative actions; program or activity exemptions.

[21] See 43 CFR § 17.312 Burden of proof.

Were the government to belatedly offer an account of the need for their age-based actions as normal operation of a cancer care program and reasonably necessary to achieve statutory objectives. §6103 provides protection for these kinds of actions *only* if:

> "(A) such action reasonably takes into account age as *a factor necessary to the normal operation* or *the achievement of any statutory objective of such program or activity*; [It. added] or (B) the differentiation made by such action is based upon reasonable factors other than age. (2) The provisions of this chapter shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms"

At respondents' insistence the court below doesn't allow the full statutory scheme to even be examined, clinging to an untenable position[22] that such inquiry is barred by the "plain language" of a single provision in the obviously initial requirements, Mn.Stat.256B.057Subd.10(a)(4) "is under 65."[23] But cf. Id.Subd.(b),

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[22] App.2a "[A]ppellant was ineligible for MA-BC benefits under the plain language of Minn. appellant was Stat. § 256B.057, subd. 10(a)." App.14a "Where the legislature's intent is clearly discernible from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." *Am.Tower,L.P. v. City ofGrant*,636N.W.2d 309(Minn. 2001).

[23] We think it is incumbent on the respondents to meet their burden to show that what are obviously initial eligibility requirements also operate as end of treatment or end of coverage triggers. Because that latter function introduces ambiguity (and improperly sets up an additional limit) since its use as an additional limit can't be inferred from what are obviously initial requirements. The correctness of our interpretation is an especially strong presumption where 10(b) also says the same individuals may be paid during the period of limitations until they don't "receive" cancer treatment. It says the payments are limited, which infers that is the only limit. See *Russello v. United States*, 464 U. S. 16, 23 (1983) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'"). As such the "may" in 10(a) "Medical assistance may be paid for a person who" cannot operate as a limit, justifying the exclusion from the program or denial of benefit payments, or discrimination in procedural protections--i.e. During the period in which the treatment has already started and the remaining issue is when it ends, while the patient is still alive. We don't believe respondents can meet this burden.

where the end of coverage, or limitations is actually spelled out as when the patient is no longer receiving the prescribed treatment referenced in Id.Subd.(a)(2).[24] This is not "criteria for participation in age-related terms" because there is no upper end. There's no doubt Victoria was qualified to be treated initially. As such this rigid interpretation undermines normal operation, and blocks the stated objective of finishing treatment and so even if correct it would violate the Age Act.

Note also that the burden is on the government to justify use of age in taking actions and making age-based decisions.[25] Since respondents completely controlled the forum and decision-making they didn't meet their burden. In fact they barred Petitioner's from even asking the question, whether this was age discrimination not supported by the statute for constitutional reasons. Petitioners on the other hand met our burden of proof to show that the county, on the basis of age (an "elderly program") had terminated Victoria in July 2016 when they began to charge her an age-based spenddown. The only argument ever given about their enunciated policy of excluding Victoria and denying her benefits, and treating her differently was her age. And the only support for that, and for all the treachery, impropriety and dishonest, injurious treatment, was her age.

Respondents urge that MA-BC is merely a temporary solution to a "crack" (See**App.**6a), a temporary fiscal fix to allow certain women to have a few

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[24] "[A]ccording to the person's treating health professional, needs treatment, including diagnostic services necessary to determine the extent and proper course of treatment, for breast or cervical cancer, including precancerous conditions and early stage cancer;"

[25] 43 CFR § 17.312 Burden of proof. "The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 17.311(b) and 17.311(c), is on the recipient of Federal financial assistance."

proceedings from a doctor after they are diagnosed positive but ending when they are removed and placed in a spenddown to 81% of poverty in order to supplement Medicare (which covers only 80% of some medical care in the MA-BC program). This contrasts with the stress on optimal care, optimal standard of practice in BCCPTA (See *Hauser v. Idaho DPW* CV-03-04943 (1st Jud. Dist. 2004) infra) and such a willingness in Minnesota to degrade the medical care provided by the Minnesota DHS. This is an argument against the really unreasonable actions and positions coming from our Minnesota DHS, which is a part of the Minnesota Health Department.

The Age Act, which has been given new force and a private action for §1983 remedies gives with limited exceptions and coverage not applicable here, is equivalent in federal-funded recipients to this Court's new *Babb* higher standard of government conduct. This creates a duty of respondents here, Minnesota DHS and Ramsey County RCCHS, to refrain from and protect against any adverse age-based injuries to the rights and entitlements under MA-BC based on age and to age-discrimination litigants including Victoria and Stephen.

II. The Violation: Systematic MA-BC age bias violated 14th Am.

Age bias at every step informed all the actions of respondents and the courts below against Victoria and Stephen and were just overtly wrongful age-based acts and violated the due process of law intended by this Court in *Goldberg v. Kelly* and *Babb v. Wilkie*, and by Congress and the Minnesota legislature to protect against age-based deprivation during needed cancer treatment.

The Minnesota courts impermissibly and we maintain corruptly replaced the contested July 2016 termination with a new termination, July 1, 2017 which was strictly age-based and purported to be what HSJ Longfellow recommended, but

which defied the DHS order requiring new adequate notice. Respondents did this months after the evidentiary hearing on the first termination, and used the earlier hearing to uphold something they did later without the adequate notice. Significantly the only reason they did it was Victoria's age being more than 65 at the time. The July 2017 final termination was just left there in place with no payments, and numerous attempts, including to this Court, to reactivate Victoria's MA-BC benefits during treatment and on appeal have been uniformly shrugged off, all age-based.

The order for a new appeal with adequate notice of what the county intentions and grounds were resulted in a second HSJ Kralik procedure being set up, without jurisdiction (See **App.**4a:5a) but having the illusion of voiding the June 8, 2017 order. The main issue of Kralik was a rumor she heard that Petitioners' were protesting and seeking a hearing contesting an age-based termination.Id. But that termination occurred July 1, 2017 and Kralik got involved more than a month later. The county cut off all MA-BC benefits July 1, 2017, forever, based on Victoria's age. The second HSJ proceeding August 24, 2017 two months after the final termination was a charade and another age-based violation of the 14th Amendment DPC, EPC, arbitrary and capricious.

These developments are relevant to the rehearing for two reasons: one, they were based entirely on Victoria's age after November 11, 2016; and two, they consist of manipulation of the process to cover up the obviously unconstitutional, unlawful reckless disregard and deprivation beginning July 2016 of federal protected

interests in the entitlements of the breast cancer treatment program. As such, as in *Babb*, they call for the application of §1983 in order to put Victoria in the same position she was in before the age violations (i.e. restore MA-BC for duration of her treatment) and to provide for damages against respondents where restoration was impossible because of irreparable injury, and provide for prospective injunctive and declaratory relief.

Constitutional Age-based Violations

While respondents and the court below proffer a basis for their actions and determinations which they say avoids a finding of Equal Protection age discrimination violations, they do so by invoking a right to an infinitely more absolute cycle age-based exclusion, denial and discrimination, even denying the need for adequate notice of the grounds (all age-based) for a hearing ordered by HSJ Longfellow's recommended measures. Viz., because of her age alone and their stilted reading of an initial requirement, they manufactured the theory that Victoria was no longer similarly situated to other women in the program with her after she was terminated, some who were because of age allowed to continue, and some who because of their age were even allowed to complete their treatment as promised. Because of Victoria's age, in fact respondents adeptly maneuver the 14th Am. itself as modified through some "rational basis" theory, to grant themselves immunity from the Medicaid Act, Equal Protection Clause--or Age Act--liability!! The only remedy is reversal and §1983.

The government has applied a purely age-based dismissal of Victoria's clear entitlements to MA-BC during the time she requires the continuing cancer

treatment prescribed by her doctor, for her *cancer*. In fact overly (and overtly) age-based--since the Ramsey respondents had to walk back their first 2016 age-based act, terminating her because for whatever reason they determined she belonged in (was "eligible for") an age-based MA-EP program. The age based injury was severely heightened then because of *Schweiker v. Hogan*, 457 U.S. 569 (1982) which Respondents cited as 'justification' of a punishing burden on Social Security recipients imposing a punitive spenddown to 81% of poverty per household monthly. The court below says all that money is redirected to younger MA-BC patients.

Under the federal Medicaid Act itself, 42 U.S.C. § 1396a(a)(3) Congress also required Minnesota to set up a process for appeals and judicial review before terminating the MA-BC benefits. Of course the termination already occurred but the point is we did participate as did Babb. Our administrative procedure should have protected us where going to HHS to complain about age discrimination could not have done that. Nonetheless, the Age Act still applies to forbid any age consideration and denial of benefits based on age unless expressly allowed. The government has not shown it is expressly allowed. The simple initial requirement §Subd.10(a)(4) operates with all the other parts of §10(a) but only initiates the treatment coverage program. The limitations period §10(b) completes the coverage if the treatment is successful..

III. The Remedy: 42 U.S.C. §1983 is needed to restore Victoria's Rights and entitlements to MA-BC benefit payments which have been violated and protect her during her treatment.

§1983 remedies are appropriate here. The county has already been found, because of their age-based conduct, to be subject to damages in the form of paying

Victoria's medical bills from July 2016 when they terminated her through eight additional months after her 65th birthday. But the problem of age-based discrimination, exclusion from participation in MA-BC and denial of MA-BC benefits has not been remedied. The *Babb* holding found that it must be.

Age wasn't just *a* factor, but the *explicit policy* of respondents was treating Victoria differently totally because of her age! It was the only factor, and the exceptions of the Age Act don't apply and so this Court should perfect the §1983 remedies the district court began but left hanging. The alternative in a COVID19 environment is too dangerous.

Petitioners could not pursue this approach of a serious analysis of the normal operation and statutory objectives, which were medical, not fiscal, because of the "plain text" all-out attack mode of the county, and DHS, too, once we won in the HSJ and obtained the June 8, 2017 reversal and order for corrective action. See 42 § 431.246 Corrective action.

Especially given the severe risk to appellant in a COVID19 environment which will be present for the foreseeable future it is critical to apply the Medicaid Act protections expressed in *Hauser v. Idaho DPW* CV-03-04943 (ID-1st Jud. Dist. 2004), infra, and now against age-bias violations in *Babb*, to interpret the federal statutory schemes, to which Minnesota has chosen to obligate itself through the optional BCCPTA program to protect Victoria's rights and entitlements, and that of thousands of women in the United States treated similarly. As *Hauser* held the interpretation must be that giving the highest quality for patients and providing

equal access, and Equal Protection. Interpreting age properly is essential.[26] Victoria must be restored to her rights before the age-consideration sullied her entitlements.

Justice Rehnquist said in the *Mt. Healthy* case, "The proper test [of a §1983 remedy] is one that protects against the invasion of constitutional rights without commanding undesirable consequences not necessary to the assurance of those rights," *Doyle* 429 U. S. 284--287.

In *Hauser*, in which the actions of the state terminating Hauser's BCCPTA breast cancer benefits, the judge found a colorable claim under §1983. Said Judge Luster of the medical expert in the case:

> "He avers that any rule which purports to provide payment for 'treatment' of women with breast cancer, but which does not pay for the protocol [which Victoria is receiving], is no longer providing treatment and the program is 'squarely at odds with any law that provides Medicaid coverage for women receiving treatment for breast cancer.'"

The age-based justification provided by the court below is:

> "As previously stated, the exclusion of individuals 65 and older is a reasonable means for ensuring that adequate funding remains for the targeted recipients of the MA-BC program." App.12a:13a "

Respondents have invaded Victoria's constitutional rights which must be assured, because in violation of *Babb* and the Age Act the respondents have ceased to provide treatment by not covering her, and the rule is squarely at odds with MA-BC and BCCPTA. That is what must be restored for the duration.

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[26] Viz., based on the age of eligible women between ages 40 to 64, to be screened within the limits of the SAGE program; who are then admitted into the MA-BC coverage under §Subd.10(a); where they are treated equally under §10(b) and get their lives saved through MA-BC standards of treatment." This is the only discernible normal operation and achievement of statutory objectives possible under the Medicaid Act and the Age Act.

The bar against age based discrimination should guide the Court in answering the issue of whether women can be removed based on age; and to provide injunctive and declaratory relief (on the statutory and Constitutional correctness of the actions taken by the courts below and the respondents), and should also be the basis to order the Commissioner of DHS in her official capacity to restore Victoria to MA-BC, and to order the Finance Director Tina Curry of RCCHS in her official capacity to pay Victoria's covered medical care (under 42 U.S.C. §§1396a(10)(A),(B)) from October 2013 until her prescribed treatment is completed.

COVID19 itself directly threatens the normal operation of the MA-BC program illustrating the need for an integrated medical support system to control the level of medical risk of the cancer treatment. The Petitioners were barred by Respondents in the Minnesota courts from even discussing normal operation because of the "plain language" theory regarding §10(a). This hinders any inquiry into the statutory intent and purpose and the normal operation of the MA-BC and the federal program of which it is a part. Examining the actual program put into place, in the new COVID19 environment it quickly becomes apparent that any age-based discrimination against Victoria is *un*reasonable. We ask this Court to give effect to the Age Act and and the federal-funded BCCPTA and that no further age-based exclusion, denial of benefits of discrimination of any kind be allowed to continue against Petitioners.

For the reasons above, Petitioners Victoria and Stephen Carlson respectfully request the Petition for Rehearing be granted.

Victoria L. Carlson
Victoria L Carlson
May 16, 2020

Stephen W. Carlson
Stephen W Carlson
May 16, 2020

Additional material from this filing is available in the Clerk's Office.