

ORAL ARGUMENT HELD MARCH 20, 2020

No. 19-5212

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

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ASSOCIATION FOR COMMUNITY AFFILIATED PLANS, ET AL.,  
*Plaintiffs-Appellants,*

v.

UNITED STATES DEPARTMENT OF THE TREASURY, ET AL.,  
*Defendants-Appellees.*

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Appeal from the United States District Court for the District of Columbia  
Case No. 1:18-cv-02133-RJL, Hon. Richard J. Leon

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**MOTION OF AMERICAN CANCER SOCIETY, AMERICAN CANCER  
SOCIETY CANCER ACTION NETWORK, AMERICAN HEART  
ASSOCIATION, AMERICAN LUNG ASSOCIATION, CYSTIC FIBROSIS  
FOUNDATION, EPILEPSY FOUNDATION, HEMOPHILIA FEDERATION  
OF AMERICA, JUDGE DAVID L. BAZELON CENTER FOR MENTAL  
HEALTH LAW, LEUKEMIA & LYMPHOMA SOCIETY, MARCH OF  
DIMES INC., NATIONAL COALITION FOR CANCER SURVIVORSHIP,  
AND NATIONAL MULTIPLE SCLEROSIS SOCIETY FOR INVITATION  
TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-  
APPELLANTS' PETITION FOR REHEARING EN BANC**

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The American Cancer Society (ACS), American Cancer Society Cancer Action Network (ACS CAN), American Heart Association, Inc. (AHA), American Lung Association (ALA), Cystic Fibrosis Foundation (CFF), Epilepsy Foundation, Hemophilia Federation of America (HFA), Judge David L. Bazelon Center for Mental Health Law, Leukemia & Lymphoma Society (LLS), March of Dimes Inc., National Coalition for Cancer Survivorship (NCCS), and National Multiple Sclerosis Society (NMMS) move for an invitation from this Court, under D.C. Circuit Rule 35(f), to submit a brief as amici curiae in support of plaintiffs-appellants' petition for rehearing en banc. *See, e.g., PHH Corp. v. Consumer Fin. Prot. Bureau*, No. 15-1177 (D.C. Cir. Feb. 16, 2017) (granting similar request for invitation to file amicus brief in support of en banc petition); *Nat'l Ass'n of Mfrs. v. Sec. & Exch. Comm'n*, No. 13-5252 (D.C. Cir. Nov. 9, 2015) (same); *Elec. Power Supply Ass'n v. FERC*, No. 11-1486 (D.C. Cir. Sept. 17, 2014) (same).

Plaintiffs-appellants have consented to this motion. The government defers to the Court's judgment whether to invite amicus briefs in support of plaintiffs' rehearing petition. The proposed brief complies with Federal Rule of Appellate Procedure 29(b), which contemplates the filing of amicus briefs in support of petitions for rehearing with leave and which limits such briefs to 2,600 words. This motion and the proposed brief are being timely filed within seven days of the petition for rehearing en banc.

## I. INTEREST OF AMICI CURIAE

Prospective Amici are organizations that represent millions of patients and consumers across the country facing serious, acute, and chronic health conditions. Many of Amici participated in the underlying rulemaking proceeding, and all submitted a brief to the district court urging it to set the rule aside, as well as a brief in this Court at the panel stage.

ACS combines an unyielding passion with nearly a century of experience to save lives and end suffering from cancer, with a global grassroots force of more than three million volunteers. ACS's extensive scientific findings have established that health insurance coverage status is strongly linked to receipt of medical care and health outcomes, including survival, and that lack of adequate insurance coverage is a major impediment to advancing the fight against cancer. ACS CAN is the nonpartisan advocacy affiliate of ACS. Together, the organizations seek to secure affordable, comprehensive, and accessible health insurance for all Americans.

AHA is a voluntary health organization that, since 1924, has been devoted to saving people from heart disease and stroke—the first and fifth leading causes of death in the United States. AHA and its more than 40 million volunteers work to fund innovative research, fight for stronger public health policies, and provide lifesaving tools and information to prevent and treat these diseases. Based on well-

documented research that uninsured and under-insured Americans with heart disease and stroke experience higher mortality rates, poorer blood pressure control, greater neurological impairments, and longer hospital stays after a stroke, AHA has worked to represent the needs and interests of heart disease and stroke patients and advocated making health care more affordable.

ALA is the nation's oldest voluntary health organization, representing the 36.6 million Americans with lung disease in all 50 states and the District of Columbia. Because people with or at risk for lung cancer and lung diseases—such as asthma, Chronic Obstructive Pulmonary Disease (COPD) and pulmonary fibrosis—need quality and affordable health care to prevent or treat their disease, ALA strongly supports increasing access to health care.

The CFF's mission is to cure cystic fibrosis and to provide all people with CF the opportunity to lead long, fulfilling lives by funding research and drug development, partnering with the CF community, and advancing high-quality, specialized care. The CFF advocates for policies that promote affordable, adequate, and available health care coverage for people with cystic fibrosis.

The Epilepsy Foundation is the leading national voluntary health organization that speaks on behalf of more than 3.4 million Americans with epilepsy and seizures. Uncontrolled seizures can lead to disability, injury, and even death. Epilepsy medications are the most common and most cost-effective

treatment for controlling and/or reducing seizures—making timely access to quality, affordable, physician-directed care and effective coverage for epilepsy medications vital for people living with epilepsy.

HFA is a community-based, grassroots advocacy organization that assists, educates, and advocates for people with hemophilia, von Willebrand disease, and other rare bleeding disorders. HFA works for patient access to quality and affordable care and coverage—priorities that reflect the nature of bleeding disorders as serious, life-long, and expensive health conditions. Quality and affordable healthcare coverage is indispensable for people living with bleeding disorders.

Founded in 1972 as the Mental Health Law Project, the Judge David L. Bazelon Center for Mental Health Law is a national non-profit advocacy organization that advances the rights of individuals with mental disabilities in health care, community living, housing, employment, education, parental and family rights, and other areas. Expanding the availability of community-based mental health services has been central to the Center's mission and focus.

LLS is the world's largest voluntary health agency dedicated to fighting blood cancer and ensuring that the more than 1.3 million blood cancer patients and survivors in the United States have access to the care they need. The significant costs associated with essential blood cancer treatments—particularly

hospitalization, stem cell transplantation, and anti-cancer drug therapies—put even routine cancer care out of reach for those patients without comprehensive and stable health insurance. LLS and its network of more than 100,000 advocacy volunteers promote policies that ensure access to quality insurance coverage and reduce barriers to vital cancer care.

March of Dimes is a nonprofit organization that leads the fight for the health of all moms and babies. March of Dimes educates medical professionals and the public about best practices, supports lifesaving research, provides comfort and support to families in neonatal intensive care units, and advocates for moms and babies. Ensuring that pregnant women and their children have access to timely, affordable, and high-quality healthcare is essential to achieving its goals.

NCCS is a national organization that advocates for access to quality care for survivors of all forms of cancer. The cancer survivors represented by NCCS have a pre-existing condition from the day of diagnosis and rely on affordable and adequate health insurance.

The NMSS mobilizes people and resources so that everyone affected by multiple sclerosis (MS) can live their best lives, while also seeking to end MS forever. To fulfill this mission, the NMSS funds more MS research and provides more programs for people with MS and their families than any other voluntary

health organization in the world. The NMSS works to ensure that all people with MS have access to affordable high-quality health care.

## **II. USEFULNESS OF BRIEFING BY AMICI CURIAE**

If leave is granted, Amici's proposed brief in support of rehearing en banc will make a valuable contribution. Amici have a unique perspective on what individuals and families need to prevent disease, manage health, and cure illness—and a deep understanding of the harm that will result if the short-term, limited-duration insurance rule is left in place.

As detailed in the proposed brief, the availability of affordable, accessible, and adequate health insurance is critical to health outcomes. The challenged rule, however, ensures that a greater number of individuals will purchase plans that deny coverage for, and thereby deny access to, critical treatments if and when they are needed. The rule will also require individuals with existing health conditions to incur greater expense in accessing the treatment they need. The rule thus poses a very real threat to the health of many millions of Americans. Amici believe the proposed brief will assist the Court in understanding the nature and extent of this harm, which underscores the “exceptional importance” of the questions presented by plaintiffs-appellants' petition for rehearing en banc. Fed. R. App. P. 35(b)(1)(B).

## CONCLUSION

For the foregoing reasons, movants respectfully request that the Court invite them to file the accompanying brief as amici curiae.

Dated: August 31, 2020

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Respectfully submitted,

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