

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**RICHMOND DIVISION**

**COMMONWEALTH OF )  
VIRGINIA EX REL. KENNETH )  
T. CUCCINELLI, II, )  
in his official capacity as Attorney )  
General of Virginia, )  
Plaintiff, )**

v. )

**No. 3:10-cv-00188-HEH**

**KATHLEEN SEBELIUS, )  
Secretary of the Department )  
of Health and Human Services, )  
in her official capacity, )  
Defendant. )**

---

**MOTION AND MEMORANDUM IN SUPPORT FOR LEAVE TO FILE BRIEF  
OF *AMICI CURIAE* THE MARCH OF DIMES FOUNDATION, THE AMERICAN  
ASSOCIATION OF PEOPLE WITH DISABILITIES, THE ARC OF THE  
UNITED STATES, BREAST CANCER ACTION, FAMILIES USA, THE FAMILY  
VIOLENCE PREVENTION FUND, FRIENDS OF CANCER RESEARCH,  
MENTAL HEALTH AMERICA, NATIONAL BREAST CANCER COALITION,  
THE NATIONAL ORGANIZATION FOR RARE DISORDERS, THE NATIONAL  
PARTNERSHIP FOR WOMEN & FAMILIES, NATIONAL PATIENT  
ADVOCATE FOUNDATION, THE NATIONAL SENIOR CITIZENS LAW  
CENTER, THE NATIONAL WOMEN’S LAW CENTER, THE OVARIAN  
CANCER NATIONAL ALLIANCE, RAISING WOMEN’S VOICES FOR THE  
HEALTH CARE WE NEED, AND UNITED CEREBRAL PALSY IN SUPPORT  
OF MOTION TO DISMISS**

---

## **FINANCIAL DISCLOSURE**

The Internal Revenue Service has determined that all *Amici* for this brief are organized and operated exclusively for charitable or educational purposes pursuant to Section 501(c)(3) or (4) of the Internal Revenue Code and are exempt from income tax. As such, *Amici* have nothing to report under Local Civil Rule 7.1(A)(1)(a).

Pursuant to Fed. R. App. P. 29(b) and Fed. R. Civ. P. 83(b), *amici curiae* March of Dimes et al. (collectively "*amici*") respectfully move this Court for leave to file an *amicus* brief in support of Defendant's Motion to Dismiss. This brief adduces the record of relevant experience in individual states, of expert studies and analyses, and of testimony and information relied upon by Congress, that show why the minimum coverage provision, Section 1501 of the Patient Protection and Affordable Care Act ("ACA"), is essential for achieving the goals of the ACA: near-universal coverage, reduced health insurance premiums, and reform or elimination of widespread detrimental insurance industry practices. The minimum coverage provision requires most Americans to carry a minimum level of insurance or pay a tax, § 1501(a)(2)(G).

This brief also highlights the importance of the minimum coverage and preexisting conditions provisions for people with disabilities, older persons, women, and children.<sup>1</sup>

#### **INTERESTS OF *AMICI***

*Amici Curiae* are non-profit education and advocacy organizations that work nationwide to promote the independence and well-being of persons affected with a variety of health risks. *Amici* have long served these populations and encouraged awareness of their needs through litigation, administrative advocacy, legislative advocacy, and coalition-building. *Amici* are profoundly concerned about the impact the Court's decision may have on their clients' and constituents' access to affordable health care and insurance.

---

<sup>1</sup> The Plaintiff has consented to the filing of this *amicus* brief. The Defendant stated that it takes no position on this motion for leave to file an *amicus* brief.

**The March of Dimes** (“Foundation”) is a national voluntary health agency founded in 1938 by President Franklin D. Roosevelt to conquer polio. Today, the Foundation works to improve the health of women of childbearing age, infants and children by preventing birth defects, prematurity, and infant mortality through research, community services, education, and advocacy. The Foundation is a unique collaboration of scientists, clinicians, parents, members of the business community, and other volunteers affiliated with 51 chapters in every state, the District of Columbia, and Puerto Rico. The March of Dimes is deeply concerned with the impact the Court's decision will have on access to health coverage for women of childbearing age (particularly those at risk for a complicated pregnancy), infants, and children (especially those with special health care needs such as conditions associated with preterm birth and birth defects).

**The American Association of People with Disabilities** (“AAPD”) is the country's largest cross-disability membership organization working to organize the disability community to be a powerful voice for change -- politically, economically, and socially. Since 1995, through its programs and policy and legislative advocacy, AAPD has worked to make the goals of the Americans with Disabilities Act -- equal opportunity, full participation, economic self-sufficiency and independent living -- a reality for all individuals with disabilities. AAPD is extremely concerned about the impact that the Court's decision may have on its members and all Americans with disabilities' access to health insurance.

**The Arc of the United States** (“Arc”) is a national non-profit organization founded in 1950 to advocate on behalf of and improve the daily lives of individuals with intellectual and developmental disabilities and their families. Through its over 140,000

members and more than 730 state and local chapters across the nation, the Arc is devoted to protecting the rights of people with intellectual and developmental disabilities and promoting and improving supports and services for them and their families. Recognizing the critical importance of health care coverage for all, the Arc has worked for many years for the elimination of exclusions from health insurance based on preexisting conditions. By definition, people with intellectual and developmental disabilities have preexisting conditions. People with intellectual and developmental disabilities are often the victims of these exclusionary practices, losing or being denied health coverage due to their preexisting condition of intellectual or developmental disability regardless of actual health status.

**Breast Cancer Action** (“BCA”) is a national education and advocacy organization that carries the voices of people affected by breast cancer to inspire the changes necessary to end the breast cancer epidemic. BCA has over 30,000 members throughout the United States. The majority of our members are living with a breast cancer diagnosis, or are at high risk for developing the disease. One of BCA’s goals is to ensure that patients’ interests come first in health care policy. Once a person has been diagnosed with breast cancer, or found to have a genetic predisposition to the disease, she or he is classified by the insurance industry as having a preexisting condition. This classification increases the likelihood that the individual will be unable to obtain health insurance, or only able to obtain coverage at a very high cost. As a result, many people with or at risk from breast cancer are locked into jobs that provide health care coverage, or are confronted with a serious risk of medical bankruptcy if they leave their jobs, lose insurance coverage, and get sick or sick again. The high cost of breast cancer treatments

makes it essential that people with and at risk for breast cancer be able to get insurance coverage irrespective of preexisting conditions. BCA's members will be seriously adversely affected if any of the ACA's elements are invalidated.

**Families USA** is the national organization for health care consumers. It is a nonprofit, nonpartisan organization dedicated to the achievement of high-quality, affordable health coverage and care for all Americans. For the past 28 years, Families USA has led various coalition efforts designed to expand health coverage for American families. The expansion of coverage under the ACA is a central component of ensuring affordable health coverage and care for millions of Americans who are currently unable to obtain affordable insurance. Families USA therefore has a strong interest in ensuring the successful implementation of the ACA.

**The Family Violence Prevention Fund** ("FVVPF") is a national nonprofit organization that works to end violence against women and children. The FVVPF mobilizes concerned individuals, children's groups, allied professionals, women's rights, civil rights, and other social justice organizations to join the campaign to end violence through public education/prevention campaigns, public policy reform, model training, advocacy programs, and organizing. For more than a decade, the Family Violence Prevention Fund's groundbreaking and highly successful National Health Initiative on Domestic Violence has been improving the health care response to domestic violence through public policy reform and health education and prevention efforts. The FVVPF has particular interest in the elimination of insurance discrimination against individuals with disabilities or preexisting conditions. Before the Patient Protection and Affordable Care Act was signed, there were no laws prohibiting insurance companies in several states and

the District of Columbia from discriminating against victims by declaring domestic violence, or a medical condition caused by domestic violence, to be a preexisting condition. Access to health care is critical for domestic violence victims and the FVPPF joins with *amici* in support of the minimum coverage requirement as an effective and fiscally viable mechanism to sustain the elimination of insurance discrimination against individuals with preexisting medical conditions.

**Friends of Cancer Research** (“Friends”) is a non-profit cancer research think tank that advocates for the advancement of biomedical research. Working with the entire cancer research and advocacy community, Friends is dedicated to overcoming the barriers standing between patients and the most promising cancer treatments. Friends is seriously concerned about the impact that the Court's decision will have on access to affordable, quality care for cancer patients and Americans with increased risk for cancer.

**Mental Health America** (“MHA”), previously known as the National Mental Health Association, is a non-profit consumer/patient advocacy organization that is dedicated to improving access to quality behavioral health services for all Americans. MHA has over three hundred affiliates across the United States and has been committed to improving mental health care and addiction treatment and promoting mental wellness for over one hundred years. Mental health and addiction treatment have historically been subject to blatantly discriminatory limits on coverage through private insurance plans that block access to effective and critically needed therapies. Moreover, a large proportion of currently uninsured individuals are in need of mental health care and/or addiction treatment but are without adequate means to access these services. Thus, MHA supports implementation of the new minimum coverage and prohibition on denials of coverage

based on preexisting medical conditions provisions as fundamental components of the new federal initiative to provide health insurance coverage to the uninsured and underinsured.

**The National Breast Cancer Coalition** (“NBCC”) is a non-profit organization that is dedicated to ending breast cancer through the power of grassroots action and advocacy. NBCC increases funding for breast cancer research; monitors how those funds are spent; expands access to quality health care for all; and ensures that trained advocates influence all decision making that impacts breast cancer. NBCC is deeply concerned about the impact that the Court’s decision may have on access to health insurance for the women and men with or at risk for breast cancer.

**The National Organization for Rare Disorders** (“NORD”) is a non-profit organization that advocates for the nearly 30 million men, women, and children in the United States affected by the estimated 7,000 known rare diseases. Since 1983, NORD has served as their primary representative providing advocacy, information and referrals, networking, mentoring, and other services to help patients, their families, and rare disease patient organizations. NORD is deeply concerned about the impact that the Court’s decision may have on rare disease patients’ access to health insurance.

**The National Partnership for Women & Families** (“National Partnership”) is a nonprofit, nonpartisan organization that uses public education and advocacy to promote access to quality, affordable health care, work and family policies, and fairness in the workplace. The National Partnership has devoted significant resources to ensuring that women and their families have reliable affordable health care, comprehensive coverage including the full range of reproductive health services, access to health professionals



who deliver the highest quality of care, and protection against unfair insurance market practices that create barriers to obtaining or keeping health insurance.

**National Patient Advocate Foundation** represents the interest of patients served by Patient Advocate Foundation, which provides case management services to individuals with chronic, life-threatening or debilitating conditions. National Patient Advocate Foundation has led an advocacy effort to eliminate pre-existing conditions waiting periods and exclusions in all insurance markets since 2006.

**The National Senior Citizens Law Center** (“NSCLC”) is a non-profit organization that advocates nationwide to promote the independence and well-being of low-income older persons and persons with disabilities. For more than 35 years, NSCLC has served these populations through litigation, administrative advocacy, legislative advocacy, and assistance to attorneys in legal aid programs. NSCLC’s *Herbert Semmel Federal Rights Project* works to ensure that courts uphold rights provided and protected by federal laws. NSCLC is profoundly concerned about the impact that the Court’s decision may have on its clients’ access to health insurance.

**The National Women’s Law Center** (“NWLC”) is a non-profit legal advocacy organization that that has been working since 1972 to advance and protect women’s legal rights. Women have long faced great difficulty obtaining comprehensive, affordable health coverage due to harmful and discriminatory health insurance industry practices.

NWLC is profoundly concerned about the impact that the Court’s decision may have on women’s access to health insurance.

**The Ovarian Cancer National Alliance** is the nation’s leading ovarian cancer advocacy organization. As the Washington, D.C. arm of the ovarian cancer movement,

the Ovarian Cancer National Alliance works to save women's lives through education, awareness, and advocacy. The health care system plays an integral role in early detection and treatment of ovarian cancer, and in turn, saving women's lives. The Ovarian Cancer National Alliance stands ready to work with Congress, the Administration, and others in the community to increase access to health care and health insurance coverage, improve the nation's health care system, and work to ensure that the nation's scarce resources are allocated to ensure the provision of quality, evidence-based, outcomes driven, comprehensive care for all patients in need.

**Raising Women's Voices for the Health Care We Need** ("RWV") is a national initiative working to make sure women's voices are heard in the health reform debate and women's concerns are addressed by policymakers developing national and state health reform plans. RWV has a special focus on engaging women of color, low-income women, immigrant women, young women, women with disabilities and members of the lesbian, gay, bisexual, and transgender community. In addition to bringing the concerns of these constituencies to federal advocacy forums, RWV has 22 regional coordinators in 19 states who do community organizing, advocacy, and public education with women at the state and local levels. RWV and the women we represent are particularly concerned with the challenge to the prohibition on health insurance exclusions for preexisting conditions that was included in the new health reform law because insurers have denied coverage to women on the basis of such preexisting conditions as pregnancy, having had a previous c-section delivery, being a breast cancer survivor, and having been a victim of domestic violence as well as chronic conditions such as asthma and diabetes.

**United Cerebral Palsy** is one of the oldest and largest national organizations dedicated to improving the lives of people with disabilities. Founded in 1949, the organization advances the independence, productivity, and full citizenship of people with disabilities through a network of 94 affiliates in 34 states and the District of Columbia, serving over 176,000 children and adults every day. United Cerebral Palsy was a major leader in supporting enactment of the Patient Protection and Affordable Care Act.

### **FILING AN *AMICUS* BRIEF IS DESIRABLE AND RELEVANT**

Filing this *amicus* brief is desirable and relevant because *amici* have a strong interest in the dismissal of the challenge to the minimum coverage provision. If the minimum coverage provision is invalidated, access of *amici's* clients and constituents to affordable health insurance will be jeopardized.

Further, filing an *amicus* brief is desirable and relevant because *amici* can provide the Court with valuable information. In particular, the brief assembles facts concerning the especially tight connection between ACA's provision for ending the ubiquitous practice of excluding from health insurance coverage people with preexisting conditions. Among other things, the brief marshalls the record of state failures and successes with legislative initiatives to prevent this type of insurance exclusion. *Amici* believe that their brief adds highly probative information that will aid the Court in its determination of the appropriate disposition of Defendant's Motion to Dismiss.

Because this brief would serve the "classic role" of "bring[ing] relevant matter to the attention of the Court that has not already been brought to its attention by the parties," *amici's* motion should be granted. Fed. R. App. P. 29 Advisory Comm. Note; *Funbus Systems, Inc. v. Cal. Pub. Util. Comm'n*, 801 F.2d 1120, 1124-25 (9th Cir. 1986) (citation

omitted); *see also Neonatology Assocs. v. Commissioner*, 293 F.3d 128, 132-33 (3d Cir. 2002) (Alito, J.) (discussing standards for acceptance of *amicus* briefs). *Amici* provide a distinct and relevant analysis of the issues addressed in Defendant's Motion to Dismiss. *Cf. In re Heath*, 331 B.R. 424, 430 (B.A.P. 9th Cir. 2005) (noting that, even under a different circuit's "restrictive" approach, an *amicus* brief is accepted if "the amicus has unique information or perspective that can help the court.").

### CONCLUSION

For these reasons, *amici* respectfully submit that the Court should grant this Motion for Leave to File the *Amicus* Brief included herewith.

Dated: June 17, 2010

Respectfully submitted,

/s/ Angela H. France  
Angela H. France  
VSB # 46862  
H. Scott Johnson, Jr.  
VSB # 41586  
PCT Law Group, PLLC  
1725 Duke Street, Suite 240  
Alexandria, VA 22314  
(703) 881-9141  
afrance@pctlg.com  
sjohnson@pctlg.com  
*Counsel of Record*

Ian Millhiser\*  
Center for American Progress  
1333 H St., NW, 10<sup>th</sup> floor  
Washington, DC 20005  
(202) 481-8228  
imillhiser@americanprogress.org

Rochelle Bobroff\*  
Simon Lazarus\*  
Sergio E. Munoz\*  
Federal Rights Project  
National Senior Citizens Law Center  
1444 I St., NW, Suite 1100  
Washington, DC 20005  
(202) 289-6976  
rbobroff@nsclc.org  
slazarus@nsclc.org  
smunoz@nsclc.org

\* Not admitted in this Court

*Attorneys for Amici Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 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: June 17, 2010

/s/ Angela H. France  
Angela H. France  
VSB # 46862  
H. Scott Johnson, Jr.  
VSB # 41586  
PCT Law Group, PLLC  
1725 Duke Street, Suite 240  
Alexandria, VA 22314  
(703) 881-9141  
afrance@pctlg.com  
sjohnson@pctlg.com  
*Counsel of Record*

*Attorneys for Amici Curiae*