

**[NOT SCHEDULED FOR ORAL ARGUMENT]**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

UNITED STATES HOUSE OF  
REPRESENTATIVES,

Plaintiff-Appellee,

v.

SYLVIA M. BURWELL, Secretary of Health &  
Human Services; U.S. Department of Health &  
Human Services; JACOB J. LEW, Secretary of  
the Treasury; U.S. Department of the Treasury,

Defendants-Appellant.

No. 16-5202

**RESPONSE OF DEFENDANTS-APPELLANTS  
TO MOTION TO INTERVENE IN APPEAL**

Pursuant to the Court's order of December 29, 2016, defendants-appellants respectfully submit this response to the motion to intervene filed by Gustavo Parker and La Trina Patton ("movants"). For the reasons discussed below, the motion rests on speculation and is premature.

**STATEMENT**

This suit concerns the Executive Branch's administration of the insurance subsidy program established by the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (ACA or Act). The Act requires the

Department of the Treasury to make payments to health insurers to subsidize health coverage for eligible low- and moderate-income Americans. These mandated payments have two components: premium tax credits, which subsidize insurance premiums for eligible individuals, and cost-sharing reductions, which subsidize copayments and other types of out-of-pocket costs for certain individuals determined eligible to receive the premium tax credits. Since January 2014, Treasury has been making monthly payments for both components of the subsidy program from the permanent appropriation in 31 U.S.C. § 1324, which the ACA amended.

In November 2014, the House of Representatives of the 113th Congress filed this suit, alleging (as relevant here) that the Section 1324 permanent appropriation is available for only the premium tax credit component—and not the cost-sharing reduction component—of the ACA's insurance subsidy program. The district court held that the House has Article III standing and a cause of action and adopted the House's view on the merits. The court did not dispute, however, that an injunction against further cost-sharing reduction payments could create significant disruptions to insurance markets and result in a disproportionate increase in expenditures for premium tax credits. JA93-94. Accordingly, the district court issued a *sua sponte* stay of the injunction pending appeal, which remains in effect.

Defendants-appellants filed their opening brief on October 24, 2016, arguing that the suit should be dismissed on threshold grounds and, alternatively, that the injunction should be reversed on the merits. On November 21, 2016, before its

responsive brief was filed, the House moved to hold this appeal in abeyance until February 21, 2017. On December 5, 2016, this Court issued an order that held the appeal in abeyance and directed the parties to file motions to govern future proceedings on February 21, 2017.

### **ARGUMENT**

Movants are two individuals who allege that they are eligible for cost-sharing reductions. Intervention Mot. 4. Their intervention motion argues that if, in the future, the incoming House and the incoming Administration were to agree to allow the district court's injunction to take effect, such an agreement would harm the putative intervenors (and others). *Id.* at 4. There is no doubt that allowing the injunction to take effect would cause major disruption of insurance markets, but the motion rests on speculation that such an agreement will occur. In light of this Court's order holding the case in abeyance until the parties file motions to govern further proceedings on February 21, 2017, it would be appropriate to defer ruling on the intervention motion. If, however, the Court is inclined to rule on the motion now, it should be denied without prejudice as premature because the motion rests on speculation about possible future litigation steps.

Respectfully submitted,

MARK B. STERN

*s/ Alisa B. Klein*

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JANUARY 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2017, I electronically filed the foregoing document with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Alisa B. Klein*  
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Alisa B. Klein

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this document complies with the requirements of Federal Rule of Appellate Procedure 27. The document contains 526 words.

*/s/ Alisa B. Klein*  
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Alisa B. Klein