**Nos. 19-840, 19-1019**

IN THE

# Supreme Court of the United States

CALIFORNIA, ET AL., *Petitioners,*

v.

TEXAS, ET AL., *Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

TEXAS, ET AL., *Cross-Petitioners,*

v.

CALIFORNIA, ET AL., *Cross-Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## BRIEF OF *AMICI CURIAE* SERVICE EMPLOYEES INTERNATIONAL UNION, MARILYN RALAT-ABERNAS, R.N., MARCUS SANDLING, M.D., *ET AL.*, IN SUPPORT OF PETITIONERS IN NO. 19-840 AND CROSS-RESPONDENTS IN NO. 19-1019

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## TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

## TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

## INTERESTS OF AMICI CURIAE[1]

The **Service Employees International Union (SEIU)** is the largest healthcare union in the United States. More than half of SEIU's two million members work in the healthcare industry. SEIU supports the Patient Protection and Affordable Care Act (ACA) because it helps to ensure accessible, quality healthcare for all Americans, including SEIU members and their families.

**Michelle Boyle, R.N.,** is a registered nurse at a large city hospital in Pittsburgh, Pennsylvania. Ms. Boyle has been a nurse for 26 years and has noticed that since enactment of the ACA, patients are more likely to go to the doctor for preventive care rather than wait until emergency room care is necessary.

**Maleta Christian** is a personal support worker from Roseburg, Oregon. Ms. Christian previously lost her job as a preschool teacher and, as a result, lost her health insurance coverage. When she became a personal support worker in 2013, however, she began receiving affordable health coverage through a trust made possible by the ACA's cost savings and tax credits.

**Kristen Edwards, Ph.D.,** is a history professor in California and a member of SEIU Local 1021. Ms. Edwards underwent treatment for breast cancer in 2009 and, after her recovery, struggled to obtain health insurance before the ACA went into effect because of insurer discrimination against her on the basis of her

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[1] This brief was not authored in whole or in part by counsel for a party and no one other than amici curiae and their counsel made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief.

pre-existing condition. Both Ms. Edwards and her husband, who has a congenital heart condition, would be once again subject to pre-existing condition discrimination if the ACA were to fall.

**Eva Hagberg, Ph.D.,** is a 37-year-old author, consultant, and architectural historian who has survived a slew of life-threatening conditions including a brain hemorrhage, a damaged pituitary gland, a congenital heart defect, and multiple ovarian cysts. Ms. Hagberg was subject to a $400,000 lifetime coverage cap before the ACA, a limit far exceeded by the actual costs of her care. If the ACA were to fall, Ms. Hagberg would not be able to afford the care she needs to stay alive.

**Cammie Hering** is a personal support worker and member of SEIU Local 503 from Portland, Oregon. Ms. Hering has relapsing-remitting multiple sclerosis, a potentially disabling chronic illness. Ms. Hering relies on ACA-provided subsidies to obtain health insurance. She earns less than $16 per hour and would not be able to afford health insurance without the ACA.

**Joseph Palma** is a 41-year-old man who suffers from a congenital cardiac condition and severe asthma, which have caused him to experience four strokes and two heart attacks. Mr. Palma could not afford health insurance before the ACA, but he has now secured coverage thanks to an ACA-provided federal subsidy. If the ACA were invalidated, Mr. Palma would lose the assistance he relies on to access healthcare.

**Marilyn Ralat-Abernas, R.N.,** of Miami, Florida is a registered nurse with more than 15 years of experience in a hospital maternity unit. Ms. Ralat-Abernas has seen improved health outcomes for mothers and infants since enactment of the ACA.

**Dakota Staggs** is a 24-year-old graduate student studying natural resource sciences at the University of Nebraska. Mr. Staggs was born with autoimmune lymphoproliferative syndrome (ALPS), an incurable genetic disorder that compromises his immune system. Thanks to the ACA, Mr. Staggs will be covered by his parents' health insurance plan until he turns 26, enabling him to receive the care he needs while he pursues his education.

**Marcus Sandling, M.D.,** is a primary care physician at the Callen-Lorde Community Health Center in New York. He has noticed that his patients are less likely to neglect their health if they are able to access coverage under the ACA. More affordable healthcare and better access to health insurance have made it easier for Dr. Sandling to maintain relationships with his patients and refer them to necessary specialists.

**Amy Zhang, M.D.,** is a physician in her second year of residency in anesthesiology at the University of Washington. Dr. Zhang, a graduate of Yale School of Medicine, is a first generation American whose family could not afford regular access to healthcare while she was growing up. Her mother had to travel outside the country to obtain essential treatment because she could not afford care in the United States. Because of the ACA, Dr. Zhang's parents no longer need to leave the country to afford medical treatment.

## INTRODUCTION AND SUMMARY OF ARGUMENT

It is easy to forget now, as the country battles its way through the Coronavirus crisis, but 2017 saw some of the most turbulent political fights ever to play out in Washington. Congress considered two major

items: legislation to repeal the central provisions of the ACA and legislation to overhaul federal tax rates for corporations and individuals. Americans on all sides of both efforts flooded the halls of power. After much debate, Congress rejected the ACA repeal legislation and passed the tax legislation.

The tax law reduced to zero the ACA's tax penalty for not obtaining insurance but otherwise left the ACA intact. As a result, those who violate the ACA's "individual mandate" by failing to obtain insurance must pay the government zero dollars. 26 U.S.C. § 5000A. According to the ACA's challengers, Congress's decision to reduce the consumer penalty made the individual mandate invalid, and, even more remarkably, invalidated sub silentio all of the ACA's other provisions that Congress had pointedly decided *not* to repeal.

The challengers' claims fail even before one reaches their merits: None of the state or individual plaintiffs has Article III standing because the ACA's zero-dollar penalty has caused them zero demonstrable harm. Even if one were to reach the merits, the challengers' claims fail because there are reasonable constructions of the tax law that preserve the ACA's validity. In the final analysis, plaintiffs' arguments are an effort to win in this Court the policy battle that the ACA's opponents lost in Congress. But making law contrary to the will of Congress is not this Court's role.

What makes the ACA challengers' arguments particularly pernicious is the real-world threat that they pose to millions of Americans' health, economic security, and lives. This brief tells the stories of Americans who depend on the ACA and describes the physical and economic harm they would suffer if the law were

invalidated. There could be no worse time for such an outcome, and thankfully it is easy to avoid because plaintiffs lack standing, and the decision below is wrong on the merits.

## ARGUMENT

### I. The Fifth Circuit's decision is wrong.

#### A. The individual and state plaintiffs have no Article III standing.

"[T]he irreducible constitutional minimum of standing" requires both (1) "an injury in fact . . . which is . . . concrete and particularized; and . . . actual or imminent" and (2) "a causal connection between the injury and the conduct complained of[.]" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotation marks and citations omitted). In other words, plaintiffs' injury "has to be fairly traceable to the challenged action of the defendant." *Id.*

Neither the individual plaintiffs nor the state plaintiffs have offered evidence of any injury in fact that is traceable to the individual mandate. Even if the individual mandate is construed as a legal "command," the individual plaintiffs may "disregard that command without legal consequence," and, "[t]herefore, any injury they incur by freely choosing to obtain insurance is still self-inflicted." J.A. 456–57 (King, J., dissenting). Parties may not "manufacture standing merely by inflicting harm on themselves." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013).

This Court's decision in *Poe v. Ullman*, 367 U.S. 497 (1961) is instructive. There, the Court found that parties lacked standing to challenge a Connecticut prohibition on contraception that had never

been seriously enforced, ruling that "[t]he fact that Connecticut has not chosen to press the enforcement of this statute deprives these controversies of the immediacy which is an indispensable condition of constitutional adjudication." J.A. 458 (King, J., dissenting) (*quoting Ullman*, 367 U.S. at 508). As the dissent below correctly observes, *Ullman* "makes this an easy case" because there the "contraception law at least allowed the *possibility* of enforcement," whereas here "[i]t is impossible for the individual plaintiffs to ever be prosecuted (or face any other consequences) for violating [the mandate]." J.A. 459 (King, J. dissenting).

The state plaintiffs likewise lack standing. While they claim that the mandate increases enrollment in state healthcare programs, state plaintiffs present no evidence that such enrollments occur "solely because of the unenforceable coverage requirement." J.A. 463 (King, J., dissenting). And at this stage in the case, state plaintiffs "must produce evidence so conclusive of the coverage requirement's effect on their healthcare-administration costs that the evidence would entitle them to a directed verdict if the evidence went uncontroverted at trial." J.A. 462 (King, J., dissenting) (internal quotation marks omitted) (*quoting Int'l Shortstop v. Rally's*, 939 F.2d 1257, 1264–65 (5th Cir. 1991)). As Judge King explained, "state plaintiffs provided no evidence *at all*, never mind conclusive evidence." J.A. 462–63 (King, J., dissenting). This leaves state plaintiffs without the traceable "injury in fact" that this Court's standing jurisprudence requires.

Because "[n]obody has standing to challenge a law that does nothing[,]" plaintiffs may not challenge the individual mandate. J.A. 451 (King, J., dissenting).

### B. The 2017 tax law did not render the minimum coverage provision unconstitutional.

The "basic lesson" of this Court's decision in *NFIB* is that courts have a "duty to construe a statute to save it, if fairly possible." Pet. 21; *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 574 (2012) [hereinafter *NFIB*] (Roberts, C.J.) (emphasis added). Discharging that duty here is easy: The individual mandate, as amended by the 2017 tax law, may be upheld as a "precatory" provision similar to, for example, the many provisions of the U.S. Code expressing a "sense of Congress" that individuals "should" or "are encouraged to" do something without actually *enforcing* any requirement. Pet. 21–22. Such unenforceable provisions are a common product of the legislative process and may be found in legislation as recent as the Coronavirus "stimulus" law. *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, § 1112(b) ("It is the sense of Congress that . . . the Administration *should* encourage lenders to provide payment deferments") (emphasis added); *id.* at § 3221(k) ("It is the sense of the Congress that . . . any person treating a patient . . . *is encouraged to* access the applicable State based prescription drug monitoring program when clinically appropriate") (emphasis added). Alternatively, the individual mandate may be upheld as a *continued* exercise of the taxing power, "albeit one whose practical operation is currently suspended[,]" with Congress merely choosing to leave the skeleton of the tax provisions in place should it later decide to increase the tax penalty from zero to another amount. Pet. 22.

Rather than adopting one of these reasonable, constitutional constructions, the Fifth Circuit went out of its way to find the individual mandate unconstitutional. For that reason alone, *NFIB* requires reversal of the decision below.

### C. Even if the minimum coverage provision is unconstitutional, it is plainly severable from the rest of the ACA.

The individual mandate is severable from the rest of the ACA because Congress severed it. After rejecting legislation to repeal the ACA in July 2017, Congress chose in December to overhaul federal tax rates, including by zeroing out the ACA-imposed tax penalty, but it left the ACA's remaining provisions intact. This is an obvious indication that Congress considered the individual mandate severable from the other provisions of the ACA.

The "touchstone" of severability "is legislative intent, for a court cannot use its remedial powers to circumvent the intent of the legislature." *Ayotte v. Planned Parenthood*, 546 U.S. 320, 330 (2006) (internal quotation marks and citations omitted). Here, the Fifth Circuit gave the district court license to conduct just such a "remedial exercise." Pet. 25. While the Fifth Circuit was "just as competent as the district court" to "analyz[e] the statute's text and historical context," it opted instead to launch a completely unnecessary district court proceeding purportedly to discover whether the individual mandate is severable from the rest of the ACA when the answer is already obvious in light of *Congress's* decision to address it separately. J.A. 475 (King, J., dissenting).

Because Congress plainly intended the rest of the ACA to operate without the individual mandate, a remand is legally unnecessary. In this context, especially amid this crisis, the idea of a remand is also morally repugnant. Sending this case back to the district court will (at a minimum) cast a pall of uncertainty over the insurance coverage that millions of Americans rely on to keep themselves and their families healthy.

## II. Invalidating the ACA would result in unnecessary illness, death, and economic devastation.

The ACA allows millions of Americans to obtain medical care without risking financial ruin. Invalidating it would cause sickness, death, and vast economic harm, as the experiences of healthcare consumers and providers show.

### A. People will get sick and die if the ACA falls.

The ACA has provided millions of Americans with affordable health insurance, implemented critical reforms to the individual insurance market, and improved the quality of healthcare in the United States. As both healthcare consumers and providers attest below, the ACA has improved the health of the American public and saved countless lives by expanding access to affordable, comprehensive care.

#### 1. The ACA has made healthcare more widely available than ever before by increasing the number of insured Americans through federal subsidies and Medicaid expansion.

Under the ACA, more Americans are covered by health insurance than ever before. In 2010, prior to passage of the ACA, more than 48 million Americans went without health insurance; by 2016, that number had shrunk to 28.6 million. Nearly 15 million low-income Americans gained coverage through the ACA's Medicaid expansion.[2] Federal subsidies have enabled

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[2] Gerald F. Kominski, et al., *The Affordable Care Acts Impacts on Access to Insurance and Health Care for Low-Income Populations*, 38 Ann. Rev. Pub. Health 489, 491 (2017).

millions more to purchase private insurance through ACA exchanges.[3] In addition, since the ACA's first open enrollment period in 2013, more than 15 million new individuals have enrolled in Medicaid and the Children's Health Insurance Program (CHIP).[4] All but 14 states have opted-into Medicaid expansion,[5] and a number of studies show that coverage gains in Medicaid expansion states is particularly striking for vulnerable populations.[6]

Because of the ACA's federal subsidies, Joseph Palma can afford life-saving medical treatment. Mr. Palma is a 41-year-old man from Florida who suffers from a congenital cardiac condition and severe asthma, which have caused him to experience four strokes and two heart attacks. If he misses his medication for even a week, his conditions will quickly become fatal.

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[3] The ACA subsidizes the purchase of private insurance for people without employer-provided coverage or access to public programs like Medicaid. Before the ACA, the cost of coverage in the individual market was prohibitively expensive for many Americans. *See* David Blumenthal, et al., *The Affordable Care Act at 10 Years—Its Coverage and Access Provisions*, 382 New England J. Med. 963, 964 (2020).

[4] Kominski et al., *supra* n.2, at 491.

[5] *See, e.g.*, Blumenthal, et al., *supra* n.3, at 964.

[6] Madeline Guth et al., Kaiser Family Found., *The Effects of Medicaid Expansion Under the ACA* 6 (2020), *available at* http://files.kff.org/attachment/Report-The-Effects-of-Medicaid-Expansion-under-the-ACA-Updated-Findings-from-a-Literature-Review.pdf (last visited May 6, 2020). This includes "lesbian, gay, and bisexual adults, the unemployed, low-income workers, justice-involved individuals, homeless individuals, noncitizens, people living in households with mixed immigration status, migrant and seasonal agricultural workers, and early retirees" and also veterans and people with disabilities, substance use disorders, HIV, diabetes, cancer, and cardiovascular disease. *Id.*

Mr. Palma needs health insurance to manage his medical conditions but struggled to find an affordable plan before the ACA was enacted. While he was uninsured, Mr. Palma suffered from his second stroke and was hospitalized. He left with a bill for $10,000 in medical expenses that he was unable to pay.

Although Mr. Palma's most recent employer offered health insurance benefits, the premiums were prohibitively expensive. The cost of enrolling in the employer's plan amounted to $458 each month, a huge percentage of Mr. Palma's income. At the time, Mr. Palma earned $17.06 an hour; after payroll deductions for health benefits, he would effectively be earning $12.99 an hour, decreasing his income by nearly 25%.

After the ACA was enacted, federal subsidies enabled Mr. Palma to purchase individual insurance through the marketplace for a fraction of the price of his employer's health plan. When he enrolled, his premiums cost only $81 per month. Moreover, his subsidized health plan provided significantly better coverage than his former employer's plan. "I have had great success with [the ACA]," Mr. Palma said "With the marketplace, they treat you very well and make sure you can pay."

Mr. Palma believes the ACA helps the most vulnerable members of our society and prevents health insurance companies from trying to avoid providing healthcare. "All you will do by getting rid of the ACA is kill more people," he said. "It does not make sense to get rid of this program because it is better to pay for health, and not for death."

For Dr. Amy Zhang, the expansion of Medicaid enabled her parents to obtain health insurance for the first time in their lives. Dr. Zhang is an anesthesiology

resident at the University of Washington in her second year of training after graduating from Yale School of Medicine. She is a first generation American whose parents emigrated from China. Her family was very poor and could not afford regular healthcare while she was growing up because they did not have health insurance. She remembers going years without seeking healthcare because her family was unable to pay the costs out of pocket.

If Dr. Zhang's family needed medical treatment, they would travel to China, where the cost of care was significantly lower. When her mother discovered a mass in her chest, she could only afford to have it removed in China. Treating her condition in the United States would have been prohibitively expensive without health insurance.

Because of the ACA, Dr. Zhang's parents no longer need to leave the country to obtain healthcare. Her home state expanded Medicaid after the ACA was passed, providing Dr. Zhang's parents with both health insurance and dental insurance. Dr. Zhang feels incredibly relieved that her parents can now afford healthcare, particularly as they get older. Because the expansion of Medicaid is the only reason they could obtain coverage, striking down the ACA will once again render the American healthcare system inaccessible to Dr. Zhang's parents.

**2. Comprehensive health insurance coverage ensures that life-saving care is available to those who need it the most.**

In addition to improving the availability of health insurance through federal subsidies, the ACA has also made coverage more comprehensive by reforming the

private individual insurance market. The ACA's "guaranteed issue" and "community rating" provisions ensure that the millions of Americans with preexisting medical conditions—by one estimate 27% of adults under the age of 65[7]—have the same access to coverage as healthy individuals. And because of the ACA's dependent-coverage provision, the uninsured rate among adults younger than 26 years old has fallen from over a third in 2010 to 15% in recent years.[8] The ACA has also expanded the scope of coverage by banning lifetime and annual limits on coverage and requiring that insurers cover essential health benefits.

The ACA's reforms have saved Eva Hagberg's life many times. Ms. Hagberg is a 37-year-old author, consultant, and architectural historian. In the last seven years, she has survived a series of life-threatening medical conditions, including a brain hemorrhage, a damaged pituitary gland, a dangerous congenital heart defect, and multiple ovarian cysts. By prohibiting lifetime limits on insurance benefits, the ACA saved Ms. Hagberg's life. "It has cost various insurance companies over $1,000,000 to keep me alive. Before the ACA, I was facing a $400,000 lifetime cap," she said. Lacking the resources to pay over $600,000 in medical expenses, Ms. Hagberg would have died without receiving the treatment she needed.

Ms. Hagberg never struggled with serious health issues before 2013, when she fainted and had to be hospitalized. An MRI of her brain revealed that a mass

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[7] Gary Claxton et al., Kaiser Family Found., *Pre-Existing Condition Prevalence for Individuals and Families* (Oct. 4, 2019), *available at* https://www.kff.org/health-reform/issue-brief/pre-existing-condition-prevalence-for-individuals-and-families/#.

[8] Blumenthal et al., *supra* n.3, at 967.

had hemorrhaged behind and into her pituitary gland. It also showed two potentially cancerous spots in her brain. Ms. Hagberg had to undergo a biopsy and receive regular MRIs to properly assess her condition. During the biopsy procedure, her surgeons nicked her pituitary gland, and she almost died from complications. Because these complications were not fully understood, Ms. Hagberg often had to be rushed to the emergency room for treatment.

By this point, Ms. Hagberg knew she was rapidly approaching the $400,000 lifetime cap on her health insurance coverage. "My surgery was $100,000. The hospital stay was $100,000. MRIs were $10,000, and I needed one every three months for at least a couple years. When I went to the ER, it cost $4,000–$5,000 per visit," Ms. Hagberg recalled. Unable to ignore her escalating medical expenses, she began wondering if she could somehow survive without healthcare. "I'm already $250,000–$300,000 in the hole, and I know I have a cap of $400,000," she said. "So I start rationing my visits to the ER."

The ACA completely changed Ms. Hagberg's life. In 2014, Ms. Hagberg was diagnosed with a congenital heart condition called Wolff-Parkinson-White syndrome and had to undergo an expensive surgery on short notice. But because the ACA removed the lifetime cap on her insurance benefits, she no longer had to worry about whether her health plan would cover her surgery.

When Ms. Hagberg developed tumors on her ovaries several years later, the ACA's protections again ensured that she could receive life-saving medical treatment. Ms. Hagberg was diagnosed with endometriosis and underwent four surgeries to remove ovarian cysts. Most recently, her doctor removed an endo-

metrioma measuring ten centimeters from her ovary and the remnants of another endometrioma that had previously ruptured onto her bowels. Had the surgery been delayed, the cyst probably would have caused Ms. Hagberg's ovary to burst, sending her into septic shock, and she may have needed a bowel resection. The procedures Ms. Hagberg received cost hundreds of thousands of dollars, however, and would have easily exceeded her pre-ACA lifetime cap.

Ms. Hagberg's very life depends on having health insurance that covers preexisting conditions and does not cap her benefits. Even before factoring in expenses from medications and emergency room and doctor visits, Ms. Hagberg estimates that her medical care has cost more than one million dollars. She is horrified by the concept of lifetime caps on coverage, which effectively allow insurance companies to determine whether someone lives or dies based on the cost of their healthcare.

If the ACA is voided and she loses her health insurance, Ms. Hagberg will almost certainly be denied coverage because of her medical history. She believes that requiring insurance companies to cover preexisting conditions ensures that health plans cover people who need the most help, not just those who are already healthy. "Being human is a preexisting condition. I don't know a single person who has gone through their entire lifetime without needing medical attention," she said. "Insurance is there to insure against disasters. It should have a different name if it's not going to cover you if you're sick."

Kristen Edwards, an adjunct professor of history from California, has also relied on the ACA's insurance reforms to access affordable, comprehensive healthcare. Ms. Edwards was diagnosed with breast cancer in 2009 and eventually made a full recovery after a year of

treatment. But when she lost her job in 2011 and began searching for an individual plan to replace her employer-sponsored health insurance, she was horrified to discover that private insurance companies would not cover her because of her past diagnosis. "I felt like an outcast in my own society," Ms. Edwards said. "It's a blow that you can't get over, finding out that you're not good enough for health insurance. It was devastating."

Ms. Edwards managed to obtain coverage through COBRA. But not only was the plan incredibly expensive, it also ensured coverage for just three years, after which private insurance companies could again refuse to cover Ms. Edwards based on her medical history. Fortunately, the ACA was implemented just months before she lost coverage through COBRA. Purchasing insurance through the marketplace cost less than half the price of her COBRA plan. Even more importantly, the ACA allowed Ms. Edwards to enroll in health insurance without worrying that her insurer would immediately reject her application because of her cancer history. "It was so easy to sign up for health insurance on the ACA, whereas before it would've been impossible," she recalled.

The ACA's Medicaid expansion has also increased coverage and access to care among low-income adults, particularly for people with cancer.[9] One study found that Medicaid expansion reduced the number of uninsured cancer survivors by as much as 25%.[10]

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[9] *See* Sayeh S. Nikpay et al., *Patient Protection and Affordable Care Act Medicaid Expansion and Gains in Health Insurance Coverage and Access Among Cancer Survivors*, 124 Cancer 2645 (2018); Tyan D. Nippo, et al., *Patterns in Health Care Access and Affordability Among Cancer Survivors During Implementation of the Affordable Care Act*, 4 JAMA Oncology 791 (2018).

[10] Nikpay, et al., *supra* n.9, at 2648.

If the ACA is invalidated, Ms. Edwards worries that obtaining affordable health insurance may yet again become impossible. While she has been cancer free for ten years, she and her husband suffer from other health conditions that may disqualify them from coverage or cause their rates to rise exponentially.

Ms. Edwards strongly supports the ACA because it ensures that all Americans can access the healthcare they need. "Without protections for people with preexisting conditions, health insurance is inherently discriminatory and only protects the healthy, not the ones who really need healthcare the most," she said.

Dakota Staggs, a 24-year-old graduate student studying natural resource sciences at the University of Nebraska, also benefits significantly from the ACA's insurance reforms, which provide him with the protections and security necessary for his independence. Mr. Staggs was born with autoimmune lymphoproliferative syndrome (ALPS), an incurable, immunocompromising genetic disorder.[11] Those with ALPS may experience debilitating symptoms and severe health conditions, including infections, autoimmune diseases, and lymphoma.[12] Like many chronic diseases, however, ALPS may be successfully managed with medication and consistent medical attention.

Because the ACA ensures that Mr. Staggs can receive coverage through his parents' plan until he turns

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[11] *Autoimmune Lymphoproliferative Syndrome (ALPS)*, Nat'l Inst. of Health (Apr. 19, 2019), https://www.niaid.nih.gov/diseases-conditions/autoimmune-lymphoproliferative-syndrome-alps.

[12] *Autoimmune Lymphoproliferative Syndrome (ALPS) Symptoms & Diagnosis*, Nat'l Inst. of Health (Apr. 19, 2019), https://www.niaid.nih.gov/diseases-conditions/alps-symptoms-diagnosis.

26, Mr. Staggs has been able to receive the treatment necessary to manage his condition while he pursues his education. Moreover, by prohibiting discrimination against applicants with preexisting conditions, the ACA ensures that Mr. Staggs will be able to maintain coverage and care once he ages out of his parents' plan. "I need constant care to manage my condition," he explained. "It's well-managed now and under control, but if I did not have protection of access to healthcare through the ACA then I don't know where I would be."

### 3. Healthcare outcomes in the United States will deteriorate without the ACA's protections.

The ACA has measurably improved healthcare outcomes. By improving the cost and quality of health insurance coverage, the ACA has enabled patients to seek care regularly and access important health services. Research shows that expanding insurance coverage has led to greater use of both primary care and specialty health services and improved access to prescription medications.[13] Moreover, a number of studies suggest that this has resulted in promising improvements for certain health outcomes, including early-stage cancer diagnosis and cardiovascular health.[14]

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[13] *See, e.g.*, Lena Leszinsky & Molly Candon, *Primary Care Appointments for Medicaid Beneficiaries with Advanced Practitioners*, 17 Annals of Family Med. 363 (2019); Aparna Soni et al., *How Have ACA Insurance Expansions Affected Health Outcomes? Findings from the Literature*, 39 Health Aff. 371 (2020); Adam J. Singer et al., *US Emergency Department Visits and Hospital Discharges Among Uninsured Patients Before and After Implementation of the Affordable Care Act*, 2 JAMA Network Open 1 (2019).

[14] *See* Soni, et al., supra n.13, at 376 (collecting sources).

The experiences of healthcare providers reflect these national trends. Marcus Sandling, M.D., a primary care physician at the Callen-Lorde Community Health Center in New York, has noticed that patients are significantly less likely to neglect their health under the ACA. "I've heard numerous stories of patients and seen medical records with long stretches of time with no care when they needed care. Now, they are able to access care and do what we recommend," Dr. Sandling said. "Allowing a lot more people to become insured by proxy allowed them to access these services [and] follow up with their healthcare needs."

By expanding access to insurance, the ACA has allowed providers to diagnose problems earlier, prevent serious conditions before they develop, and recommend more cost-effective treatments. For example, Dr. Sandling observes that many of his patients can successfully manage chronic conditions like diabetes and high blood pressure with routine care and prescription medications, which became much easier to access after the ACA was enacted.

Marilyn Ralat-Albernas, a registered nurse with more than 15 years of experience in her hospital's maternity unit, similarly believes comprehensive insurance coverage is essential to ensure that expecting mothers receive quality prenatal care. Detecting medical concerns earlier in pregnancy allows providers to determine an appropriate course of care before delivery, which can often save a baby's life. "Mothers suffering from cardiac issues, diabetes, preeclampsia, or exacerbations of other conditions need specific care and education," she explained. "When the doctor catches these conditions on prenatal visits, the outcomes are much better."

Before the ACA went into effect, Ms. Ralat-Albernas remembers that many expecting mothers who lacked

insurance did not have adequate prenatal care. "We had a lot more baby deaths, and mothers whose hospital stay could've been a lot shorter had they known they had certain conditions [before going into labor]," she recalled. Under the ACA, however, Ms. Ralat-Albernas noticed that access to prenatal care has significantly improved. She now sees "healthier mothers with healthier outcomes and healthier babies."

Consistent with Ms. Ralat-Albernas's observations, the infant mortality rate declined between 2010 and 2016 in both Medicaid expansion and non-Medicaid expansion states.[15] This decline in infant mortality was more than 50% greater in Medicaid expansion states than non-expansion states.[16] The shift in infant mortality is especially profound for African-Americans: the infant mortality rate decline in African-American infants in Medicaid expansion states was more than twice that in non–Medicaid expansion states.[17]

For Maleta Christian, a personal support worker from Roseburg, Oregon, access to preventative care saved her life. In 2013, Ms. Christian began receiving comprehensive and affordable health insurance through the Oregon Homecare Workers Supplemental Trust and Benefits Trust, an entity made possible by the ACA's subsidies. Shortly after becoming insured, Ms. Christian underwent testing as a part of a routine gynecological exam that came back positive for cancer cells. After having surgery several days later, she has been cancer free ever since. "If it wasn't for the ACA, I was destined to probably die," Ms. Christian said.

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[15] Chintan B. Bhatt et al., *Medicaid Expansion and Infant Mortality in the U.S.*, 108 Am. J. Pub. Health 565, 565–67 (2018).

[16] *Id.*

[17] *Id.*

For people living with conditions like cancer, having health insurance can be determinative of health outcomes.[18] While long term effects are still being observed, studies demonstrate a significant improvement in the number of early diagnoses of all cancer types since passage of the ACA, particularly in Medicaid expansion states.[19]

Following the 2014 implementation of the ACA's insurance provisions, the number of emergency room visits and hospital discharges for uninsured individuals declined considerably.[20] If the ACA is voided, medical providers predict that countless people will be unable to afford regular care and will rely more heavily on emergency services, often with catastrophic consequences. In her experience as a registered nurse, Michelle Boyle has noticed that those without insurance often forgo preventive care. When they finally seek medical care, uninsured patients often present with acute medical conditions that are much more difficult for providers to treat. Ms. Boyle believes that a decision striking down the ACA would be profoundly traumatic for both patients and pro-

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[18] *See* Xuesong Han et al., *Comparison of Insurance Status and Diagnosis Stage Among Patients with Newly Diagnosed Cancer Before vs. After Implementation of the Patient Protection and Affordable Care Act*, 4 JAMA Oncology 1713 (2018). *See also* John A. Graves & Katherine Swartz, *Effects of Affordable Care Act Marketplaces and Medicaid Eligibility Expansion on Access to Cancer Care*, 23 Cancer J. 168 (2017); Anna Jo Smith & Amanda Fader, *Effects of the Affordable Care Act on Young Women with Gynecologic Cancers*, 131 Obstetrics & Gynecology 966 (2018).

[19] *See* Han, et al., *supra* n.18, at 1717; Graves & Swartz, *supra* n.18; Smith & Fader, *supra* n.18.

[20] Singer et al., *supra* n.13, Michelle P. Lin et al., *Trends in Emergency Department Visits and Admission Rates Among US Acute Care Hospitals*, 178 JAMA Internal Med. 1708 (2018).

viders. "People would be coming in the ER and just dying," she said.

Ms. Ralat-Albernas also expects continuity of care to suffer if the ACA is struck down. "You're going to have a lot of people coming through the ER—what we call acute cases, sicker people. They're not going to the doctor, not taking care of themselves, not doing physicals. There's no treatment plan, no routine testing that should be done," she said. "It's really sad to see the same person, like a revolving door, coming in and out and their condition not being taken care of adequately. They're just going to come back sicker."

Ms. Boyle believes that providing affordable, comprehensive healthcare through the ACA reflects American values. "The ACA is the first step of that idea of America that I'm teaching to my kids. That idea of looking out for one another," she said. "That's how you have a strong society, instead of vultures just circling until they can pick the pockets of people as they're dying. And that's exactly what the ACA has helped stave off."

### B. Striking down the ACA will weaken the American economy.

In addition to the disastrous public health implications of stripping health coverage and protections from nearly 30 million people, voiding the ACA will also have catastrophic economic consequences for patients, their families, and the healthcare system. Without the ACA, the number of uninsured Americans will skyrocket as individual health plans become prohibitively expensive for much of the population. Uninsured patients will face staggering medical debt, jeopardizing not only their personal financial

security but also the economic viability of healthcare institutions and providers burdened with uncompensated care.

### 1. Americans need access to affordable healthcare to support themselves and their families.

By providing access to affordable, comprehensive health insurance, the ACA has reduced the risk of medical out-of-pocket spending and improved financial security for millions of Americans.[21] For example, in states that expanded their Medicaid programs as a result of the ACA, one study shows that the financial health of state residents improved as measured by improved credit scores, reduced past due balances on outstanding debt, reduced probability of a medical collection balance of $1,000 or more, reduced probability of having one or more recent medical bills go to collection, reduction in the probability of experiencing a new derogatory balance of any type, and a reduction in the probability of a new bankruptcy filing.[22]

For Colleen W., a musician and adjunct music professor from Fairport, New York, the ACA helped save her family from financial ruin. On April 10, 2011, her husband died after battling cancer for four months, leaving Colleen with two young sons. Even with insurance, her husband's medical bills were astronomical. "We were

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[21] *See, e.g.*, Kyle J. Caswell & Timothy A. Waidmann, *The Affordable Care Act Medicaid Expansions and Personal Finance*, 276 Med. Care Res. & Rev. 538 (2017); Shiho Kino et al., *Spillover Benefit of Improved Access to Healthcare on Reducing Worry about Housing and Meal Affordability*, 17 Int'l J. for Equity in Health 1 (2018).

[22] Caswell & Waidmann, *supra* n.21.

hemorrhaging cash for months after his death," Colleen said. "My husband was only sick for four months. He only had one chemo treatment and two surgeries. But bills would come in in the five figures. And that was with health insurance, while he was still alive and had good coverage from his employer."

When her husband passed away, Colleen was only working part time and struggled to make ends meet while caring for two small children. They were able to stay on her husband's employer-sponsored health plan through COBRA, but coverage was available for only three years and cost more than her mortgage. Their premium started at $1500 and eventually reached $1777. "It was the largest single bill every month, and I just didn't know how much longer I was going to be able to do that," Colleen recalled. "I didn't know how I could get a full-time job and afford childcare."

When the ACA passed, Colleen and her children qualified for Medicaid and she no longer had to worry about becoming uninsured. "The ACA saved us. I could now get health insurance without worrying every month about my bills," Colleen said.

Although Colleen is more financially secure today, she continues to rely on the ACA to purchase affordable health insurance for herself and her children. Despite working three jobs, she does not work enough hours at any one employer to qualify for health benefits. "I teach at two separate colleges, at a community music school, I freelance when I can, but all that doesn't add up to employer-based health insurance. Even though I'm working a lot more, without the ACA I don't have health insurance," Colleen explained.

For the millions like Colleen who do not receive health insurance through their employers, the ACA is

essential to ensure access to affordable care. Colleen worries that these Americans are often overlooked. At one of the colleges where she works, none of the adjunct professors qualify for health insurance, despite constituting two thirds of the teaching staff. "People think, oh, you work at a college, you must have a nice, cushy job. No! I'm an adjunct," Colleen said. "You start to feel invisible. With anybody who works as much as I do—and I'm always working—people assume they have a full-time job and an affordable employer-based health plan [even when] we don't."

Access to affordable healthcare also allows people to successfully manage potentially disabling conditions and become contributing members of society. Consider the experience of Cammie Hering, a personal support worker and member of SEIU Local 503 from Portland, Oregon. In the spring of 2007, Ms. Hering was diagnosed with relapsing-remitting multiple sclerosis, a potentially disabling chronic illness. Because she is usually asymptomatic, Ms. Hering continues to work and support herself. To remain asymptomatic, however, she requires ongoing medical care, including daily medication and regular appointments with her neurologist. Ms. Hering is paid only $15.50 per hour, and managing her condition would be prohibitively expensive without insurance.

Because she depends on federal subsidies to afford health insurance, Ms. Hering could not access the healthcare she needs if the ACA were invalidated. "My health insurance is $800 a month. I make $2000 a month. My rent is $1600. That's negative $200," she explained. "I'm not willing to live in my car, so I'd pay rent before I'd pay [for] health insurance." And even if she started making more money, insurance companies might refuse to cover Ms. Hering because of her preexisting condition.

Without the ACA, Ms. Hering worries that her condition will deteriorate to the point where she can no longer work. "I'm fully able as long as I have medical care," she said. "Pre-existing conditions don't mean someone is unable to work, but in many diseases such as mine, unsupported it will become a problem. We will become wards of the state and a burden to society."

### 2. The ACA has stabilized the healthcare system by creating reliable streams of funding for hospitals that serve low-income communities.

The ACA provides significant financial benefits for healthcare providers and systems. Medicaid expansion alone has had substantial positive impacts on safety-net hospitals in expansion states, with reduced uncompensated care and better financial margins compared to safety-net hospitals in non-expansion states.[23] Marcus Sandling, M.D., has worked as a primary care provider in community health systems for most of his career. He believes the ACA has created a more sustainable healthcare system. "Having the ACA added a level of stability for the healthcare system, particularly for community-based care, smaller health systems, [and] providers working with lower income patients," he said. "Once the ACA was in place,

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[23] *See* Allen Dobson, et al., Commonwealth Fund, *Comparing the Affordable Care Act's Financial Impact on Safety-Net Hospitals in States that Expanded Medicaid and Those that Did Not* 1–7 (2017). *See also* Susan Camilleri, *The ACA Medicaid Expansion, Disproportionate Share Hospitals, and Uncompensated Care*, 53 Health Servs. Res. 1562 (2018); Alyssa Tilhou et al., *The Affordable Care Act Medicaid Expansion Positively Impacted Community Health Centers and Their Patients*, 35 J. Gen. Internal Med. 1292 (2020); Ge Bai et al., *Charity Care Provision by US Nonprofit Hospitals*, 180 JAMA Internal Med. 606 (2020).

a lot of people could have their care reimbursed through Medicaid."

By causing millions of Americans to lose their health insurance, striking down the ACA would increase the burden of uncompensated medical care borne by hospitals and other medical care providers. Dr. Sandling predicts that this would cause parts of our healthcare system to collapse because many facilities could not handle the amount of uncompensated care that many people would require without the ACA. "There could be catastrophic problems if this component of the healthcare system were to disappear," he said.

## CONCLUSION

Voiding the ACA would endanger millions of Americans. This harm is completely unnecessary because, contrary to the decision below, the plaintiffs lack standing, the individual mandate is still constitutional, and the mandate is plainly severable from the rest of the ACA. This Court should reverse the judgment of the court of appeals.

Respectfully submitted,

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