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Introduction

Chairman Cummings, Ranking Member Jordan, and Members of the House Committee on Oversight and Government Reform – thank you for the opportunity to speak with you today. I am Frederick Isasi, the Executive Director of Families USA. For nearly 40 years, we have served as one of the leading national voices for health care consumers both in Washington, D.C. and on the state level. Our mission is to allow every individual to live to their greatest potential by ensuring that the best health care is equally accessible and affordable to all. I appreciate the opportunity to speak to the Committee today about the disastrous effects on families across this nation if federal judges choose to strike down the Affordable Care Act *in the Texas v. United States* lawsuit.

Families USA's work is to represent the needs and interest of our nation's families. We are proud to work closely with congressional and administration leaders on bipartisan efforts to achieve these goals. This year, we've been very active supporting Congress' efforts to ban surprise medical billing, improve access to lower cost generic drugs, increase transparency in health care pricing, and enhance access to interoperable data systems. In part because we see that bipartisan progress is possible, it is deeply disappointing that some leaders continue to focus on invalidating a federal law enacted nearly a decade ago that ensures core protections against insurance company abuses to all in our country as well as providing high quality health coverage to more than 20 million men, women, and children.

I cannot make this case any clearer: The Affordable Care Act has become part of the fabric of the United States. Health care providers, drug and device manufacturers, employers, and insurers have all based their long-term business strategies on its continued existence. More importantly, millions of families across the country have come to rely on its coverage options and vital consumer protections. Invalidating the ACA would mean ripping these protections away with no meaningful and effective way to replace them. It would mean profound and indelible damage to families' health and financial security, the health care delivery system, and, frankly, the American people's confidence in its leaders.

Despite the Political Rhetoric, the Public Overwhelmingly Supports the Affordable Care Act

For those who continue to seek to undermine the ACA, I want to make my point very clear: ***The American people are not with you.*** Public opinion about the law has evolved since enactment of the ACA and for well over a year a majority of Americans have supported the law.¹ Even more importantly when you strip away the partisan rhetoric, and examine the key coverage elements of the ACA, the public's support grows overwhelming.

Let me give you a sense of how strongly the public supports the ACA. In a poll conducted 3 months ago, the Kaiser Family Foundation found that overall, seven in ten voters say it is very important to them that policymakers maintain the ACA's prohibition on

insurance companies denying care to people with preexisting conditions.² Further, 64 percent say it is very important to keep insurance companies from charging more to people with preexisting conditions.³ Similarly, two thirds think the federal government should require insurers to cover a certain set of benefits and cover pre-existing conditions.⁴ A majority of both Democrats *and* Republicans support these three guarantees (guaranteed issue, community rating, essential benefits), which are central protections of the Affordable Care Act.⁵

Despite attacks on the critical program that provides coverage for more than 70 million people – half of whom are children - the public also supports the federal option to expand Medicaid programs. In a November 2018 poll, 77 percent of the public favored that provision, and 59 percent of those living in non-expansion states said they would like to see their states expand Medicaid.⁶ Last fall, voters in Idaho, Nebraska, and Utah explicitly voiced their support at the ballot box by voting overwhelmingly to expand Medicaid in their states. Each of those states has deep conservative political traditions and President Trump won those three states two years earlier by an average of 25 percentage points.⁷

Consumer protections and Medicaid expansion are not the only parts of federal coverage law that remain quite popular. Subsidies for care in the individual market have strong support from the public across party lines. 81% of the public favors financial help to low- and moderate- income Americans, including 92% of Democrats, 82% of independents, and 63% of Republicans.⁸

How We Got Here, and What America Needs from its Elected Leaders

Following enactment of the ACA in 2010, opponents of the law began immediately to seek to repeal, overturn, or otherwise dismantle the law. On two separate occasions, litigation to invalidate all or parts of the ACA made its way all the way to the Supreme Court.⁹ In both cases, the Supreme Court upheld the constitutionality of the law.¹⁰

Within the legislative branch, between 2011 and 2017, Republican leaders in Congress sought to repeal all or part of the ACA more than 70 times.¹¹ In 2017, Republican leaders in Congress and President Trump nearly succeeded after the House narrowly passed legislation that would have repealed the ACA and the Senate came within just a few votes of following suit.

After failing to repeal the ACA, they successfully passed the “Tax Cuts and Jobs Act” in December 2017. One provision of the law effectively “zeroed out” the ACA’s individual mandate, which imposed a financial penalty for failure to purchase comprehensive health insurance. While there is no indication that congressional leaders believed that this provision would effectively invalidate the entire law, politically motivated state Attorneys General have attempted to make this flawed legal argument. Both conservative and progressive legal scholars believe that the litigation is groundless.¹²

Those who bear primary responsibility for the risks created by the lawsuit are the officials who brought it and the judges who have given unwarranted credit to plaintiffs' arguments. But federal elected officials have played a key role as well.

The administration's decision not to defend duly enacted federal legislation represents the abandonment the President's core Constitutional responsibility to "'take care that the laws be faithfully executed.'"¹³ We urge the President and the Attorney General to reconsider this decision, which marks a radical departure from longstanding practices of the Department of Justice under Democratic and Republican administrations alike.

More fundamentally, it was Republican leaders in Congress and President Trump that enacted the change in federal law that became the faulty basis for this lawsuit. They created this problem and they must own the outcome if this lawsuit results in judges dismantling the ACA.

What America will lose if Judges Overturn the ACA

If federal judges wrongly decide to overturn the ACA in the case of *Texas v. United States*, 20 million people in America will lose health insurance.¹⁴ Millions who retain coverage will experience skyrocketing health care costs while vital consumer protections are ripped away from people with preexisting conditions, women, older adults, and others who need health care.¹⁵

Attached to my testimony, and incorporated by reference, is the amicus brief Families USA and other consumer organizations filed in the Fifth Circuit, which paints a clear picture of what this lawsuit could mean for our country. My testimony will focus more narrowly on six populations impacted by a repeal of the ACA:

- People enrolled the individual market
- The uninsured
- People enrolled in employer-sponsored insurance
- Rural residents
- America's veterans
- Medicare beneficiaries

People Enrolled in the Individual Market

The individual market, which is where the ACA's insurance exchanges operate, has always been one of the weakest segments of our country's health system. This market still needs a lot of work, but without question the ACA made individual health insurance substantially better and more affordable for the vast majority of families who rely on this market for their health coverage.

As you know, before the enactment of the ACA, insurers in the individual market could discriminate against people with preexisting conditions, but let us not gloss over what

that meant. Until less than ten years ago, anyone diagnosed with cancer, heart disease, depression, diabetes, high blood pressure, or even high cholesterol could be charged additional premiums or be denied coverage outright. More than two out of every five people (42.7%) who applied for insurance were turned down.¹⁶ Someone who got sick while they were insured could see their insurance terminated; and in 44 states, an insurance company could immediately rescind a policy, without any state review, if the company concluded that an enrollee had a preexisting condition.¹⁷ Women were charged up to 81% more than men simply because they were women;¹⁸ in effect, being a woman was a preexisting condition. Older adults too could be charged increased premiums in an uncapped “age tax” allowed by the vast majority of states.

Those aspects of the abusive insurance practices before the ACA are well-known. But I’d like to emphasize three features of the pre-ACA individual market that we often forget.

- First, people with preexisting conditions included millions of completely healthy people. Breast cancer survivors with their conditions in remission for up to 10 years were commonly denied coverage, for example.¹⁹ Past medical history, not just current health problems, could bar you from coverage at the insurance company’s door. If the courts repeal the ACA, 133 million people in this country who suffer from preexisting conditions will lose their current guarantee of non-discriminatory access to insurance.²⁰ They include 13 million children with special health care needs like autism or cerebral palsy, nearly one out of every five American children (18.2%).²¹ Many benefit from job-based insurance today, but they are just one pink slip away from losing that coverage and being forced to rely on the individual market. Today, insurance companies in that market cannot turn them away, charge them more because of past or present health problems, or exclude necessary benefits.
- Second, millions of women who bought their own insurance could not obtain maternity care coverage. In most of the country, purchasing such coverage required paying specially targeted premium increases, known as “insurance riders.” In 11 out of the country’s 50 state-capital cities, not a single health plan on the individual market covered maternity care – at any price. Unless women in those areas were insured by Medicaid, an employer, or the military, they were completely on their own in paying for prenatal care, labor, and delivery expenses.²²
- Third, and most appalling, women in some states could be denied insurance because they had been raped or were the victims of domestic violence. Members of Congress actually voted down legislation that would have banned this egregious practice.²³ A judicial repeal of the ACA would once again allow insurance companies to make more money by denying health care to survivors of rape and domestic violence.

The Uninsured

The ACA provided health coverage to more than 20 million people who would otherwise have been uninsured.²⁴ Controlling for multiple factors, researchers found that the ACA was responsible for a 46% decline in the number of uninsured adults. An estimated 18.1 million adults gained coverage who would have been uninsured without the ACA.²⁵ Under the ACA, the proportion of uninsured children dropped by 49.5%.²⁶ According to researchers, some 2.8 million gained coverage under the law.²⁷

The substantial reduction in the ranks of the uninsured has had profound effects on the health and livelihood of millions of families, the economy, and the health care sector. Last month, leading academic researchers released a comprehensive analysis of rigorous research findings to date analyzing the impact of the ACA's coverage expansion.²⁸

According to researchers, the ACA resulted in “reductions in cost-related delays in care and an increased share of the population with a personal physician and regular location of care.” Studies have found increased use of preventive services ranging from wellness exams to diabetes screening;

- “The available evidence suggests that chronic care did improve under the ACA, in particular through increased use of prescription medicines, including medications for the treatment of substance use disorder. Both the Medicaid expansion and new Marketplace coverage have been found to increase diagnoses of chronic conditions, which can potentially lead to more efficient treatment through early detection;”
- “Most studies show significant improvements in self-reported health.” Outcomes improved with “several serious but common conditions including appendicitis, peripheral artery disease, and aortic aneurysms;” and
- Rigorous studies have already begun to show that the ACA's coverage expansion has saved lives. A recent working paper found a “precise 8% decline in [total] mortality in [Medicaid] expansion states,” compared to states that did not expand Medicaid. And “published studies have found significant mortality reductions due to the ACA – one examining the Medicaid expansion's effects among high risk patients starting dialysis, and the other finding reduced disease-related mortality among young adults gaining coverage under the dependent coverage provision.” Moreover, “Medicaid expansions were associated with a nearly 50% decline in uninsured hospital stays, and [an] estimated a 30% decline in hospital uncompensated care.”

All of these gains would disappear if the federal courts repeal the ACA. The proportion of uninsured would increase by 65 percent, and “demand for [hospital] uncompensated care would increase by \$50.2 billion, an increase of 82 percent.”²⁹

The ripple effects on state economies could be grim. Using methodologies developed by leading health economist Sherry Glied, reduced federal financial support for health care would eliminate at least 1.7 million jobs.³⁰

People Enrolled in Employer-Sponsored Insurance

Employer-sponsored insurance (ESI) now covers 157 million people,³¹ including 57% of everyone in the country under age 65.³² If courts repeal the ACA, this enormous slice of America will lose critically important consumer protections, and medical bankruptcies will become more commonplace. Before the ACA, annual and lifetime limits applied to 59% of people with ESI.³³ People with significant health care costs often had their insurance come to an end long before their medical bills were full paid. Ten percent of all cancer patients reported that they reached a benefit limit in their insurance policy and were forced to seek alternative insurance coverage or pay the remainder of their treatment out-of-pocket.³⁴ The ACA banned those limits, giving privately insured families protection against catastrophic medical costs. Total bankruptcies, from all causes, fell by 50%.³⁵ If plaintiffs prevail in *Texas v. United States*, millions of people will once again find that, if they are hit by a car or come down with a very serious illness, their insurance will abandon them to bankruptcy at precisely the time they most need health coverage.

Further, if the courts end the ACA, privately insured families will no longer be guaranteed coverage of preventive care without deductibles, coinsurance, or deductibles. Currently covered services include “breast, colon, and cervical cancer screening, pregnancy-related services including breastfeeding equipment rental, contraception, well-child visits, adult and pediatric immunizations, and routine HIV screening.”³⁶ Illustrating the extraordinary impact of this safeguard, the percentage of women age 15-44 receiving coverage from a large employer who incurred out-of-pocket costs for oral contraception fell from 22.7% in 2012 to 2.7% in 2016—nearly a 90% drop.³⁷ This tremendous step forward for prevention would be reversed if the ACA is repealed.

Finally, young adults up to age 26 will lose the right to enroll as dependents in their parents’ health insurance plans. An estimated 2.3 million uninsured gained coverage as a result.³⁸ If the courts toss out the ACA, insurers will once again be free to turn these young people away.

Rural Residents

Residents of rural America gained considerably in the last decade because of the ACA. Since enactment of the ACA, the proportion of uninsured in rural areas fell by a third, dropping from 21.6% to 14.4%.³⁹ Within Medicaid expansion states alone, 1.9 million residents of rural areas gained insurance coverage, under the ACA.⁴⁰ In the federally operated healthcare.gov insurance marketplace for 2019, 18 percent of covered consumers, or 1.5 million people, live in rural areas. If that same proportion applies to other states, 2.1 million residents of rural America receive insurance through ACA marketplaces.⁴¹ Among people living in rural areas, the proportion unable to obtain essential health because of cost dropped by 5.9% just one year after the ACA’s coverage

expansions took effect.⁴² All of these gains would disappear, if plaintiffs prevail in *Texas v. United States*.

America's Veterans

Our country owes a profound debt to the women and men who put their lives on the line in our defense. But repealing the ACA would take away health coverage from veterans in every state, many of whom still suffer the wounds of war. According to researchers, the ACA cut the uninsurance rate among veterans by more than a third, from 9.1 percent to 5.8 percent.⁴³ These veterans would lose their health insurance coverage if the *Texas v. United States* law suit is successful.

Medicare Beneficiaries

Millions of seniors and people with disabilities benefit from a stronger Medicare program, thanks to the ACA. They would suffer grievous harm if the courts repeal the law.

The ACA greatly cut seniors' costs for Medicare prescription drugs. The so-called "donut hole"—a coverage gap between the end of regular prescription drug coverage under Part D and the start of catastrophic coverage—gradually closes, under the ACA. During the three most recent years for which data are available, 5.2 million Medicare beneficiaries fell into this coverage gap.⁴⁴ All of their drug costs would rise, if judges repeal the ACA.

The ACA eliminated deductibles, coinsurance, and copayments for Medicare preventive services. At the same time, the legislation provided Medicare coverage for annual comprehensive risk assessments. Each year, 50 million seniors and people with disabilities now receive zero-copayment preventive care under the ACA and would see their costs rise if the *Texas v. United States* lawsuit succeeds.⁴⁵

The ACA prohibited Medicare Advantage plans from charging higher deductibles, copayments, or coinsurance than amounts allowed under the traditional Medicare program. 20 million seniors and people with disabilities receive coverage through those plans and thus could be charged more for their health care if the ACA is repealed.⁴⁶

Finally, the ACA also decreased costs to Medicare beneficiaries and increased the solvency of the Medicare trust fund. Repealing the ACA would add billions of to higher deductibles and co-payments for Medicare beneficiaries and take billions of dollars away from the Medicare Trust fund, reducing its solvency.⁴⁷

Other Important ACA Provisions that are in Danger

It is hard to overstate how much the ACA has become part of the fabric of American health care. Following are just a few examples of the gains our country has experienced that would come to an end if the courts throw out the law:

- The ACA authorized the U.S. Food and Drug Administration (FDA) to approve generic versions of highly expensive biologic medications that treat devastating illnesses such as breast cancer, leukemia, colorectal cancer, multiple sclerosis, rheumatoid arthritis, diabetes, and Crohn’s disease. These treatments can cost hundreds of thousands of dollars and biosimilars will allow for lower-cost generic alternatives to save the lives of millions of men, women, and children across the nation. By July 2018, the FDA had approved 21 biosimilar products.⁴⁸ This pathway to more affordable drug costs would come to an end if courts repeal the ACA.
- The ACA required non-grandfathered private insurance to devote a minimum percentage of premium dollars to paying for health care. Carriers that do not meet these “medical loss ratio” requirements must provide refunds to consumers and employers. In 2017, 5.9 million consumers received rebates; and since the law took effect, insurers that devoted excessive premium dollars to profits and administrative costs have rebated \$4 billion.⁴⁹
- The ACA let people with disabilities receive care at home and in the community. By 2016, 18 states were implementing the ACA-created option to provide home- and community-based services under Social Security Act Section 1915(i), covering 62,000 people. Eight states were implementing the ACA’s option for personal care attendant services that let people with disabilities stay at home or in the community, keeping more than 350,000 people out of institutions.⁵⁰ Further progress would be stymied, and many of these vulnerable people would be institutionalized if judges repeal the ACA.

Mary’s Story

As the previous section indicates, tens of millions of people in our country – from newborn children to seniors covered by Medicare – would be harmed by the repeal of the ACA. I’d like to share the story of just one of the millions of people who could lose everything if the law was repealed.

Mary W hails from the Naperville, IL, a suburb of Chicago. Like more than 130 million people in the United States, Mary has a pre-existing condition. When she was a young woman, Mary acquired a gynecological condition for which she surgery. The condition led her to be denied insurance based on a preexisting condition for the next 14 years. Unfortunately, the condition that necessitated the surgery eventually returned. Mary knew she couldn't afford the \$35,000 procedure, so she waited until her doctors said she couldn't hold out any longer. Thankfully, the ACA's marketplace opened right after Mary's doctors said she needed the surgery the most. "Coverage came just in time for me," Mary told Families USA's story bank program.

While Mary was uninsured, she went a local free clinic to get care. However, the clinic only took care of her basic medical needs. Mary said her years of being

uninsured were “a horrible time” and made it difficult to fully devote herself to her job. She suffers from anemia and said her energy level was very low. “When you don't have health insurance, it doesn't just affect your health, it affects your quality of life.”

Mary was forced to put off her surgery because it couldn't be performed by the free clinic. “I tried to persevere until it became too much. I had to make a choice. Do I want to file for bankruptcy for surgery?” Mary was briefly insured when she worked at a bank, but left to be a pastor at a church that didn't offer employee coverage.

Mary enrolled in coverage online soon after the marketplace opened. She experienced a few computer glitches, but she was covered by Blue Cross Blue Shield on January 1, 2014. Mary made an appointment for her surgery immediately after her coverage was activated. “It was a huge relief,” she said. The surgery went well, and Mary paid \$2,000 out-of-pocket for the \$35,000 surgery.

Mary said not only her health, but her overall quality of life has greatly improved since she got covered. “After 14 years, my health was going downhill. Now...I can be strong and useful.” Since 2014, she's been able to see a primary care physician for an annual check-up and get access to preventative care, like mammograms and blood work. “The greatest thing was that I didn't worry about getting sick. It gave me a much greater peace of mind than I had before.”

Politicians of all political stripes have said they want to protect people with pre-existing conditions. But make no mistake: A judicial ruling to overturn the ACA would mean that Mary and more than 130 million other people in our country would once again face the devastating prospect of uninsurance and medical bankruptcy simply because they have a pre-existing condition.

The ACA's Impact on Premium Costs

The individual market still has problems. Too many people are charged premiums and deductibles they can't afford. But the ACA took a terrible individual market and made it much, much better. For example, according to national surveys before and after the ACA reforms were implemented, the following has occurred:⁵¹

- Before the ACA, 60% of consumers trying to buy insurance in the individual market reported that it was “very difficult or impossible to find affordable insurance.” The ACA cut that proportion to 34%.

- More than two out of five (43%) consumers trying to buy individual insurance before the ACA said that it was “very difficult or impossible to find the coverage they needed.” Under the ACA, just one in four (25%) experienced this problem.
- Altogether, just 46% of those who tried to buy individual coverage before the ACA wound up actually purchasing insurance. By contrast, two-thirds (66%) of people exploring the ACA’s individual market bought coverage.
- Under the ACA, more people attempted to buy individual coverage, and more of those who made the attempt found a plan that met their needs. As a result, the number of people who used their own money to buy individual health insurance more than doubled under the ACA, rising from 12 million in 2010 to 29 million in 2016.

As noted above, the costs that consumers pay to buy health insurance are substantially more affordable under the ACA. The percentage of people who were unable to find affordable coverage dropped from 60% to 34% under the ACA, while the number of people using their own money to purchase insurance doubled.

Families USA shares Congress and the public’s deep concern about premium costs and we are working to ensure that health care premiums become much more affordable for all in our nation. *However, it’s completely inaccurate to assert that the ACA is the cause of high health insurance premiums.* Let’s be honest. Health insurance premiums rose before the ACA and they’ve continued rising after the ACA was signed into law.

Premiums reflect cost inputs including how much we pay for pharmaceuticals, hospital care, and physician care, etc. Underlying health care costs have been rising for decades, with recent private-sector cost increases driven mainly by the health care sector charging higher prices.⁵²

Despite those underlying cost trends, premiums in the employer market, where 157 million people receive their coverage, have grown more slowly since the ACA’s main coverage provisions took effect in 2014. Since then, average annual cost increases for group coverage dropped from 3.4% to 2.8%—a relative reduction of 18%, or nearly a fifth.⁵³

In the individual market, the picture is mixed. Thanks to the ACA’s premium tax credits and insurance reforms, *consumers overall are paying less.*⁵⁴ But the growth of gross “sticker price” premiums accelerated for individual-market coverage, rising from an average of 7.6% per year before the ACA’s main coverage provisions took effect in 2014 to 8.3% since then.⁵⁵ In addition to the increase in the price of health care, the most important reason for higher premiums in the individual market is that the ACA forbids insurers from discriminating against people with preexisting conditions.⁵⁶ Many more older adults and people with health problems are covered today, and their costs are shared among all individual-market enrollees.

Put simply, anyone who tells you that the ACA raised total consumer costs or otherwise made the overall individual market worse for families is either attempting to mislead you or doesn't understand the facts. Further improvements are needed, but it is a matter of settled fact that the ACA made this market substantially more affordable and better able to provide the coverage sought by millions of families in America.

There is no Easy Fix if Courts Overturn the ACA

Some members of Congress suggest that the ACA's judicial repeal would not be a problem because Congress could quickly enact replacement legislation that would accomplish the ACA's objectives, perhaps with greater efficiency and effectiveness. The empirical record makes clear, however, that federal lawmakers are highly unlikely to accomplish this goal. Comprehensive health care reform has repeatedly failed to be enacted over decades, under Democratic and Republican administrations alike.

During the previous Congress, the majority party, in control of both chambers and the White House, proposed replacement policies that the Congressional Budget Office found would result in more than 20 million people losing health insurance.⁵⁷ Harvard University's Robert Blendon noted that only one in four people Americans supported these replacement plans, observing: "From the point of view of public opinion, the Republican replacement plans were extraordinarily unpopular."⁵⁸

Ultimately, federal lawmakers were not able to pass replacement legislation, despite a single party's control of Congress. Blendon saw this failure as rooted in political division: "Reflecting the difficulty in reaching a consensus among Republicans in Congress were the deep divisions among Republicans on many of the specific components of their own replacement proposals." It was surely also rooted in the inherent complexity of health reform legislation, which involves difficult trade-offs, technically challenging policy choices, and deep values questions involving the appropriate role of government in providing for basic human needs. Partisan divides also played a central role inhibiting progress. The kinds of technical corrections that once were routine for major legislation like the ACA have been impossible to enact, despite considerable bipartisan effort. As observed by a leading political scientist, "Partisanship has prevented reformers from remedying the ACA's shortcomings and addressing implementation problems."⁵⁹ Put simply, the notion that Congress will be able to act quickly to replace the ACA if the courts strike it down is dangerously flawed and our families' health and financial security hang in the balance.

Conclusion

As described above, the Affordable Care Act has become an integral part of the fabric of the federal protections and supports for our nation's families. Tens of millions of people rely on it to protect them from being discriminated against because of pre-existing medical conditions, to lower the costs of health insurance premiums, to support their use of preventative care, to increase the financial protections in their employer sponsored coverage and on and on. This federal law has reduced the rate of uninsurance among children by 50 percent, supports rural America, supports seniors, and supports

our veterans. So much hangs in the balance. We urge members of Congress to work together in a bipartisan fashion to protect this law.

More broadly, it's time to consolidate rather than repeal the ACA's gains, building on the progress we've achieved to bring quality coverage and care within reach of more families in America. For example, we urge President Trump to reverse his decision to allow insurance companies to profit at the expense of vulnerable people by selling junk plans exempt from consumer safeguards. We urge rapid enactment of legislation that makes coverage and care more affordable, that streamlines enrollment of the eligible uninsured into coverage, and that tackles serious problems of out-of-control prescription drug prices and surprise medical bills. Examples of such legislation include H.R. 968 and H.R. 987, which both increase access to high quality care and stop the sale of junk insurance. These bills passed the House earlier this year and await action in the Senate. Further, we support enactment of H.R. 1425 and H.R. 1868, which would meaningfully bring down premiums for people purchasing health insurance in the individual and small group markets. Members of Congress who are earnestly concerned about the high cost of premiums in the individual market should join Families USA in supporting these bills.

At Families USA, we hope that this troubling hour will see our country's elected leaders come together across party lines. Democrats, Republicans, and Independents have all benefited from the Affordable Care Act. But Democrats, Republicans, and Independents alike still struggle with unaffordable health care costs and an unresponsive system of health care and coverage. We've come a long way, but we are still in the middle of our journey towards a country where everyone has affordable access to the health care they need to thrive. Let's take the next steps on this journey together.

¹ Ashley Kirzinger, Cailey Muñana, and Mollyann Brodie, "6 Charts about Public Opinion on The Affordable Care Act". December 19, 2018. <https://www.kff.org/health-reform/poll-finding/6-charts-about-public-opinion-on-the-affordable-care-act/>

² Ashley Kirzinger, Bryan Wu, and Mollyann Brodie, "KFF Health Tracking Poll – April 2019: Surprise Medical Bills and Public's View of the Supreme Court and Continuing Protections for People With Pre-Existing Conditions," April 24, 2019, <https://www.kff.org/health-costs/poll-finding/kff-health-tracking-poll-april-2019/>

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ Ashley Kirzinger, Bryan Wu, and Mollyann Brodie, "KFF Health Tracking Poll – November 2018: Priorities for New Congress and Medicaid Expansion," November 28, 2018, <https://www.kff.org/health-reform/poll-finding/kff-health-tracking-poll-november-2018-priorities-congress-future-aca-medicaid-expansion/>

⁷ Politico. "2016 Presidential Election Results," December 2016. <https://www.politico.com/2016-election/results/map/president/>

⁸ Kirzinger et al, 2018, *op. cit.*

⁹ National Federation of Independent Businesses v. Sebelius (2012), and King v. Burwell (2015).

¹⁰ In the case of NFIB v. Sebelius, the court upheld most of the law, but ruled that the mandatory expansion of state Medicaid programs was invalid, effectively making Medicaid expansion optional for states.

¹¹ Chris Riotta, "GOP Aims to Kill Obamacare Yet Again After Failing 70 Times," July 29, 2017, Newsweek, <https://www.newsweek.com/gop-health-care-bill-repeal-and-replace-70-failed-attempts-643832>

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- ¹² Brief of Jonathan H. Adler, Nicholas Bagley, and Ilya Somin as Amicus Curiae in Support of Intervenor-Defendants-Appellants, *Texas v. United States*, 2019, https://oag.ca.gov/system/files/attachments/press_releases/Prof.%20Adler%2C%20Bagley%2C%20Gluck%2C%20and%20Somin%20Amicus%20Brief.pdf
- ¹³ U.S. Constitution, Article II, Section 3.
- ¹⁴ Linda J. Blumberg, Bowen Garrett, and John Holahan, “Estimating the Counterfactual: How Many Uninsured Adults Would There Be Today Without the ACA?” *Inquiry* 53:1-13 (2016).
- ¹⁵ Families USA calculations based on America's Health Ins. Plans Ctr. for Policy Research, *Individual Health Insurance 2009: A Comprehensive Survey of Premiums, Availability, and Benefits* 10 tbl.6 (Oct. 2009), https://kaiserhealthnews.files.wordpress.com/2013/02/2009_individualmarketsurveyfinalreport.pdf Before the ACA went into effect, 45 states and the District of Columbia allowed insurance companies to charge discriminatory premiums or to deny coverage entirely due to pre-existing conditions, and these discriminatory practices and denials and premium increases were standard practice; and only 12 states prohibited insurers from selling policies with elimination riders that permanently excluded coverage of pre-existing conditions.
- ¹⁶ *ibid.*
- ¹⁷ Families USA, *Failing Grades: State Consumer Protections in the Individual Health Insurance Market* 26-27 (June 2008), http://familiesusa.org/sites/default/files/product_documents/failing-grades_1.pdf.
- ¹⁸ Danielle Garrett, *Turning to Fairness: Insurance Discrimination against Women Today and the Affordable Care Act* (Washington, DC: National Women’s Law Center, March 2012), https://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf
- ¹⁹ Gary Claxton, Cynthia Cox, Anthony Damico, Larry Levitt, Karen Pollitz. *Pre-existing Conditions and Medical Underwriting in the Individual Insurance Market Prior to the ACA*. Kaiser Family Foundation, December 2016. <http://files.kff.org/attachment/Issue-Brief-Pre-existing-Conditions-and-Medical-Underwriting-in-the-Individual-Insurance-Market-Prior-to-the-ACA>
- ²⁰ U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation. “Health Insurance Coverage for Americans with Pre-Existing Conditions: The Impact of the Affordable Care Act.” January 5, 2017. <https://aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf>
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⁵⁶ Experts at the Kaiser Family Foundation thus found that short-term, limited-duration insurance (STLDI), exempt from ACA consumer protections, would cost 54% less than ACA-compliant insurance. However, more than 70% of this cost differential resulted from STLDI’s ability to discriminate against people with preexisting conditions. 24% of the cost differential resulted from ACA-required prescription drugs, and the remaining 6% of the price differential involved all other required benefits under the ACA,

including treatment of mental health and substance use disorders and maternity care. Larry Levitt, Rachel Fehr, Gary Claxton, Cynthia Cox, and Karen Polliz. “Why Do Short-Term Health Insurance Plans Have Lower Premiums Than Plans That Comply with the ACA?” Kaiser Family Foundation. October 31, 2018. <https://www.kff.org/health-reform/issue-brief/why-do-short-term-health-insurance-plans-have-lower-premiums-than-plans-that-comply-with-the-aca/> To be precise, a 38% premium drop resulted from STLDI’s authorization to exclude people with preexisting conditions, representing 70.4% of the total 54% premium savings for STLDI, relative to ACA-compliant plans. STLDI’s exclusion of prescription drug coverage was responsible for a 13% premium drop, accounting for 24.1% of the total 54% premium reduction. All other benefits combined were responsible for a 3% premium reduction, or 5.6% of the total 54% premium savings for STLDI, relative to ACA-regulated insurance.

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