

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

**STATE OF FLORIDA, by and
Through Bill McCollum, et al.,
Plaintiffs,**

v.

No.: 3:10-cv-91-RV/EMT

**UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
et al.,
Defendants.**

**MOTION AND MEMORANDUM IN SUPPORT THEREOF FOR LEAVE TO
FILE BRIEF OF *AMICUS CURIAE* YOUNG INVINCIBLES
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

MOTION

Pursuant to Fed. R. Civ. P. 83(b) and this Court's June 14, 2010 "Order on *Amicus Curiae* Filings," *amicus curiae* Young Invincibles respectfully moves this Court for leave to file an *amicus* brief in support of Defendant's Motion for Summary Judgment.

MEMORANDUM IN SUPPORT OF MOTION

**I. *AMICUS* YOUNG INVINCIBLES HAS AN INTEREST AFFECTED BY A
DECISION IN THIS CASE**

The *amicus* has an interest in maintaining the minimum coverage provision and Medicaid expansion provided in ACA.

Young Invincibles is a non-profit, non-partisan organization that advocates on behalf of young adults ages 18 to 34. As an active voice during the health care reform debate, Young Invincibles found that the provisions at issue were essential to the long-

term health and financial security of young adults. Young Invincibles has an interest in protecting members from harmful changes to these provisions.

A. Young adults are disproportionately uninsured not by choice, but because they are generally low-income and lack access to affordable health care.

Young adults have reduced access to common forms of coverage such as employer-provided insurance, and earn far less than older adults, making individual insurance unaffordable. As a result, young adults remain uninsured in much higher numbers than older Americans not by choice, but due to circumstance.

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

Young adults frequently lack access to employer-sponsored health insurance, the source of coverage for most Americans. Only 53% of young adults ages 19 to 29 have access to employer-sponsored insurance, compared to 76% of adults over 30. U.S. Census. Without that option, and limited access to Medicaid before the ACA takes full effect, this low-income population is forced into the high-priced individual market.

ii. Quality insurance on the individual market is prohibitively expensive for young adults.

Purchasing insurance on an unsubsidized individual market is too costly for young adults. The average individual plan offered to a healthy 27-year old costs \$1,723 per year. AHIP Center for Policy Research, *Individual Health Insurance 2009: A Comprehensive Survey of Premiums, Availability and Benefits* (October 2009). But the average young adult with no access to employer-sponsored insurance earns only \$14,746 per year, making individual plans effectively unattainable. *Id.*

Young people with preexisting conditions have a particularly hard time affording insurance coverage because premiums for less healthy individuals are even higher. *Id.* Although older adults with preexisting conditions are offered coverage on the individual

market about as often as young adults with preexisting conditions, the older cohort is 15% more likely to have coverage through an employer. *Id.*; Young Invincibles analysis of U.S. Census. (2009-2010). *Current Population Survey: Annual Social and Economic Supplement*. Young adults with preexisting conditions simply have fewer options.

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

When health insurance is affordable, young adults eagerly enroll. When people ages 19 to 29 are offered more affordable health insurance through their employers, 78% enroll, compared to 84% of older adults. Jennifer Nicholson, et al., Commonwealth Fund, *Rite of Passage? Why Young Adults Become Uninsured and How New Policies Can Help*, 2009 Update, 2009, at 6. (“Rite of Passage? 2009”). The similar take-up rates when refutes the myth of young adults’ cultural opposition to coverage.

Moreover, higher-income young adults are far more likely to have insurance. The uninsured rate is just 14% for young adults living over 400% of the federal poverty line (“FPL”), but 46% for young adults making less than 200% of the FPL. U.S. Census; *Income Trumps*. With about 37% of young adults living below 200% of the FPL, it is no surprise that young adults have the highest uninsured rate of any age group: they cannot afford it. Indeed, polls show that young adults want to purchase insurance and support the ACA. 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).

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

Without tax credits or access to Medicaid, young adults 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. About 21 million young adults are uninsured. *Id.* Millions more remain

underinsured. Families USA, *Barebones Insurance Would Do Little to Help Uninsured Working Families*, May 4, 1999.

B. Though healthier than the rest of the population, young adults face serious health and economic consequences as a result of uninsurance.

Widespread lack of coverage is a serious problem for young people. They suffer from chronic illnesses, catastrophic accidents and unpredictable health crises. Not having insurance can have dramatically negative health and financial consequences, and can artificially restrain their career and educational choices.

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

Approximately 15% of young adults have a chronic health condition such as asthma or diabetes, and almost 16% of young adults ages 18 to 24 have a “preexisting condition,” and without the ACA are excluded from the current market altogether. Rite of Passage? 2009; Families USA, *Health Reform: Help for Americans with Preexisting Conditions* (May 2010), at 3. Young adults also often face sudden accidents or illnesses; those ages 19 to 29 are in the emergency room more than any other age group under 75. Robert Fortuna and Brett Robbins, *Dependence on Emergency Contracts among Young Adults in the United States*, (2010); M. Jane Park, et al., *The Health Status of Young Adults in the United States*, *Journal of Adolescent Health*, 39, (2006). Even the healthiest young adult is never more than an instant from needing insurance to afford care.

ii. The inability to afford quality insurance results in many of these needs going unmet and causes serious financial hardship for young adults.

Unfortunately, the health care needs of young adults often go unmet. More than three-quarters of uninsured young adults reported not seeking medical care because of high costs. Rite of Passage 2010. Of those uninsured young adults who sought medical

attention, 60% reported difficulty paying for their treatment, compared to 27% of insured young adults. *Id.* The disparity keeps young adults with coverage tethered to jobs or locations that may limit career prospects or education opportunities, because leaving a job with insurance often means forgoing access to medical care. Further, young adults generally find it more difficult to pay medical costs. Two-thirds of young adults earn below 400% of the FPL (\$43,320). U.S. Census. This limited-income population has little opportunity to build up savings, and so endure medical bankruptcies at much higher rates than their older counterparts. Michelle Doty, et al., Commonwealth Fund, *Seeing Red: Americans Driven Into Debt By Medical Bills*, August 2005 Issue Brief (2005), at 2.

Apart from financial consequences, the inability to afford care has long-lasting adverse effects on the health of young adults. 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 chronic health conditions reported conditions worsening after avoiding costly medical treatment, *Rite of Passage: 2010*, at 2.

These sobering statistics 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. Each aspect of the regulatory scheme – are essential to giving this generation a chance at a healthy and financially stable future.

C. The ACA will offer affordable insurance to the majority of uninsured young adults.

The ACA has the potential to provide affordable insurance and health care to the majority of young adults, giving the millions of young adults who want and need affordable insurance a stake in the outcome of the present case.

i. The ACA's minimum coverage provision allows young adults to access

insurance through non-discrimination provisions and tax credits.

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, the reforms that make coverage affordable are unsustainable.

The ACA provides insurance tax credits to individuals making up to 400% of FPL. 26 U.S.C. § 36B (2010). Almost 9 million young adults ages 18 to 34 earn between 133% and 400% of FPL, and will qualify for tax credits. U.S. Census. The credits are a huge benefit for young adults, but only work if private health insurance premiums are kept under control. Similarly, eliminating discrimination against preexisting 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, so young adults will likely take advantage of the new options. By enrolling in insurance through these reforms, newly insured young adults will be less likely to avoid seeking treatment and, as a result, improve the risk pool. This allows the system to carry the cost brought by the end to preexisting condition discrimination, ensuring that these young adults gain fair access to the health care system. 42 U.S.C. § 300gg (2010); Rite of Passage? 2009.

ii. Expanding Medicaid will cover millions of young adults who currently only access the health care market when they are forced to.

Because so many uninsured young adults are low-income, providing Medicaid access to those that can least afford it will create an enormous benefit for this generation. The ACA requires states to expand Medicaid coverage to all individuals making less than 133% of FPL, regardless of whether the individual has a child or a disability. 42 U.S.C. §

1396a (2010). The expansion will cover almost 58% - 6.6 million - of uninsured Americans ages 19 to 34. U.S. Census. Access to this coverage will allow unhealthy young adults to treat their conditions and healthy young adults to maintain their health, and provide a health care backstop for a generation finding themselves jobless, in life transitions, and with little income. Young adults moving for better educational or career prospects will be safe in the knowledge that they can access coverage.

The ACA extends Medicaid, creates tax credits for low-income Americans, and ends preexisting condition discrimination, all provisions that are critical for this generation and rely on the minimum coverage requirement for the system to work.

II. *AMICUS* BRIEF IS DESIRABLE AND RELEVANT

The amicus brief will demonstrate the importance of the entire regulatory schema – including the minimum coverage provision, the Medicaid expansion, and tax subsidies - on the long-term health and economic prospects of young adults.

The benefits to young adults from the insurance tax credits and exchange participation cannot be realized without the inclusion of the minimum coverage provision. The pre-ACA status quo creates an indirect tax on premiums to cover necessary treatment for uninsured individuals, an implicit tax that increases costs and makes individual coverage unaffordable for young adults. Moreover, including the important tax credits and ban on preexisting condition discrimination, but no minimum coverage provision, would mean that the sickest individuals would seek coverage first. This could increase premiums from the pre-ACA levels 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 free-rider cost that the insured population must ultimately bear – again increasing costs and making premiums unaffordable. By including a minimum coverage provision, the ACA removes the indirect tax to individual plans that has made premiums unaffordable for so many young adults - and without it, young adults are more likely to be priced out of the new exchanges than wealthier age groups.

The minimum coverage provision is also essential to offering Medicaid coverage to young adults. By controlling the cost of premiums, and therefore the cost of tax credits for low-income individuals, the federal government is able to increase support to states and expand Medicaid to a large population of low-income, uninsured young adults. Without minimum coverage, the increase in premium prices would make tax credits and the Medicaid expansion unaffordable. The minimum coverage provision is thus essential to covering both limited-income young adults through tax credits as well as those with preexisting conditions, and it will ultimately lower premiums for all young adults.

The minimum coverage tax provision, which provides such enormous benefits for all Americans, is also implemented in a way that makes sense for young adults. ACA'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 without spending more than 8% of his or her income. 26 U.S.C. § 5000A(e)(1)(A-B). Further, providing Medicaid coverage and much-needed tax credits to young adults requires universal minimum coverage, making this provision an indispensable part of a regulatory scheme that alleviates the high uninsurance rates of young adults.

III. AMICUS HAS UNIQUE INFORMATION AND PERSPECTIVE

Founded by a group of students and young adults during the health care reform debate, Young Invincibles sought to provide a voice for young adults in a policy process that too-often excluded young people. Currently, no advocacy organization provides a comparable voice for young adults in this arena. This under-representation is linked to the lack of economic resources and opportunity. Over 12.2 million young adults live below the poverty line, and unemployment for individuals ages 18 to 34 is currently 12.5%, compared to 9.6% for the population as a whole. U.S. Census. Because of this lack of resources, young adults are not a powerful constituency and have not, as a result, been the primary focus of attention when it comes to legislation that expands access to health care. 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. The coalition developed a perspective on the evolving health care legislation and developed a comprehensive policy platform to make sure the needs of young adults were addressed in the legislative process.

Young Invincibles has continued its work to give young adults a voice in legislative, regulatory and legal arenas by informing lawmakers and relevant actors about the unique needs of young adults and organizing grassroots campaigns to educate its constituency. The focus of this work is formed through interaction with thousands of young adult members around the country and extensive research on relevant issues. The goal is to represent young adults as an age group in the same way that AARP stands for the interests of Americans over the age of 50.

Now, of all of parties and *amici* to this lawsuit, no one else will present the desperate situation young adults faced in pre-ACA. As an organization that has dedicated the entirety of its research capacity to reform's impact on young adults, Young Invincibles will provide the data and lens necessary to analyze the commercial activity impacted by this legislation, and the importance of the regulatory scheme as a whole. No other party will describe the tremendous impact on the daily lives, the improved economic prospects and the career choices that the ACA will create for young adults.

CONCLUSION

For these reasons, *amicus* respectfully submits tha the Court should grant this Motion for Leave to File an *Amicus* Brief.

Dated: November 12, 2010

Respectfully submitted,

Paolo Annino, J.D., Ph.D.
Florida Bar No. 379166
Attorney for *Amicus Curiae* Young
Invincibles
FSU College of Law
Public Interest Law Center
425 West Jefferson Street
Tallahassee, Florida 32306
Telephone: (850) 644-9930
Facsimile: (850) 644-0879
Email: pannino@law.fsu.edu

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2010, I electronically filed the foregoing by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Date: November 12, 2010

/s/ Paolo Annino
Paolo Annino, J.D., Ph.D.
Florida Bar No. 379166
Attorney for *Amicus Curiae* Young
Invincibles
FSU College of Law
Public Interest Law Center
425 West Jefferson Street
Tallahassee, Florida 32306
Telephone: (850) 644-9930
Facsimile: (850) 644-0879
Email: pannino@law.fsu.edu

CERTIFICATE OF LOCAL RULE 7.1(B) COMPLIANCE

Plaintiff's counsel was contacted, but did not respond before the filing of this motion. Counsel for Defendant has been contacted, and neither consents nor objects to this motion.

Date: November 12, 2010

/s/ Paolo Annino
Paolo Annino, J.D., Ph.D.
Florida Bar No. 379166
Attorney for *Amicus Curiae* Young
Invincibles
FSU College of Law
Public Interest Law Center
425 West Jefferson Street
Tallahassee, Florida 32306
Telephone: (850) 644-9930
Facsimile: (850) 644-0879
Email: pannino@law.fsu.edu