

No. 11-398

IN THE

United States

Supreme Court

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, ET AL.,
PETITIONERS

v.

STATE OF FLORIDA, ET AL.,
RESPONDENTS.

On Writ of Certiorari to the United States
Court of Appeals for the 11th Circuit

**BRIEF OF YOUNG INVINCIBLES AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONER**

MINIMUM COVERAGE PROVISION

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QUESTION PRESENTED

Whether Congress had the power under Article I of the Constitution to enact the minimum coverage provision.

PARTIES TO THE PROCEEDING

All the parties to the proceeding are listed on the cover of the brief.

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INTEREST OF THE AMICUS CURIAE¹

Founded in 2009 by a group of students during the health care reform debate, Young Invincibles provides a voice for young adults in a policy process that too-often excluded young adults. No advocacy organization provides a comparable voice for young adults in health care policy. Young adults are under-represented in this policy process because of the lack of economic resources and opportunity needed to influence the political debate. Over 12.2 million young adults live below the poverty line. The unemployment rate for people ages 18 to 34 is currently about 12%, compared to between 8 to 9% for the population as a whole. U.S. Census, *Current Population Survey: Annual Social and Economic Supplement (2010)* (“U.S. Census (2010)”). Because of this lack of resources, young adults are not a powerful constituency and thus have not been the focus of attention in health care legislation.

¹ Pursuant to Rule 37.6 of the Rules of the Supreme Court of the United States, counsel for *amicus* represents that no counsel for a party authored this brief in whole or in part and that none of the parties or their counsel, nor any other person or entity other than *amicus*, its members or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Additionally, all parties have filed notices with this Court consenting to the filing of amicus curiae briefs.

Young Invincibles recognized this void and built a coalition of over twenty national youth-focused organizations with a combined membership of more than 1.5 million young adults. This coalition developed a perspective and a policy platform on the evolving health care legislation to ensure that the needs of young adults – 20 million of whom are uninsured - were addressed in the process. U.S. Census (2010).

Young Invincibles has continued its work to give young adults a voice in legislative, regulatory and legal arenas by informing policymakers about the unique needs of young adults and organizing grassroots campaigns to educate its constituency. For example, Young Invincibles serves as a consumer representative to the National Association of Insurance Commissioners, which acts as a forum for the creation of model laws and regulations, presenting research findings on the impact of reform implementation on young adults. Interactions with thousands of young adult members, polling, and extensive research on the challenges they face drive Young Invincibles' advocacy.

Now, of all parties and *amici* to this lawsuit, no one else will present the desperate

situation young adults faced before the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (“Affordable Care Act” or “ACA”) passed. As an organization that has dedicated the entirety of its health care research capacity to reform’s impact on young adults, Young Invincibles will provide the data necessary to analyze the commercial activity impacted by the entire regulatory scheme. No other party will describe exclusively the tremendous impact on the lives, improved economic prospects, and career choices that the ACA will create for young adults.

The *amicus* will show by empirical data and detailed analysis that the ACA is vital to the health status of young adults. *Amicus* will dispute any claims seeking to portray young adults as victims of reform, when, in fact, the ACA will benefit this age group more than any other population segment. Accordingly, *amicus* will show that the minimum coverage provision serves as an integral part of a federal regulatory scheme that drastically improves the health and lives of millions of young adults.

SUMMARY OF THE ARGUMENT

There are approximately 20 million uninsured young adults between the ages of 18

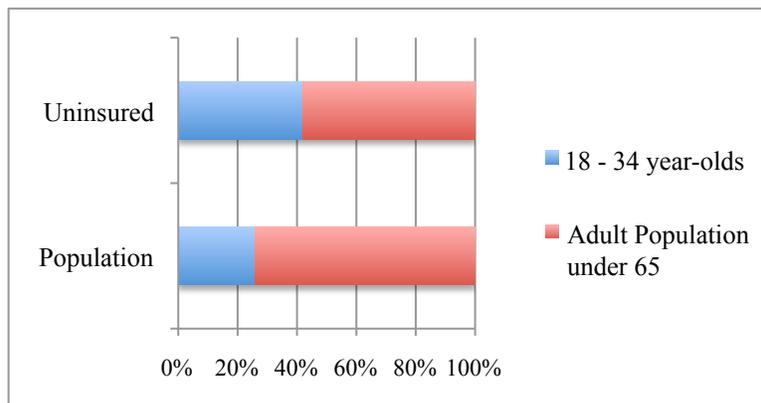
and 34. U.S. Census (2010). Young adults both want and need health insurance, and their interests are substantially affected by the decisions made and arguments presented in this case. The disproportionately high uninsurance rate for young adults under the pre-ACA status quo has severe health and economic consequences for this population. As a result, the ACA offers tremendous opportunities for improvements in the health and financial status of young adults, particularly provisions made possible by the minimum coverage requirement. The ACA will – and has already begun to – provide access to affordable health care for most uninsured young adults struggling in the current insurance market, and the possibility of quality care for millions of underinsured young adults.² See Kaiser Commission on Medicaid and the Uninsured, *Underinsured in America: Is Health Coverage Adequate?* (2002); see also Affordable Care Act.

The minimum coverage provision at issue does not impose a significant burden on young

² Underinsured are defined as those who “have health insurance but face significant cost sharing or limits on benefits that may affect its usefulness in accessing or paying for needed health services.” Kaiser Commission on Medicaid and the Uninsured, *Underinsured in America: Is Health Coverage Adequate?* (2002).

adults. On the other hand, eliminating this and other pillars of the ACA would undermine the regulatory scheme and harm the health and economic well-being of millions of young Americans by denying them access to affordable health care.

In 2010, young adults made up 26% of the population under the age of 65, but account for 42% of that population's uninsured. U.S. Census (2010).



Source: U.S. Census (2010).

This high rate of uninsured young adults does not reflect a free choice by young Americans to go without insurance, but rather the lack of affordable coverage options. When health insurance is affordable and available,

young adults enroll at rates similar to older Americans. Jennifer Nicholson, et al., Commonwealth Fund, *Rite of Passage: Young Adults And the Affordable Care Act of 2010* at 11 (2010), (“Commonwealth Fund, Rite of Passage 2010”). In fact, few young Americans – just 5% - actually choose to go uninsured. The State of Young America, *Poll Results*, http://www.demos.org/sites/default/files/publications/SOYA_PollResults_2.pdf. Instead, the vast majority of young people say they lack insurance because of a lack of affordable options or because they have a pre-existing condition. *Id.* The majority of young adults favor the ACA, in part because of these pervasive barriers to coverage for young adults. Lydia Saad, *Verdict on Healthcare Reform Bill Still Divided*, Gallup (June 22, 2010), *available at* [http://www.gallup.com/poll/140981/Verdict-Health care-Reform-Bill-Divided.aspx](http://www.gallup.com/poll/140981/Verdict-Health-care-Reform-Bill-Divided.aspx) (showing that 57% of 18-29 year olds favor the ACA).

Despite the relatively good health of young adults, they suffer significant economic and health consequences from their uninsurance and underinsurance. Young adults without insurance are likely to avoid seeking medical care due to cost; in a recent study, nearly one-third of

uninsured young adults said their health situation had worsened because they did not have insurance. Commonwealth Fund, *Affordable Care Act Has Potential to Extend Health Insurance to Up to 13.7 Million Uninsured Young Adults, Protect Young Adults from Medical Debt* at 2 (2010). When they do seek care – about half of uninsured young adults access the health care market – they struggle to pay for it, add to the burdensome uncompensated care costs felt by others, and face skyrocketing medical debt and even bankruptcy. See U.S. Department of Health and Human Services, Medical Expenditure Panel Survey, <http://meps.ahrq.gov/mepsweb/>. Young adults need affordable, accessible insurance to maintain good health and prevent them from burdening the medical system when their health deteriorates because they are unable to access the system early enough.

By requiring that all Americans get insurance, the ACA will lower prices to a level young adults can afford, and cover young adults with pre-existing conditions. See Jeffrey M. Jones, *Income Trumps Health Status in Young Adults' Coverage*, GALLUP (February 26, 2010) (“Gallup, *Income Trumps*”). Creating affordable individual insurance will also provide young adults, often looking to go back to school,

change jobs, make an interstate move, or generally build their careers and their families, with the financial flexibility and variety of options to switch from the coverage they might currently have. The availability of reasonably-priced, portable coverage will have a strong positive effect on commerce as it will allow young adults to move freely to more productive jobs. See 42 U.S.C. § 18091(a)(2).

Moreover, in practice, the minimum coverage provision will not require young adults to purchase coverage unless they can afford to do so at a reasonable price. The Act's tax for failing to maintain minimum coverage will not be assessed against anyone whose family is below the poverty line. 26 U.S.C. § 5000A(e)(1)(B). Nor will it be assessed against anyone who cannot purchase coverage for less than 8% of his or her income. *Id.* at § 5000A(e)(1)(A). Also, the ACA provides subsidies in the form of government tax credits for anyone whose family income is less than 400% of the poverty line; approximately two-thirds of young adults will qualify for subsidies or Medicaid. U.S. Census. Millions of uninsured young adults will also be eligible for the Medicaid expansion, which now will cover childless adults with family incomes up to 133% of poverty. *Id.* As a result, in reality,

everyone required to purchase insurance will be able to afford to do so. The minimum coverage provision simply eliminates the incentive for individuals who can pay for coverage to choose instead to take their chances, passing the costs of medical care on to people who pay for insurance.

The ACA's minimum coverage provision, end to discrimination based on preexisting conditions, the expansion of Medicaid coverage, and the establishment of exchanges with tax credits are all essential pieces of a regulatory scheme that provides young adults with access to affordable care. These provisions collectively provide an opportunity for young adults to get the medical treatment they need without depleting their finances or limiting life opportunities. The minimum coverage provision is an essential piece of the regulatory scheme through which to provide these improvements, and without which the system cannot function.

ARGUMENT

I. YOUNG ADULTS ARE DISPROPORTIONATELY UNINSURED BECAUSE OF ECONOMIC CIRCUMSTANCES.

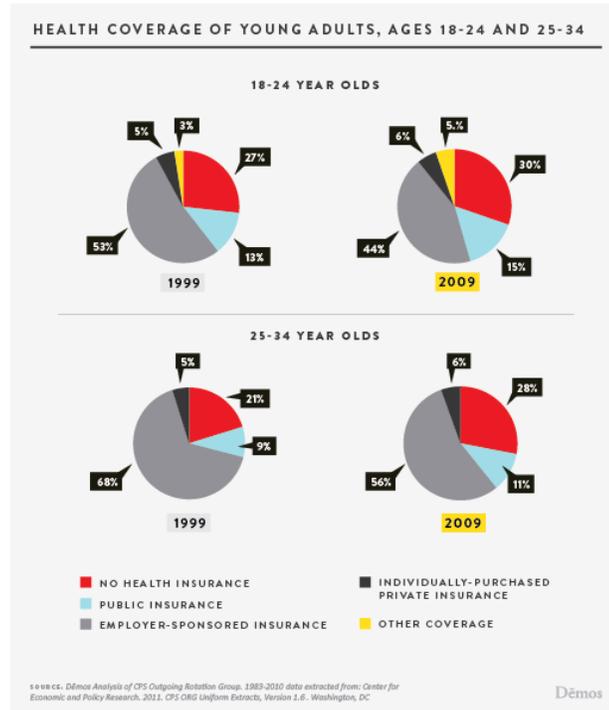
The cultural myth of the “young invincibles” rests on the mistaken inference that young adults do not have health insurance by choice. The public and the media often assume that the high rate of uninsurance among young people is because young adults do not think they need coverage. This assumption is incorrect. Young adults have limited access to the most common form of coverage, employer-provided insurance, and are frequently priced out of individual insurance. As a result, young adults remain uninsured in much higher numbers than older Americans not by choice, but due to economic circumstances.

A. Young adults are less likely to have access to employer-sponsored coverage.

Young adults more often lack access to employer-sponsored health insurance, which is the source of insurance for the vast majority of Americans. Only 53% of young adults, ages 19 to 29, have access to employer-sponsored

insurance, compared to 76% of adults over the age of 30. Jennifer Nicholson, et al., Commonwealth Fund, *Rite of Passage? Why Young Adults Become Uninsured and How New Policies Can Help* at 6 (2009) (“Commonwealth Fund, *Rite of Passage? 2009*”). In the past 10 years, employer-sponsored insurance has dropped by 12.8 percentage points for 18 to 24 year-olds, and by 8.5 percentage points for 25 to 34 year-olds. The State of Young America, *Health Care and Coverage*, http://www.demos.org/sites/default/files/imce/soya_HealthcareandCoverage.pdf. These drops are far greater in comparison to the overall drop in employer-sponsored coverage, which went down 4.4 percentage points in the same time period. *Id.*

Without the option of insurance from employment, and with limited access to Medicaid or tax credits before the ACA takes full effect, this low-income population is forced into the unsubsidized, largely unaffordable individual market, expensive in part due to the \$43 billion in uncompensated care that drives up premium costs. See 42 U.S.C. § 18091(a)(2)(F).



Source: State of Young America, *Databook* (2011),
http://www.demos.org/sites/default/files/publications/SOYA_TheDatabook_1.pdf.

B. Quality insurance on the individual market is too expensive for young adults, particularly for those with pre-existing conditions.

Purchasing insurance on an unsubsidized individual market is too costly for young adults.

The average annual premium of an individual plan offered to a healthy 27-year old is \$1,723.³ AHIP Center for Policy Research, *Individual Health Insurance 2009: A Comprehensive Survey of Premiums, Availability and Benefits* (2009) (“AHIP Center for Policy Research, *Individual Health Insurance 2009*”). To put this in perspective, the average young adult with no access to employer-sponsored insurance earns \$14,746 per year, making individual plans effectively unattainable. U.S. Census (2010).

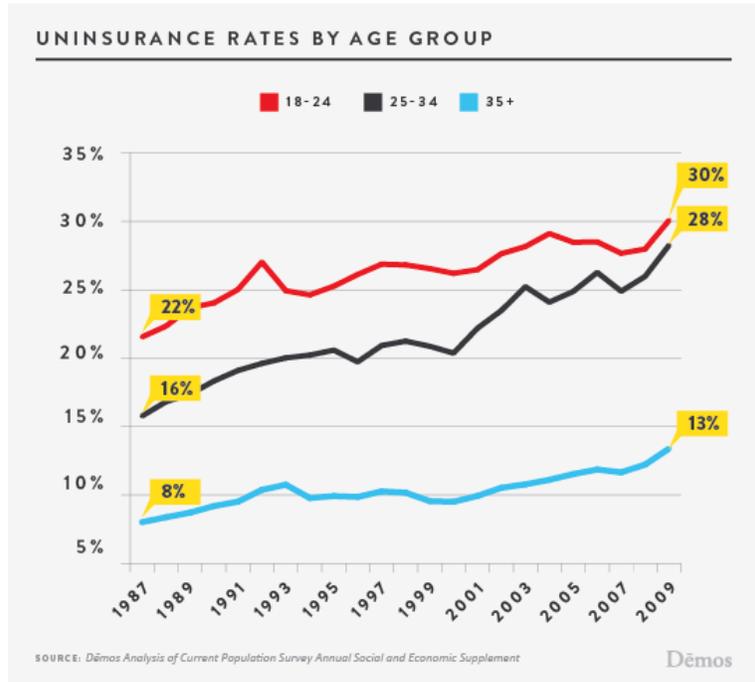
Premiums for those with a pre-existing medical condition are even higher. AHIP Center for Policy Research, *Individual Health Insurance 2009*. Young people with pre-existing conditions get offered coverage (or refused coverage) on the individual market at about the same rate as members of the generation older than them who also have pre-existing conditions. In other words, the frequency with which the consumer is offered coverage by an individual market insurer for a young adult between 18 and 34 with a preexisting condition is roughly equal to someone with a preexisting condition between the ages of

³ This estimate only covers those who actually decide to take up individual coverage, and does not include higher premium offers for those with conditions making coverage more expensive, forcing them out of the individual market altogether.

35 and 49. But the individual between the ages of 35 and 49 is 15% more likely to have coverage through an employer. *Id.*; U.S. Census (2010). Thus, a greater percentage of younger adults with pre-existing conditions have to turn to the individual market, and even if they obtain an offer of coverage, the premiums are higher than the already unaffordable, unsubsidized rates that 18 to 34 year-olds without preexisting conditions must pay. Simply put, less healthy young adults have even fewer healthcare options than older adults in poor health.

C. Because young adults are priced out of the health insurance market, the pre-ACA status quo left this segment of the population disproportionately uninsured.

Without the tax credits or access to Medicaid promised by the ACA, young adults have few coverage options. People ages 18 to 34 make up 26% of the under-65 population, but account for 42% of the uninsured in that age range. U.S. Census (2010). About 19.8 million of the over 70 million young adults between 18 and 34 are uninsured. U.S. Census, *Current Population Survey: Annual Social and Economic Supplement* (2011) (“U.S. Census (2011)”).



Source: State of Young America, *Databook* (2011),
http://www.demos.org/sites/default/files/publications/SOYA_TheDatabook_1.pdf

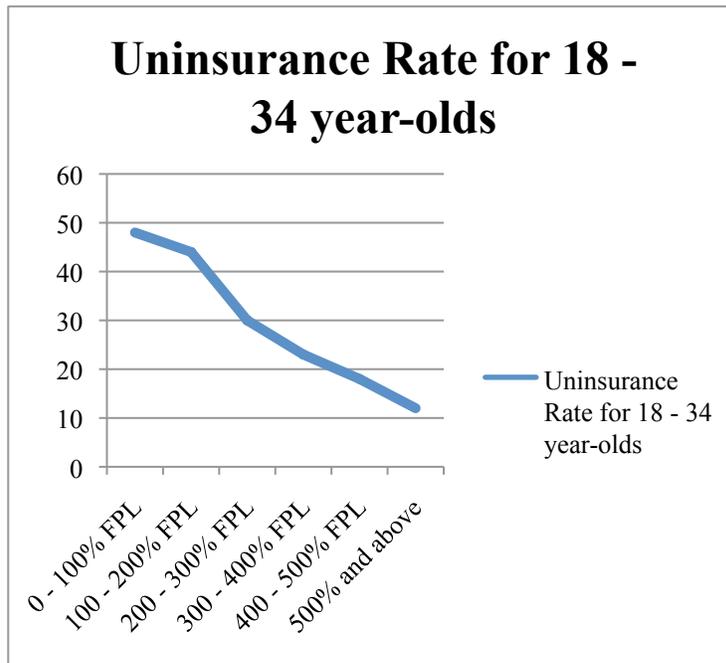
Millions more remain underinsured, enrolling in barebones coverage that leaves them without access to everyday care. Families USA, *Barebones Insurance Would Do Little to Help Uninsured Working Families* (1999); see also Yi Want Change, *Comprehensive Insurance: Not*

Insurance In Name Only: YIWC Analysis of Catastrophic Plan and Dependent Coverage (2009).

The high rate of uninsurance is not voluntary; it is caused by the lack of affordable, available health insurance. This striking rate of non-coverage has serious consequences for young adults, and ultimately for the health care system and the health of the population as a whole.

D. When young adults do have access to affordable coverage, they enroll.

Studies show that when health insurance is affordable and available, young adults enroll. When young adults ages 19 to 29 are offered affordable health insurance through employers, 78% enroll, compared to 84% of adults over age thirty. Commonwealth Fund, *Rite of Passage? 2009*. The similar enrollment rates when presented with affordable options demonstrate that the uninsurance rate is not due to cultural opposition or considered refusal, but cost.



Source: U.S. Census (2010).

Moreover, young adults with higher income levels are far more likely to have insurance. The uninsured rate is just 14% for young adults living over 400% of the federal poverty level (“FPL”), but rises to 46% for young adults making less than 200% of the FPL. U.S. Census (2010); Gallup, *Income Trumps*. With 37% of young adults living below 200% of the FPL, it is no surprise that young adults are the most uninsured age group.

The link between income and coverage refutes the story often told that healthy young people choose not to buy insurance because they do not want or think that they need it. In fact, healthy, higher-income young adults are more likely to have insurance than lower income, often less healthy young adults, completely dispelling unfounded assumptions to the contrary. Gallup, *Income Trumps*.

A recent bipartisan, national poll conducted in the fall of 2011, found that the vast majority of young adults who were uninsured lacked coverage because it was too expensive, their jobs did not offer coverage, or they had a preexisting condition. The State of Young America, *Poll Results*, http://www.demos.org/sites/default/files/publications/SOYA_PollResults_2.pdf. In fact, just 5% of young adults stated that they did not purchase health insurance because they did not want to be insured. *Id.*

Moreover, when the first major new offer of affordable coverage under the Affordable Care Act took effect, young adults quickly took advantage of the option. The provision mandating that family plans offer coverage to young adults up to the age of 26 provided a new

affordable option for high school and college graduates. This enrollment exceeded the original estimations. Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 27,122 (May 13, 2010). In 2010, the Department of Health and Human Services estimated that 3.4 million 19 to 25 year-olds were currently uninsured, and had parents who had insurance with the possibility of family coverage. *Id.* They estimated that anywhere from 190,000 to 1.6 million uninsured young adults would enroll in 2011. *Id.* They underestimated the dire need for coverage; 2.5 million young adults enrolled on their parents plan in 2011 – a take-up rate of nearly 75% in one year. U.S. Department of Health and Human Services, ASPE Issue Brief, *2.5 Million Young Adults Gain Health Insurance Due to the Affordable Care Act*, (2011).

It is no wonder that polls show that young adults want insurance and are in fact the most supportive of the reform law. Lydia Saad, *Verdict on Healthcare Reform Bill Still Divided*, Gallup (June 22, 2010), *available at* [http://www.gallup.com/poll/140981/Verdict-Health care-Reform-Bill-Divided.aspx](http://www.gallup.com/poll/140981/Verdict-Health-care-Reform-Bill-Divided.aspx).

II. THOUGH HEALTHIER THAN THE REST OF THE POPULATION, YOUNG ADULTS FACE SERIOUS HEALTH AND ECONOMIC CONSEQUENCES AS A RESULT OF UNINSURANCE OR LACK OF ACCESS TO CARE.

Not having health insurance or access to care can have negative health and financial consequences, and artificially restrain the career and educational choices facing young adults during this period of their lives. Young adults have chronic illnesses, catastrophic accidents, unpredictable health crises, and need preventive care. Their low incomes lead to serious financial troubles when forced to pay out of pocket. This financial difficulty limits career and educational flexibility for those saddled with expenses or stuck in a less productive job in order to maintain existing coverage. As a result, uninsurance has long-lasting consequences to the health and economic opportunity of young adults.

A. Young adults need medical care to treat chronic conditions, respond to sudden accidents or illnesses, and provide critical preventive services.

Many young adults have chronic conditions requiring ongoing care. Approximately 15% of young adults live with a chronic health condition

such as asthma, diabetes, or cancer. Commonwealth Fund, *Rite of Passage? 2009*. Another 9% grapple with depression or anxiety disorders. *Id.* Moreover, almost 16% of young adults ages 18 to 24 have what is classified as a “preexisting condition,” and without the ACA are often excluded from the current market altogether. Families USA, *Health Reform: Help for Americans with Preexisting Conditions* at 3 (2010).

Additionally, young adults need a range of care, from the sudden accidents and unexpected illnesses, to the routine preventive care. Rates of motor vehicle accidents, sexually transmitted diseases, and substance abuse peak in young adulthood. Robert Fortuna, et. al, *Dependence on Emergency Contracts among Young Adults in the United States*, J. Gen. Intern Med. 642-3 (2010). More accidents mean that young adults ages 19 to 29 find themselves in the emergency room more than any other age group under the age of 75. M. Jane Park, et al., *The Health Status of Young Adults in the United States*, Journal of Adolescent Health 39 (2006). Additionally, almost half of pregnancies are unplanned, and three-quarters of unplanned pregnancies are from women under the age of 30. The National Campaign to Prevent to Prevent Teen and

Unplanned Pregnancy, *The DCR Report*, http://www.thenationalcampaign.org/resources/dcr/SectionA/DCR_SectionA.pdf. Even the healthiest young adult, then, is never more than an instant from entering the health care market where they will need insurance to afford proper care. Even if a young adult is lucky enough to avoid injury, he or she still needs preventive care. Prevention, care for chronic illnesses, and emergency care make coverage essential to the short- and long-term health of young adults.

B. Young Adults Need Medical Care For Pregnancy

Young adult pregnant women between the ages of 20 to 34 have had the highest birth rates for their age group than any other age group from 1990 to 2009. Joyce A. Martin, M.P.H et al., Division of Vital Statistics, National Vital Statistics Report, *Births: Final Data, 2009* (2011) at 39.

Women presently face many obstacles in obtaining healthcare. The cost of having a baby can easily reach thousands of dollars, making insurance coverage critical for pregnant women. Kaiser Family Foundation, *Maternity Care and Consumer-Driven Health Plans* (2007),

<http://www.kff.org/womenshealth/upload/7636ES.pdf>. The cost of delivery alone is between \$6,000 and \$8,000. American Pregnancy Association, *Health Insurance for Pregnant Women* (2011).

In addition, women are more vulnerable to losing their insurance compared to men, as they are more likely to be covered as dependents. This subsequently places them at greater risk of losing coverage if they become widowed or divorced, their spouse loses his job, his employer drops family coverage or increases premium and out-of-pocket costs to unaffordable levels. Kaiser Family Foundation, *Women's Health Policy Facts* (2010).

Before the Affordable Care Act, only six percent of women purchased coverage through individual insurance markets. These plans have traditionally been able to deny coverage to individuals with a "preexisting condition" such as a pregnancy. Furthermore, plans sold on the individual market often do not cover many important services for women, such as maternity care. Kaiser Family Foundation, *Impact of Health Reform on Women's Access to Coverage and Care* (2010).

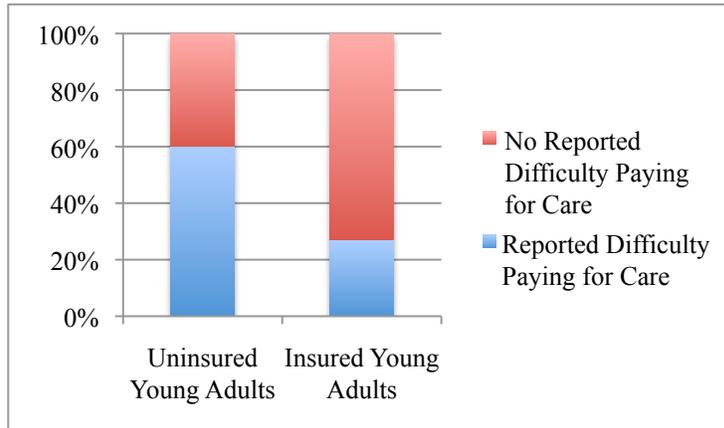
The ACA makes many changes to this market, and subjects all individual insurance plans, not just plans sold in state-based exchanges, to the same regulations regarding discrimination. Therefore, it will ban the practices of gender rating (charging higher premiums to women than men solely based on gender) and preexisting condition exclusions starting in 2014. Furthermore, all plans sold on the individual market will have to cover a minimum level of services, which includes maternity care. *Id.*

The ACA provides additional services that disproportionately benefit young adults. Some of the benefits afforded as a result of the ACA include the requirement for new insurance plans to offer minimum coverage, referred to as essential health benefits, effective 2014. 42 U.S.C. § 18022. This benefit package will include categories of services that will benefit pregnant women such as: ambulatory care, emergency services, hospitalization, maternity and newborn care, mental health and substance abuse disorder services. *Id.* In addition, states will receive new grants for home visiting and postpartum depression services. Nursing mothers will receive new workplace protections: break time and private space to express milk. 29 U.S.C. § 207; 42 U.S.C. § 1396d; Kaiser Family Foundation,

Impact of Health Reform on Women's Access to Coverage and Care (2010).

C. The inability to afford quality insurance often results in many health needs either going unmet and ultimately causing a decline in health, or causing young adults to face serious financial difficulties when attempting to pay for care out of pocket.

Unfortunately, the various health care needs of young adults often go unmet, because most young adults without health insurance avoid getting necessary care due to the price. More than three-quarters of uninsured young adults reported not seeking medical care because of high costs, compared to just 37% of young adults with insurance. Commonwealth Fund, *Rite of Passage* 2010. Of those uninsured young adults who sought medical attention, 60% reported difficulty paying for their treatment, compared to just 27% of insured young adults. *Id.*



Source: Commonwealth Fund, *Rite of Passage* 2010.

Paying for necessary medical expenses while uninsured or underinsured can have drastic consequences. Two-thirds of young adults earn below 400% of the FPL, or approximately \$43,320. U.S. Census (2010). This limited-income population has little opportunity to build up savings.⁴ At the same time, about half of uninsured young adults incur medical costs. U.S. Department of Health and Human Services,

⁴ The average net worth of a young adults household under the age of 35 actually decreased by almost 25% between 2004 and 2007 (almost all other age groups either increased in that period; only 55 to 64 had a slight decrease). Patrick Purcell, Congressional Research Service, Retirement Savings and Household Wealth in 2007, (April 2009), available at <http://www.policyarchive.org/handle/10207/bitstreams/19203.pdf>.

Medical Expenditure Panel Survey, <http://meps.ahrq.gov/mepsweb/>. As a result, when young adults do face a medical crisis, they face medical bankruptcies and burdensome debt at higher rates than their older counterparts. Michelle Doty, Commonwealth Fund, *Seeing Red: Americans Driven Into Debt By Medical Bills* (2005) at 2. For those young adults with medical debt, the mean debt level is \$13,303 – higher than any other age group, and credit card debt is 79% higher for those with medical debt – again a much higher difference than for any other age. Cindy Zeldin & Mark Rukavina, Demos and the Access Project, *Borrowing to Stay Healthy: How Credit Card Debt is Related to Medical Expenses* (2007). In a recent national, bipartisan survey, of the 40% of young adults who saw their debt increase over the past four years, 27% said they saw an increase in their medical debt. The State of Young America, *Poll Results*, http://www.demos.org/sites/default/files/publications/SOYA_PollResults_2.pdf.

The inability to afford care adversely affects the health of young adults, sometimes permanently. Nearly one-third of uninsured young adults reported their health worsening because they did not access health care soon

enough, and almost half of uninsured young adults with a chronic health condition reported their condition worsened when they avoided medical treatment due to cost. Commonwealth Fund, *Rite of Passage: 2010*, at 2. Failure to treat these conditions often increases young adults' risk later in life. Andrew Wilper, et al., *A National Study of Chronic Disease Prevalence and Access to Care in Uninsured U.S. Adults* 3 *Annals of Internal Medicine* 149, 170 (2008).

D. The lack of adequate health insurance is an economic barrier to young adults.

The threat of uninsurance to a young adults' health and finances provides a serious incentive for young adults lucky enough to have coverage to stay tethered to jobs or geographic locations. Some college students can often stay covered by their parent's plan back home and access emergency care while at school. Others need to move for school and purchase their own insurance. See M. Planty, et al., National Center for Education Statistics, U.S. Department of Education, *The Condition of Education 2008* (2008). But when they graduate or leave their parent's geographic location, or if they never enroll in college, or if their parent's do not have insurance, the need to stay covered by an

employer limits career prospects and education opportunities of young adults. This has negative economic consequences. To reach their potential, workers must have the option to change jobs, go back to school, or move across country in search of the best opportunities. The lack of health care options stifles economic growth.

These facts point to the same conclusion: the pre-ACA status quo was unhealthy for young adults, strained already difficult financial circumstances, and limited economic and educational opportunities.

III. THE ACA WILL OFFER AFFORDABLE INSURANCE TO MOST UNINSURED YOUNG ADULTS.

The ACA has the potential to provide affordable health insurance to the majority of young adults, giving the millions of young adults who want and need coverage a stake in the outcome of the present case. Each aspect of the regulatory scheme – the minimum coverage provision, the Medicaid expansion, and tax credits – is essential to give this age group a chance at a healthy and financially stable future.

A. The ACA allows young adults to avoid debilitating uninsurance

through non-discrimination provisions, the availability of tax credits to purchase insurance on an exchange, and the expansion of medicaid coverage.

The minimum coverage provision is inextricably interwoven with two other provisions that benefit young adults: the creation of tax credits and exchanges, and the end to discrimination against those with preexisting conditions. Without the minimum coverage provision, sustaining affordable coverage becomes impossible.

The ACA provides insurance tax credits to individuals earning up to 400% of FPL, making health care affordable for millions of young Americans. 26 U.S.C. § 36B (2010). Almost 9 million young adults ages 18 to 34 are limited-income, earning between 133% and 400% of FPL, and will qualify for tax credits. U.S. Census (2010). The tax credits are a huge benefit for limited-income young adults, but could become unsustainable if private insurance premiums are not kept under control through the risk sharing that results from minimum coverage. Similarly, eliminating discrimination against preexisting conditions, including the almost 16% of young

adults with chronic conditions, requires broad sharing of risk to keep coverage affordable.

These reforms will also have a significant impact on the health care system as a whole. Young adults enroll in affordable coverage when available, evidenced by the huge popularity of the new dependent coverage extension. They are also likely to take advantage of the new options. By enrolling in insurance through these reforms, these young adults will be less likely to avoid seeking medical treatment and, as a result, stay healthier and improve the risk pool. This allows the health care system to carry the cost brought by the end to discrimination against those with preexisting conditions, ensuring that all young adults gain fair access to the health care system. 42 U.S.C. § 300gg (2010).

IV. THE MINIMUM COVERAGE PROVISION IS AN ESSENTIAL PART OF A REFORM REGULATORY SCHEME THAT SIGNIFICANTLY BENEFITS THE HEALTH AND ECONOMIC PROSPECTS OF YOUNG ADULTS.

The benefits to young adults of the insurance tax credits and exchange participation cannot be realized without the inclusion of the minimum coverage provision. The status quo creates an indirect tax on premiums to cover

necessary treatment of uninsured individuals, making individual coverage unaffordable for young adults – a predicament discussed previously. Indeed, the uncompensated care that uninsured people received drove up health costs for those who purchased insurance. By including a minimum coverage provision, the ACA ensures that everyone purchases insurance and removes the indirect tax to individual plans, which contributes to the current high cost of premiums.

Additionally, including the important ban on preexisting condition discrimination, and tax credits, but no minimum coverage provision, would mean that the sickest individuals would seek coverage first. This could increase premiums by up to 27% and make insurance coverage even less affordable for young adults. Jonathan Gruber, Center For American Progress, *Health Care Reform is a 'Three-Legged Stool': The Cost of Partially Repealing the Affordable Care Act* (2010), at 5. Relatedly, many uninsured individuals might wait until they are sick to enter the market or receive care from community health centers, a cost that ultimately the insured population must bear – again making premiums unaffordable.

Without the minimum coverage provision, young adults are more likely to be priced out of the exchanges than older, wealthier, age groups. The minimum coverage provision is thus essential to covering limited-income young adults through tax credits and coverage for those with pre-existing conditions, particularly those who are a part of the throng of millions of young adults changing locations. And importantly, it is essential to lowering premiums for all young adults. At the same time, the Act's tax penalties for failing to maintain minimum coverage will not be assessed against any young adult below the poverty line, nor against anyone who cannot purchase coverage that costs him or her less than 8% of his or her income. 26 U.S.C. § 5000A(e)(1)(A-B).

Young adults both want and need health insurance. The minimum coverage provision is an integral part of the regulatory scheme that alleviates the high rate of uninsurance for young adults by reducing the implicit uncompensated care tax on premiums, ensuring coverage of those with pre-existing conditions, and providing much-needed tax credits, thereby providing affordable options as young adults move, go to school, and seek employment.

CONCLUSION

For the foregoing reasons, this Court should uphold the minimum coverage provision of the Affordable Care Act.

Dated: January 13, 2012

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**CERTIFICATE OF COMPLIANCE
WITH LENGTH**

This brief complies with the type-volume limitation of Rule 33.1(g) of the Rules of the Supreme Court because this brief contains 5,409 words, excluding the parts of the brief exempted by Rule 33.1(d) of the Rules of the Supreme Court.

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2012, forty copies of the foregoing were hand delivered to the Clerk of the court for the United States and three copies of the foregoing have been served, via first class mail on all counsel of record as follows:

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