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

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

BRIEF AMICUS CURIAE OF SERVICE EMPLOYEES INTERNATIONAL UNION IN SUPPORT OF INTERVENOR-DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Since its passage in 2010, the Patient Protection and Affordable Care Act ("ACA") has enabled more than 20 million people to obtain health coverage, led to substantial improvements in quality of care and patient outcomes, and conferred enormous economic advantages on consumers and health care providers. Millions of people with preexisting medical conditions are now guaranteed access to insurance coverage, which they previously would have been denied. And many low-income families have, for the first time, been able to obtain access to health care, as nearly 12 million people have gained coverage through the ACA's Medicaid expansion.

Amicus curiae Service Employees International Union ("SEIU") is the largest health care union in the United States. More than half of SEIU's two million members work in the health care industry, including in most of the Plaintiff and Intervenor-Defendant States. SEIU supports the ACA because it helps to ensure accessible, quality health care for all Americans, including SEIU members and their families. SEIU submits this brief to demonstrate how a decision striking down the ACA would cause catastrophic harm to the millions of Americans who depend on its provisions.

Part I of this brief discusses the benefits that the ACA has achieved for both consumers and providers of health care, as well as the grave harms that would flow from a decision striking it down. Part II describes SEIU members' personal experiences with the ACA, as health care providers and as consumers who depend on the ACA for care.

ARGUMENT

I. A DECISION STRIKING DOWN THE ACA WOULD DO DEVASTATING HARM TO MILLIONS OF HEALTH CARE PROVIDERS AND CONSUMERS, AS WELL AS TO THE AMERICAN ECONOMY.

The Patient Protection and Affordable Care Act has conferred significant benefits on millions of Americans and transformed a sector of the economy that accounts for $3.3 trillion in spending, or 17.9% of the GDP.[1] This Part describes some of those changes, as well as the consequences that would flow from a decision striking down the Act.

The ACA has made health care more widely available and easily accessible than ever before. In 2010, prior to the passage of the ACA, there were more than 48 million Americans without health insurance; by 2016, that number had shrunk to 28.6 million.[2] As of that date, nearly 12 million low-income Americans gained coverage through the ACA's Medicaid expansion.[3] That number is likely even higher today, as additional states have decided to expand their Medicaid programs. Federal subsidies have enabled millions more to purchase private insurance on the Act's exchanges. In addition, the ACA's "guaranteed issue" and "community rating" provisions have allowed millions of individuals with preexisting medical conditions—by

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[1] *National Health Expenditures 2016 Highlights*, Ctr. for Medicare and Medicaid Serv., https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/highlights.pdf (last visited June 12, 2018).

[2] Robin A. Cohen et al., *Health Insurance Coverage*, Nat'l Ctr. for Health Statistics, https://www.cdc.gov/nchs/data/nhis/earlyrelease/insur201705.pdf (last visited June 12, 2018); *see also* Nicholas Bakalar, *Nearly 20 Million Have Gained Health Insurance Since 2010*, N.Y. Times (May 22, 2017), https://www.nytimes.com/2017/05/22/health/obamacare-health-insurance-numbers-nchs.html.

[3] *Medicaid Expansion Enrollment*, Kaiser Family Found., https://www.kff.org/health-reform/state-indicator/medicaidexpansionenrollment/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Expansion%20Group%20Enrollment%22,%22sort%22:%22desc%22%7D (last visited June 12, 2018).

one estimate, at least 27% of adults under the age of 65[4]—to purchase coverage at the same prices as healthy individuals.

This broader availability of health coverage has delivered major public health benefits. One study found that low-income people who gained coverage under the Act were 41% more likely than before to have a regular source of care, 23% more likely to have "excellent" self-reported health, and spent an average of $337 less annually on health care expenses.[5] Studies have found numerous beneficial effects, including increased rates of screening and detection of gynecological cancers among young women,[6] improvements in pediatric care utilization,[7] and better access to necessary prescription drugs.[8]

The stories of SEIU members set forth in Part II reflect these national trends. One member, Tara Blackwell, an adjunct professor in Florida, has lived with Type 1 diabetes since the age of six, which eventually caused kidney disease. Prior to the passage of the ACA, she was forced to go without insurance coverage because her preexisting condition made her ineligible for coverage on the private market. Other members describe their pre-ACA experiences living with chronic pain for years but being unable to seek treatment because of prohibitively expensive costs and/or coverage denials based on preexisting conditions. Without the ACA's protections

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[4] Gary Claxton et al., *Preexisting Conditions and Medical Underwriting in the Individual Insurance Market Prior to the ACA*, Kaiser Family Found. (Dec. 12, 2016), https://www.kff.org/health-reform/issue-brief/pre-existing-conditions-and-medical-underwriting-in-the-individual-insurance-market-prior-to-the-aca/.

[5] Benjamin D. Sommers et al., *Three-Year Impacts of the Affordable Care Act*, Health Affairs, June 2017, at 1119.

[6] Anna Jo Smith & Amanda Fader, *Effects of the Affordable Care Act on Young Women With Gynecologic Cancers*, 131 Obstetrics & Gynecology 966 (June 2018).

[7] Alexander N. Ortega et al., *Insurance Coverage and Well-Child Visits Improved for Youth Under the Affordable Care Act*, Am. Pediatrics, Jan.–Feb. 2018, at 35.

[8] Ausmita Ghosh et al., *The Effect of State Medicaid Expansions on Prescription Drug Use: Evidence from the Affordable Care Act*, Nat'l Bureau of Econ. Research, http://www.nber.org/papers/w23044 (last visited June 12, 2018).

for people with preexisting conditions, requirement of guaranteed issue regardless of health status, and community rating system to keep plans affordable, these members would not have had access to critical treatment and Ms. Blackwell might not have survived kidney failure. A decision striking down these provisions of the ACA would mean that individuals in Part II and millions more like them would once more be unable to obtain access to crucial and even life-saving health care services. Indeed, invalidation of the ACA would cause 29.8 million people to lose their insurance.[9]

The ACA has also improved patient care in ways beyond the extension of insurance coverage, and those quality-of-care benefits will be lost as well if the statute is struck down. For example, the ACA created the Partnership for Patients Initiative, a public-private partnership that provides federally funded grants to reduce preventable harm in American hospitals. In addition, the ACA created the Hospital-Acquired Conditions Reduction Program, which provides financial incentives for hospitals to reduce the incidence of infections and other hospital-acquired conditions, such as falls, pressure sores, and blood clots.[10] These programs led to a sustained 17% reduction in hospital-acquired conditions between 2010 and 2014.[11] The U.S. Centers for Medicare and Medicaid Services (CMS) estimates that as a result, 87,000 fewer patients died, 2.1 million fewer patients were harmed, and nearly $20 billion in health care costs were saved in that period.[12]

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[9] Linda J. Blumburg et al., *Implications of Partial Repeal of the ACA through Reconciliation*, Urban Inst. (Dec. 6, 2016), https://www.urban.org/research/publication/implications-partial-repeal-aca-through-reconciliation.

[10] 42 U.S.C. §1395ww(q).

[11] *Saving Lives and Saving Money: Hospital-Acquired Conditions Update*, Agency for Healthcare Research and Quality, https://www.ahrq.gov/professionals/quality-patient-safety/pfp/interimhacrate2014.html (last visited June 12, 2018).

[12] *Id.*

The SEIU health care providers whose experiences are described in Part II have witnessed firsthand the ACA's quality-of-care improvements. The hospital where Registered Nurse Sasha Cuttler works received a grant under the ACA's Partnership for Patients Initiative to pilot a program aimed at reducing patient falls, and the program achieved remarkable results, reducing falls resulting in injury by 40%.[13] Another member, Maternity Nurse Marilyn Ralat-Albernas, has seen the ACA's increased maternity coverage and screening requirements improve results for pregnant women and infants by enabling the early diagnosis and treatment of conditions that would have gone unrecognized and untreated.

Nurse Ralat-Albernas's observations are consistent with national trends. From 2010 to 2016, the infant mortality rate in the United States declined by 11.9%. Notably, there were greater reductions in infant mortality rates in the thirty-one states that expanded Medicaid under the ACA than in those states that did not expand their programs.[14]

Many SEIU members emphasize that when providers are able to see their patients on a regular basis and identify health problems before they become severe, outcomes improve. This improvement results largely from a factor outside the providers' control: patients' access to care. Accordingly, from providers' perspectives, one of the ACA's most dramatic improvements has been Americans' increased access to health care.

A decision striking down the ACA not only would strip health coverage and protections from nearly 30 million people and remove quality care incentives for providers but also would have catastrophic economic consequences. Loss of the ACA would cause an enormous surge in

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[13] Sasha J. Cuttler et al., *Reducing Medical-Surgical Inpatient Falls with Videos, Icons, and Alarms*, BMJ Open Quality, Oct. 3, 2017 at 1.

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

the number of uninsured Americans, which would in turn increase the burden of uncompensated medical care costs borne by hospitals and other medical care providers by an estimated $1 trillion between 2019 and 2028.[15] The massive reduction in federal funding would lead to the loss of up to 2.6 million jobs.[16] And because the health care sector accounts for such a large percentage of the overall U.S. economy, eliminating the ACA would result in a $2.6 trillion reduction in total business activity between 2019 and 2023.[17]

II. SEIU MEMBERS' EXPERIENCES ILLUSTRATE THE BENEFITS OF THE ACA AND THE DEVASTATING HARM THAT WILL BE DONE BY A DECISION STRIKING IT DOWN.

More than a million health care workers are SEIU members, and thousands more of the union's members depend on the ACA for health coverage. The representative experiences recounted below illustrate the ACA's significant improvements to health care quality and accessibility and show how important the Act is to SEIU members and their families, their patients, and millions of Americans nationwide.

Michelle Boyle, RN

Michelle Boyle has been a nurse for 24 years and worked at one of Pittsburgh's largest hospitals for 14 years.[18] After a back injury limited her ability to take on certain nursing assignments, Ms. Boyle began working as a case manager at another hospital in the Pittsburgh area. She has been a member of SEIU Healthcare Pennsylvania since 2002.

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[15] Leighton Ku et al., *Repealing Federal Health Reform: Economic and Employment Consequences for States,* The Commonwealth Fund (Jan. 2017) http://www.commonwealthfund.org /~/media/files/publications/issue-brief/2017/jan/ku-aca-repeal-jobloss/1924_ku_repealing_federal_ hlt_reform_ib.pdf

[16] *Id.*

[17] *Id.*

[18] Ms. Boyle and the other individuals named in this brief were interviewed by or at the direction of counsel about their experiences and work. They have given SEIU permission to tell their stories, and records of their interviews and statements are on file with undersigned counsel.

Ms. Boyle is a strong advocate for her patients. She is proud of the role that nurses play in helping patients cope with the anxiety and emotional aspects of their conditions. As a case manager, Ms. Boyle's responsibilities include reviewing patient charts and submitting patient information to insurance companies to determine how long the companies will cover hospital care. If patients require more time in the hospital than their insurance covers, they accrue exorbitant out-of-pocket expenses which the hospital rarely recovers.

Prior to the ACA, insurance companies and hospitals faced no penalties if a patient was discharged and then rapidly returned to the hospital for the same condition. The ACA's Hospital Readmissions Reduction Program ("HRRP") created incentives for hospitals to reduce inefficiencies associated with repeat visits from discharged patients.[19] Complementary to these incentives, the ACA's Community Based Care Transitions Program funds community-based organizations that provide continuing care after patients are discharged from the hospital.[20]

Because of the ACA, Ms. Boyle reports, "At our daily meetings, we have to flag any patient who returned for the same condition within thirty days. The emphasis is on patients' ability to stay healthy once they leave. The focus is on our patients' health." The ACA's incentives for reducing readmission rates have had an impact in Ms. Boyle's home state of Pennsylvania, which saw its 30-day readmission rates decrease between 2011 and 2016,[21] as well as nationally, where "passage of the [ACA] was followed by widespread reductions in readmission rates."[22]

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[19] 42 U.S.C. § 1395ww(q).

[20] 42 U.S.C. § 1395b-1.

[21] *Hospital Performance Report 2016*, Pennsylvania Health Care Cost Containment Council, http://www.phc4.org/reports/hpr/16/ (last visited June 12, 2018).

[22] Jason H. Wasfy et al., *Readmission Rates After Passage of the Hospital Readmissions Reduction Program: A Pre-Post Analysis*, 166 Ann. Intern. Med. 324 (2017); *see also* Rachael B. Zuckerman et al., *Readmissions, Observation, and the Hospital Readmission Reduction Program*, 374 N. Engl. J. Med. 1543 (2016).

Ms. Boyle has also seen other improvements to health care since the passage of the ACA, particularly related to the increased accessibility and affordability of insurance. Ms. Boyle has observed, both as a nurse and as a case manager, that people forgo preventive care when they don't have insurance. Uninsured patients are therefore often sicker than their insured counterparts when they finally seek medical care, and their exacerbated conditions are often more difficult for providers to treat. 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.

Moreover, before the ACA prohibited lifetime caps on insurance and implemented protections against insurers charging higher premiums on the basis of health status, age, gender, or past claims, many Americans who had health insurance still did not receive adequate health care. These pre-ACA practices, which targeted the sickest and most vulnerable Americans, interfered with providers' ability to care for their patients by effectively determining treatment based on patients' ability to pay rather than on medical necessity.

In her previous job as a registered nurse, Ms. Boyle interacted primarily with transplant patients. She relayed the story of one patient at her facility—before the ACA was passed—who had a successful and life-saving kidney transplant. Soon after her transplant, however, her husband was diagnosed with cancer. The couple's insurance plan did not provide enough coverage for them to afford both his cancer treatment and her follow-up transplant care, so they were forced to make an impossible choice. Ultimately, the patient gave up continuing her own care so that her husband could receive cancer treatment. As a result, her new kidney failed and she had to go back on dialysis. This was devastating to her providers, as Ms. Boyle explains: "her kidney transplant went to waste because she could not afford to continue care."

Lack of affordable care is literally a life-and-death issue for many patients, as Ms. Boyle has seen both on the job and in her personal life. Ms. Boyle's mother-in-law passed away at the age of 58 as the result of an untreated, chronic illness. Ms. Boyle believes that her mother-in-law would have lived long enough to meet her grandchildren if she had only had health insurance and access to treatment. Ms. Boyle said that her daughters now have to "hold a picture of their grandma, instead of her hand."

Ms. Boyle believes that the ACA reflects American values. She fears that overturning it will allow insurers to reinstate practices that interfere with the provision of quality health care and lead to inhumane results. She says, "the America that I was brought up to believe in is a place where you look out for each other. That's what makes America strong. By taking away people's access to health care, we are weaker as a nation."

Sasha Cuttler, RN, PhD

Registered Nurse Sasha Cuttler is the Coordinator for the Collaborative Alliance for Nursing Outcomes at a major public hospital in Northern California. Mr. Cuttler has been a registered nurse for 33 years and, in his current position, oversees quality and safety programs for a large public health system. He is a member of SEIU Local 1021 and active with SEIU's Nurse Alliance.

Mr. Cuttler notes that the often-overlooked "Patient Protection" aspect of the "Patient Protection and Affordable Care Act" has been a crucial part of the ACA's success in improving health care in the United States. Through the ACA's Partnership for Patients, the Agency for Healthcare Research and Quality ("AHRQ") has provided federal funding for studies on decreasing hospital-acquired conditions, such as patient falls and pressure or bed sores. Mr. Cuttler estimates that on a large hospital campus at least one patient falls every day, and those

falls often lead to injury, prolonged hospital stays, and unnecessary expense.[23] With the support of the Partnership for Patients, Mr. Cuttler and his colleagues studied and sought to prevent patient falls in 2014-2015. They created an instructional video about preventing falls and bought electronic tablets for volunteers to show the video to patients. The study had a significant impact: a 20% reduction in falls generally; a 40% reduction in falls with any injury; and an 85% reduction in falls with serious injury.[24] These results demonstrate that a minimal federal investment—authorized by the ACA—can have striking outcomes for patients.

Mr. Cuttler feels strongly about the importance of decreasing incidences of hospital-acquired conditions: "The hospital is supposed to be the place where you go to get better. We don't want you to get worse!" He fears that if the ACA is overturned, hospitals will lose not only funding opportunities to pilot solutions but also the ACA's incentives to track hospital-acquired conditions and share best practices among facilities.

Another part of the ACA that Mr. Cuttler considers crucial is the provision that prohibits discrimination or exclusions from insurance coverage on the basis of identity characteristics such as race, color, national origin, sex, age, or disability.[25] During his 33 years as a registered nurse, Mr. Cuttler has observed that when people are fearful of how they will be treated, they feel uncomfortable seeking care or sharing information with their health care providers. That reluctance means providers often do not have the information necessary to make sound treatment decisions, and patients are at risk of receiving inadequate care. Patients who have experienced or

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[23] AHRQ estimates that there are 700,000 to one million falls of hospitalized patients each year. Those falls lead to fractures, lacerations, and internal bleeding. *Preventing Falls in Hospitals*, Agency for Healthcare Research and Quality, https://www.ahrq.gov/professionals/systems/hospital/fallpxtoolkit/fallpxtk over.html#Problem (last visited June 12, 2018).

[24] Sasha J. Cuttler et al., *Reducing Medical-Surgical Inpatient Falls with Videos, Icons, and Alarms,* BMJ Open Quality, Oct. 3, 2017 at 1.

[25] 42 U.S.C. § 18116(a).

fear discrimination by their health care providers will likely delay seeking treatment until they end up in an emergency room. Incomplete information for providers and delays in seeking care lead to poor health outcomes and higher costs.

Finally, as the parent of two young adult children, Mr. Cuttler has also personally benefitted from the ACA's protections. Because of the ACA, Mr. Cuttler's children were able to stay on their parents' health insurance until they had a chance to establish themselves after college.[26] When Mr. Cuttler's daughter was assaulted as a college junior, the resulting medical expenses would have been an unbearable financial burden had they been paid out of pocket. Fortunately, the coverage provided by Mr. Cuttler's plan prevented that result.

Before the ACA, young adults were generally not covered on their parents' plans. If they experienced significant health problems or injuries in their early twenties, they faced the financial burden of paying for immediate treatment, as well as the risk of denied coverage for the rest of their lives based on preexisting conditions. Mr. Cuttler's daughter's ordeal and recovery were traumatic and painful, even without additional stress from medical bills or concerns about future coverage. But if the ACA is overturned and insurance companies are allowed to resume cutting children off from their parents' plans before age 26, setting unreasonably high premiums, or refusing to insure people with preexisting conditions, young people in the future will have to face similar medical emergencies without the security that comes from knowing they won't risk financial ruin when they seek treatment.

Rachel Paneth-Pollak, MD

Dr. Rachel Paneth-Pollak is a doctor who provides comprehensive primary and preventive care to underserved individuals at a Federally Qualified Health Center[27] in

[26] 42 U.S.C. § 300gg-14 (requiring insurers to extend dependent coverage up until age 26).
[27] 42 U.S.C. § 1396d(l)(2)(B).

Washington, D.C. She has been practicing medicine for five years and currently resides in Maryland. Dr. Paneth-Pollak is a Shop Steward for SEIU1199 United Healthcare Workers East.

As a practicing physician at a community-based health center, Dr. Paneth-Pollak has learned that medical school does not teach doctors how to navigate insurance coverage, and that she often cannot make medical decisions purely based on patients' symptoms. Although the health center where she works offers services on a sliding fee scale to low-income individuals, she still spends much of her time trying to help her patients find alternative ways to obtain care when their insurance coverage is insufficient.

Dr. Paneth-Pollak believes that one of the most important pillars of the ACA is increased patient access to preventive medicine. Under the ACA, insurers are required to cover at least 63 distinct preventive medical services without any co-payment or deductible, including immunization vaccines and screenings that identify cancer and other diseases in their early stages.[28] Instead of paying for costly emergency room visits at the inevitable point of health crisis, patients with access to preventive care services can see providers early enough to make treatment options more successful and cost-effective.

In Dr. Paneth-Pollak's experience, insurance coverage that includes preventive care is vitally important. She has seen firsthand how the lack of access to preventive care can lead to life-threatening consequences. One of her patients had kidney issues as a child, but her family did not have access to health care and relied on home remedies to alleviate her symptoms. Even though the patient's household income is below 133% of the federal poverty level, she has not been eligible for Medicaid coverage because she lives in Virginia, which only recently elected to

[28] 42 U.S.C. § 300gg-13.

expand Medicaid. This patient now has stage four kidney disease, and is on the verge of needing dialysis with few options for long-term treatment.

Although the patient urgently needs to be seen by a specialist to determine the cause of her kidney disease and her medical options, Dr. Paneth-Pollak's community health center does not have that type of specialist on staff, and the patient does not have insurance to cover such services. The procedures and tests the patient needs are costly and, as she cannot afford to pay out of pocket, no specialist will see her. The only other option is to be added to the kidney transplant list. But that too is not a viable option, because the patient cannot afford either the surgery or the post-operative medications that are essential to a successful transplant. The patient would not be able to afford even one appointment with a specialist for evaluation, let alone the transplant and follow-up care. Dr. Paneth-Pollak provides prescription drugs on a sliding fee scale to help, but the medication is only a temporary solution.

Dr. Paneth-Pollak is helping to prepare the patient's eventual application for coverage through Virginia's expanded Medicaid, with the hope that her patient may be able to get the testing and treatment she needs. Coverage for those services, however, will not be available until enrollment begins in early 2019. In the meantime, if the patient deteriorates further, she may have to begin dialysis, increasing her risk of early death. Dr. Paneth-Pollak says that Medicaid expansion through the ACA could potentially save her patient's life, and may be the only option for doing so.

Experiences such as this are unfortunately common among Dr. Paneth-Pollak's patients, and among Americans nationwide. Kidney disease is the ninth leading cause of death in the United States, affecting 15% of the population. One out of every three Americans is at risk of developing chronic kidney disease, but 96% of those in the early stages of the disease, where

treatment is most effective, are unaware of their condition.[29] Dr. Paneth-Pollak also points to heart disease, the leading cause of death in the United States, as another example where preventive care, testing, and early intervention make a significant difference in health outcomes. Patients can deteriorate quickly, however, and there is little that can be done for heart and kidney failure at the end stages. Lack of insurance coverage prevents providers from being able to treat these patients early enough, which can be, as Dr. Paneth-Pollak describes, "the difference between a life with medication and treatment or death."

Dr. Paneth-Pollak has come to dread informing patients who have no insurance coverage that they need to see a specialist for a serious health condition. All too often, Dr. Paneth-Pollak's ability to save a patient's life depends on the patient's past and present insurance coverage, rather than on her or fellow doctors' medical expertise. Widespread access to adequate preventive care, like that required by the ACA, can make the difference for patients at risk for kidney, heart or other severe complications where early intervention is crucial. If the ACA is overturned, these patients will be left without a path to receive the care they need, which is devastating for both the patients whose lives are at stake and the providers that treat them.

Marilyn Ralat-Albernas, RN

Marilyn Ralat-Albernas has worked as a registered nurse for 15 years. She lives in South Florida and is a member of SEIU1199 United Healthcare Workers East. As a postpartum nurse in her hospital's maternity unit, Ms. Ralat-Albernas's job consists primarily of providing medical care to mothers and newborns and instructing new mothers on the basics of infant care.

Since the ACA's implementation in 2012, Ms. Ralat-Albernas has noticed marked improvements in health outcomes for mothers and infants. In her experience, comprehensive

[29] *National Chronic Kidney Disease Fact Sheet*, Centers for Disease Control and Prevention, https://www.cdc.gov/diabetes/pubs/pdf/kidney_factsheet.pdf (last visited June 13, 2018).

insurance coverage for maternity patients is critical to providing quality prenatal care, which in turn is critical for a healthy birth. "So many issues could be prevented if mothers simply had prenatal care and education. You may not know that certain symptoms indicate, for example, gestational diabetes. But if you're getting consistent prenatal care, we can spot it early on and help you, and potentially save your or your baby's life."

The ACA sets multiple requirements for insurers in regards to maternity care. First, it makes maternity and newborn care an "essential health benefit" that must be covered under all plans, and it prohibits the previously common insurance practices of charging women higher premiums and refusing coverage to women based on the preexisting condition of pregnancy.[30] The Act further specifies basic requirements for maternity coverage, such as prenatal appointments and screenings for conditions that can threaten the mother's health or fetal development, including gestational diabetes and various infections that can harm the fetus.[31]

These provisions work in concert to protect the lives and health of mothers and babies. Ms. Ralat-Albernas explains the transformative impact of the law: "Before the ACA, you'd see babies enter the neo-natal intensive care unit, and many newborn deaths were due to something that could have easily been prevented if the mother was able to see a doctor before going into labor. By then, it's often too late. The ACA means more parents get to take home happy, healthy babies, instead of burying their infant."

[30] 42 U.S.C. § 300gg-3 (prohibiting denial of coverage based on preexisting conditions); § 300gg-4 (prohibiting discrimination based on health status); § 18022 (essential health benefits, including maternity care).

[31] 42 U.S.C. § 18022.

Consistent with Ms. Ralat-Albernas's observations, from 2010 to 2016, there was a national decline of 11.9% in infant mortality rates in the United States.[32] Notably, the 31 states that accepted the expansion of Medicaid under the ACA saw a higher reduction in infant deaths than states that did not expand their program (15.2% vs. 11% decline in infant deaths, for Medicaid expansion states and non-expansion states, respectively).[33]

As a provider, Ms. Ralat-Albernas has found that maternity patient care has become more effective and efficient since the ACA mandated maternity coverage and made health insurance more affordable and accessible. Prior to the ACA, Ms. Ralat-Albernas saw many people going to the emergency room with health issues that could have been prevented if they had health insurance that would have enabled them to seek care sooner. "I've seen so many mothers come into the emergency room and learn they have ovarian cancer, or other gynecological issues that could have been prevented or helped if they'd caught it earlier. But folks don't have the money to check on symptoms, so they often wait until they need emergency care, when it's way worse." Again, Ms. Ralat-Albernas's observations reflect a national trend: since implementation of the ACA (and its requirements for coverage of cancer screenings), diagnosis and treatment of gynecological cancers among young women has increased.[34]

Based on her experiences working with new mothers, Ms. Ralat-Albernas believes that sufficient prenatal care is not only essential to preventing complications during childbirth, but also crucial for the education of soon-to-be mothers. Regular prenatal visits make it easier for

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

[33] *Id.*

[34] Anna Jo Smith & Amanda Fader, *Effects of the Affordable Care Act on Young Women With Gynecologic Cancers,* 131 Obstetrics & Gynecology 966 (2018).

providers to give mothers the information and resources they need to recover after childbirth and care for their babies.

For these reasons, Ms. Ralat-Albernas strongly supports the ACA, and particularly the multiple provisions that have improved health outcomes for mothers and babies, before and after birth. If the Act were overturned, she fears that insurers would return to their previous practices of refusing maternity coverage, charging women higher premiums, and declining to cover multiple health screenings that can save babies' lives. She worries, "If we don't take care of our future, then where are we going?"

Ethel Turner, CNA

Ms. Ethel Turner is a Certified Nursing Assistant (CNA) at a nursing home in Huntington, West Virginia, and a member of SEIU 1199 West Virginia, Kentucky, Ohio. Ms. Turner has been a CNA for almost 11 years. She provides care to patients living with dementia and particularly Alzheimer's disease, a degenerative and incurable disease characterized by progressive memory loss, impaired thinking, disorientation and changes in mood or behavior. Ms. Turner loves her job, but she worries about the future of nursing as an industry due to staffing shortages and lack of new incoming workers. Her compassion and respect for her patients motivates her on days when her job feels especially difficult.

Ms. Turner recounts several ways that the ACA has improved the lives of her patients and individuals in her community. First of all, the ACA has improved patient access to prescription drug benefits, which has positively impacted both patients in long-term care and the nursing home workers who care for them. This aspect of the ACA is of particular concern to elderly patients whose significant medication requirements land them in the coverage gap known as the Medicare Part D "donut hole." Prior to the ACA, seniors with chronic conditions who exceeded the limits of their prescription drug plans had to pay out-of-pocket until they reached

their catastrophic coverage limit. The ACA has gradually reduced the cost burden by covering more prescription drug costs every year.[35]

Ms. Turner has observed that, without insurance or adequate prescription coverage, her patients living with Alzheimer's have to choose which medications to buy based on the limited amount they can afford to pay. Choosing among needed medications, or taking medications intermittently when they are meant to be taken every day, is dangerous for patients and staff. In Ms. Turner's experience, a lack of proper medication can lead to patient falls, injuries, and increased anger and confusion. It also increases the risk of injury for the providers caring for these patients. CNAs generally experience high rates of injury, including assault from nursing home patients, and those who work with Alzheimer's patients have a "significantly elevated risk" of assault.[36] Ms. Turner has seen her patients struggle with decisions about prescription costs and knows that this would only get worse without the ACA's protections.

She has also seen benefits from the ACA's protections for patients who would otherwise be denied care due to preexisting conditions or charged unaffordable premiums based on health status or age. Previously, it was difficult, if not impossible, for people with early onset Alzheimer's to obtain and keep insurance coverage. Under the ACA, however, those patients are protected, and cannot be denied or charged higher premiums based on their preexisting conditions or medical status. Additionally, the increase in the availability of comprehensive coverage, that the ACA catalyzed, benefits people who have or may develop Alzheimer's.

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[35] 42 U.S.C. § 1395w-102. *See also* Tehrani A. Bonakdar & PJ Cunningham, *Closing the Medicare Doughnut Hole: Changes in Prescription Drug Utilization and Out-of-Pocket Spending Among Medicare Beneficiaries with Part D Coverage After the Affordable Care Act*, 55 Med Care 43 (2017).

[36] *See* Sangwoo Tak, et al., *Workplace Assaults on Nursing Assistants in U.S. Nursing Homes: A Multilevel Analysis*, 100 Am. J. Public Health 1938, 1942 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2936998/pdf/1938.pdf.

Because functioning declines progressively in Alzheimer's patients and degeneration cannot be reversed, early detection leads to better outcomes by enabling individuals to access treatments and support services at the early stages when they are most beneficial.[37] Primary care doctors can diagnose Alzheimer's and prescribe medication that will slow the progression of the disease and enhance cognition, so expanding access to routine primary care can make a significant difference for patients and their families.

In Ms. Turner's opinion, eliminating the ACA will be devastating to her patients. She questions what coverage will take its place if patients lose the protections of the ACA. Ms. Turner also worries about health care providers' jobs being jeopardized if the ACA is overturned, as patients with less or no coverage forgo care based on prohibitive costs. She has seen that, for many individuals, the ACA provides the only option for obtaining health care. She hopes that the ACA is upheld for the sake of her patients, co-workers, and community.

Tara Blackwell, PhD

Professor Tara Blackwell, of Tampa, Florida, has been devoted to education for her entire career. She taught drawing for many years and, since 2014, has taught as an adjunct professor of biology. As a teacher who cares deeply about her students and colleagues, she became active with SEIU Florida Public Services Union (FPSU) to advocate for better working conditions on campus for part-time non-tenure track faculty.

Ms. Blackwell's commitment to others is notable given the fact that she has to undergo time-intensive and physically draining dialysis treatments three times a week. Since the age of six, Ms. Blackwell has battled Type 1 diabetes. Though she has always worked to maintain a healthy lifestyle, her condition steadily eroded her kidneys. She knew for years that she was at

[37] *Early Detection and Diagnosis of Alzheimer's Disease,* Alzheimer's Association (Dec. 2015), https://www.alz.org/publichealth/downloads/policy-brief.pdf.

risk of kidney failure, and in 2015, doctors discovered alarming creatinine levels during routine testing. Fortunately, Ms. Blackwell had affordable health insurance through the ACA and thus had access to such testing and was able to begin dialysis. She recently completed further diagnostic testing that will allow her to join the waitlists for kidney and pancreas transplants.

Without the ACA, Ms. Blackwell would not have had timely access to life-saving care, or she would have been bankrupted by the resulting emergency room and hospital bills. Prior to the ACA, Ms. Blackwell was able to secure health insurance only intermittently. While she participated in her university's insurance plan when she was enrolled as a student, after she graduated, she was denied insurance coverage because of her diabetes. Ms. Blackwell had no choice but to pay out of pocket for necessary treatments, prescriptions, and medical supplies like her insulin pump. Without financial help from her parents, she would have faced the impossible choice between buying insulin and paying rent.

Today, thanks to the ACA, Ms. Blackwell has access to affordable care, but she still fears losing health insurance. As an adjunct professor, Ms. Blackwell makes $16,000 a year and struggles to pay for basic necessities like rent, groceries, and utilities. If her ACA subsidies were terminated, Ms. Blackwell's premiums would quadruple, and she would likely be unable to afford the care that keeps her alive. As she puts it, "my life depends on this."

. Like the other union members whose stories are included below, Ms. Blackwell would face multiple obstacles to obtaining insurance coverage if it were not for the ACA's myriad protections: her current health conditions, including diabetes and kidney disease, would not be covered if insurers were allowed to decline treatment for preexisting conditions; her premium rates would skyrocket without subsidies or the assurance of community ratings; and she likely would be denied coverage altogether based on her health status, if insurers were not required to

sell policies on a guaranteed issue basis. Invalidating the ACA will allow insurers to resume all of these practices, putting Ms. Blackwell and others' lives at risk.

Christina Nykol

Christina Nykol, a member of SEIU Local 925, is a child care provider for one- and two-year-old children in Washington State. As the mother of a young son, Ms. Nykol knows how important early education is. "We're not just watching the children. We're teaching them and making sure that they're ready for school."

Ms. Nykol does not receive health care through her employer. Earning only $11.75 per hour, she cannot afford to pay for health care out of pocket. However, thanks to the ACA's Medicaid expansion, she and her son receive health care through Washington State's Apple Health Medicaid program. With Medicaid, Ms. Nykol has been able take her son to the doctor for regular checkups and vaccinations. Recently, her son's adenoids and tonsils became so swollen that he could no longer breathe through his nose. Without the Medicaid coverage she received because of the ACA, Ms. Nykol would have been unable to pay for the surgery her son urgently needed in order to breathe normally.

Ms. Nykol is worried about what might happen if the courts strike down the ACA. "For single moms like me, it's really hard to take care of your kids if they don't have health care." Thanks to his successful surgery, Ms. Nykol's son is now breathing normally again, but she is concerned about related health complications in his future. "Sinus problems run in the family; he could have major health problems for the rest of his life." Ms. Nykol is worried that if the ACA is struck down, she will not be able to afford the treatments that keep her son healthy.

Wanda Rogers

Wanda Rogers, a lifelong resident of St. Louis, Missouri, is a mother of four and a grandmother of twelve, all of whom live under her roof. Ms. Rogers has suffered from serious

health problems for many years. In 2010, she had a near fatal bout of meningitis and a staph infection which left her comatose and on life support, forcing her to leave her secure municipal job. After recovering, she took a job at McDonald's to support her family. For the past two years, she has been active with other fast food workers in the nationwide Fight for $15 movement, a campaign now led by SEIU National Fast Food Workers Union.

For almost a decade, Ms. Rogers has continued to struggle with her health and has required extensive medical care. On several occasions, her acute hypertension has put her at serious risk of suffering a stroke, necessitating immediate treatment. In 2017, a co-worker found her unconscious at work as a result of bronchitis. Her recovery has required her to miss a great deal of work, causing financial strain for her family.

For Ms. Rogers, ensuring that she stays healthy is "a must," not only for her but also for the 16 children and grandchildren who live with her and depend on her. But making only $10 an hour, she cannot afford private health insurance, she does not receive health insurance from McDonald's as part of her employment, and she does not qualify for Medicare or Medicaid. Without the ACA, her medical problems would likely go untreated, preventing her from supporting her family. ACA subsidies have enabled Ms. Rogers to obtain coverage for regular doctor visits and necessary medication, all free of charge. That access to quality care has, in turn, ensured that she can continue to provide for her family.

Celeste Thompson

Celeste Thompson, a member of SEIU Local 775 in Montana, began her career as a Certified Nursing Assistant working in a hospital. When a close friend became disabled, Ms. Thompson changed careers in order to care for her friend at home. Since then, she has worked providing homecare services for over 25 years.

In 2015, Ms. Thompson was diagnosed with uterine cancer. At the time, she was uninsured and did not qualify for Medicaid, so she had no way to pay for a potentially life-saving hysterectomy. Funding from a charity program allowed her to undergo the initial operation she needed, but could not afford the continued medical care necessary to remain healthy and able to care for her children. Ms. Thompson says, "I am a hard-working person, so I should not have to depend on charity for health care. I should have insurance that I can rely on to cover what I need to be healthy."

After Montana adopted the ACA Medicaid expansion in 2015, Ms. Thompson finally qualified for coverage. In November, 2015, she was first in line at the Montana Governor's office to enroll in Medicaid. Now, she is almost three years cancer free. The ACA allows Ms. Thompson to have regular checkups, something she had not done in many years. And in addition to her life-saving cancer treatment, Ms. Thompson now receives basic care that has greatly improved her quality of life. Prior to the ACA, Ms. Thompson could not afford glasses for nine years or much-needed dental work. Now that the ACA has allowed her to meet these basic needs, she can continue to devote her time to caring for others.

Ms. Thompson has also seen the benefits of the ACA for her patients. She explains, "With Medicaid expansion, a lot of my homecare patients can get help for more hours, and with more procedures." This means patients have a higher quality of life and nursing homes aren't the only option if their condition worsens. And it means more hours for Ms. Thompson and her co-workers: "Without the ACA, there would be a lot of people out of work."

Fatima Whitmore

Fatima Whitmore is a family child care provider in Baltimore, Maryland, and a member of SEIU Local 500. After beginning her career as a special education assistant, she discovered a passion for early education that she has pursued professionally for the past 16 years.

Before the passage of the ACA, Ms. Whitmore lived for six years without any health insurance. During much of that time she regularly suffered from extreme pain. She could not afford out-of-pocket medical expenses on her low wages, and was thus unable to seek treatment. On the rare occasions when she was compelled to seek emergency care, prohibitive costs forced her to discontinue treatment before she was fully recovered. This inability to get properly diagnosed and treated allowed the pain to continue, and left her in a perpetual state of worry because she did not understand the cause of the extreme pain she was regularly experiencing. Thus, in addition to the pain itself, she also suffered from anxiety about the uncertainty of her health and her ability to keep working to support her son.

ACA subsidies finally allowed Ms. Whitmore to purchase health insurance and seek treatment. She discovered that her years-long symptoms were the result of fibroids, which caused extreme pain and serious blood clots that could have been fatal, had they traveled to her heart or lungs. Based on that diagnosis, she was finally able to obtain an embolization procedure to treat the fibroids, receive medication, and stop the blood clots. Ms. Whitmore now lives with far less pain, and she has the peace of mind that comes with knowing that if she gets sick, she can receive care before her condition worsens and forces her to go to the emergency room.

Ms. Whitmore worries about what will happen if the ACA is struck down. Without ACA subsidies, the cost of her insurance premium would overwhelm her household budget, and she is concerned that her health and her ability to work will deteriorate if she can't afford care. Ms. Whitmore supports the ACA because it provides security and peace of mind to workers, allowing them to do their jobs and provide for their families more effectively.

CONCLUSION

Plaintiffs' application for a preliminary injunction should be denied.

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Respectfully submitted,

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