

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

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

**BRIEF OF AMICUS CURIAE YOUNG INVINCIBLES IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

FINANCIAL DISCLOSURE

The Internal Revenue Service has determined that the fiscal sponsor, Center for Community Change, of *Amicus* for this brief is organized and operated exclusively for charitable or educational purposes pursuant to Section 501(c)(3) of the Internal Revenue Code and are exempt from income tax.

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INTEREST OF THE AMICUS CURIAE

Founded by a group of students and young adults during the health care reform debate, Young Invincibles provides a voice for young adults in a policy process that too-often excluded young adults. Currently, no advocacy organization provides a comparable voice for young adults in health care policy. Young adults' under-representation is linked to the lack of economic resources and opportunity needed to influence the debate. Over 12.2 million young adults live below the poverty line, and the unemployment rate for young adults ages 18 to 34 is currently 12.5%, compared to 9.6% for the population as a whole. U.S. Census, (2009-2010). *Current Population Survey: Annual Social and Economic Supplement*. 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. 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 policy platform to make sure the needs of young adults – 21 million of whom are uninsured - 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 policy makers about the unique needs of young adults and organizing grassroots campaigns to educate its constituency. Interactions with thousands of young adult members and extensive research on the challenges they face drive the focus of Young Invincibles' advocacy. 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 parties and *amici* to this lawsuit, no one else will present the desperate situation young adults faced before the Affordable Care Act (ACA) passed. 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 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.

SUMMARY OF THE ARGUMENT

The ACA will 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.¹ Kaiser Commission on Medicaid and the Uninsured, *Underinsured in America: Is Health Coverage Adequate?* (July 2002). The minimum coverage provision at issue does not impose a significant burden on young adults. On the other hand, eliminating this and other pillars of the ACA would undermine the entire law and harm the health and economic well-being of millions of young Americans by denying them access to affordable health care.

Young adults make up 26% of the population under the age of 65, but account for 42% of that population's uninsured. U.S. Census. The 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, worthwhile 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*

¹ 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.”

Affordable Care Act of 2010, (2010) at 11, available at (“Rite of Passage 2010”). The 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, worthwhile coverage options. The majority of young adults favor the ACA, in part because of the pervasive barriers to coverage for young adults. *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).

Despite the relatively good health of young adults, they suffer significant economic and health consequences from their lack of insurance coverage. Young adults without insurance are likely to avoid seeking medical care due to cost; 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* 2010, at 2. Young adults need affordable 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. See *Gallup, Income Trumps Health in Young Adults’ Coverage*, February 26, 2010. (“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 would have a

strong positive effect on interstate commerce as it would allow young adults to move freely to more productive jobs. *See* 42 U.S.C. § 18091(a)(2).

In practice, the minimum coverage provision will not require young adults to purchase coverage unless they can otherwise afford to do so at a reasonable price. The Act's tax penalties 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 they be assessed against anyone who cannot purchase coverage for less than 8% of his or her income. *Id.* at § 5000A(e)(1)(A). To ensure that few people meet these criteria, the ACA provides subsidies in the form of government tax credits are available for anyone whose family income is less than 400% of the poverty line; approximately two-thirds of young adults will qualify. U.S. Census. Close to half the 21 million uninsured young adults in America will be eligible for the Medicaid expansion, which covers childless adults with family incomes up to 133% of poverty. *Id.* In reality, everyone required to purchase insurance can 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.

Moreover, ACA's minimum coverage provision, end to discrimination based on preexisting conditions, expansion of Medicaid and creation of tax credits are all essential pieces of a regulatory scheme that provides young adults with 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.

The *amicus* will show by raw 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 each challenged aspect of the ACA, including 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.

ARGUMENT

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 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 and Medicaid expansion.

I. Because young adults are generally low-income and lack access to affordable health care, they are disproportionately uninsured not by choice, but by circumstance.

The cultural myth of the “young invincibles” rests on the mistaken inference that young adults do not have health insurance by choice. However, young adults have reduced access to the most common form of coverage, employer-provided insurance, and

are 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 circumstance.

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.¹ Only 53% of young adults ages 19 to 29 have access to employer-sponsored insurance, compared to 76% of adults over 30. 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”). Without the option of insurance from a job, and with limited access to Medicaid or tax credits before the ACA takes full effect, this low-income population is forced into the unsubsidized individual market., which is largely unaffordable.

B. Quality insurance on the individual market is expensive for young adults, particularly for those with preexisting 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 \$1,723.² AHIP Center for Policy Research, *Individual Health Insurance 2009: A Comprehensive Survey of Premiums, Availability and Benefits* (October 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. *Id.*

² 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.

Premiums for those with a preexisting medical condition are even higher. *Id.* 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 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. In other words, assuming a young adult with a preexisting condition even has an offer of insurance on the private market, 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 options.

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

Studies show that when health insurance is made affordable and available, young adults eagerly 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. Rite of Passage? 2009. The similar enrollment rates into affordable options demonstrate that the uninsurance rate is not due to cultural opposition or considered refusal, but cost.

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 line (“FPL”), but rises to 46% for young adults making less than 200% of the FPL. U.S. Census; 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 need it. In fact, healthy, higher-income young adults are more likely to have insurance than unhealthy

young adults, completely dispelling unfounded assumptions to the contrary. Income Trumps. It is no wonder that polls show that young adults want insurance and are in fact the most supportive of the reform law. 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).

D. 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. About 21 million of the over 70 million young adults between 18 and 34 are uninsured. *Id.* 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*, (May 4, 1999); *see also* YI Want Change, *Comprehensive Insurance: Not Insurance In Name Only: YIWC Analysis of Catastrophic Plan and Dependent Coverage*, December 2009. The high rate of uninsurance is not voluntary, but caused by the lack of affordable 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.

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

Not having insurance can have negative health and financial consequences, and artificially restrain the career and educational choices facing adults during this period of their lives. Young adults do suffer from chronic illnesses, as well as catastrophic accidents and more unpredictable health crises; they also need preventive care. Their low incomes mean serious financial troubles when forced to pay out of pocket. This financial difficulty limits career and educational flexibility for those saddled with expenses or required to maintain existing coverage in a less productive job. 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, care for 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. 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*, (May 2010), at 3.

Additionally, young adults often face sudden accidents or unexpected illnesses. Rates of motor vehicle accidents, sexually transmitted diseases, and substance abuse peak in young adulthood. Robert Fortuna and Brett Robbins, *Dependence on Emergency Contracts among Young Adults in the United States*, (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). 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. And if a young adult is lucky enough to avoid injury, preventive care is critical to protect the future health of everyone. Prevention, care for chronic illnesses, and emergency care all mean that young adults need coverage.

B. The inability to afford quality insurance results in many of these needs either going unmet 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. 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.*

Paying for necessary medical expenses can have drastic consequences. Two-thirds of young adults earn below 400% of the FPL, or approximately \$43,320. U.S. Census. This limited-income population has little opportunity to build up savings.³ As a

³ 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>.

result, when young adults do face a medical crisis, they face 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.

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. 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*, *Annals of Internal Medicine*, at 170.

The threat to health and finances of uninsurance provides a serious incentive for young adults lucky enough to have coverage to stay tethered to jobs or geographic locations. 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 need to stay covered by an employer limits career prospects and education opportunities of young adults.

These sobering 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. Fortunately, the ACA law provides welcome relief from these financial barriers.

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 both non-discrimination provisions and the availability of tax credits to purchase insurance on an exchange.

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, these provisions that make coverage affordable are unsustainable.

The ACA provides insurance tax credits to individuals making 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. The tax credits are a huge benefit for limited-income young adults, but only work if private 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, and will likely

similarly 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).

B. 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 or underinsured young adults are low-income, providing low or no-cost access to care to those that can least afford it will create an enormous benefit for young adults. 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). Before the ACA, states generally only covered young adults with children. The expansion of Medicaid will cover almost 58%, or over 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, give healthy young adults an option to maintain their health, and generally provide a health care backstop for a generation finding themselves jobless, in life transitions, and with little stable income. Young adults leaving for education or better career prospects will be safe in the knowledge that they will not be denied 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.

IV. The minimum coverage provision and Medicaid extension are essential parts 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. By including a minimum coverage provision, the ACA removes the indirect tax to individual plans, which make premiums unaffordable. Moreover, 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 preexisting conditions, and to lowering premiums for all young adults. The minimum coverage provision is also essential to offering Medicaid coverage to young adults. By controlling the cost of the

tax credits, the federal government is able to increase support to states and expand Medicaid to a large population of low-income, uninsured 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).

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.

CONCLUSION

For the foregoing reasons, *amicus* supports the Motion for Summary Judgment filed by the Defendant.

Dated: November 19, 2010

Respectfully submitted,

/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 SERVICE

I hereby certify that on November 19, 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 19, 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