Affordable Care Act "Friend of the Court" Briefs: Minimum Coverage Provision

Today, more than 25 "friend of the court" briefs will be filed in support of the minimum coverage provision of the Affordable Care Act. These briefs are being submitted by doctors, nurses, and hospitals; organizations representing patients, women, small businesses, people with disabilities, senior citizens, young people and the civil rights community; the state of Washington; Democratic congressional leaders; nearly 500 state legislators representing all 50 states; and the Attorneys General of eleven states. Here is a brief synopsis for many of the amicus briefs filed before the Supreme Court of the United States in support of the minimum coverage provision in the Affordable Care Act.

If you need contact information for any brief, please contact Lori Lodes at llodes@americanprogress.org.

AARP

AARP filed a "friend of the court" brief supporting the Affordable Care Act (ACA) because it prohibits health insurers from excluding coverage based on pre-existing conditions and restricts the use of age rating to charge exorbitant premiums to older Americans. These issues are of critical importance to AARP members and all older Americans, and we strongly support the ACA which make health insurance more affordable for all. Inadequate health insurance is a serious challenge to older Americans. Insurers in the individual market have adopted industry-wide practices of weeding out those not as healthy by systematically denying coverage, limiting benefits, and charging excessive premiums to individuals with pre-existing conditions. The consequences have been dire, as the uninsured and underinsured often forego or receive inadequate health care and enter Medicare sicker and in greater need of services than their insured counterparts. Medicare, therefore, is forced to shoulder the burden of paying the costs for the services needed to care for those uninsured people once they enter Medicare. For more information, please visit www.aarp.org.

Attorneys General

The Attorneys General of eleven states – California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, New York, New Mexico, Oregon and Vermont – and the District of Columbia have filed a "friend of the court" brief in support of the Affordable Care Act. The Attorneys General believe that the Affordable Care Act is not only constitutional but also a strong example of cooperative federalism. The Act is constitutional as an exercise of Congress' power under the Commerce Clause to address problems that States, despite their best efforts, cannot comprehensively solve because of their fundamentally interstate nature. The Act combats these problems through a series of measures, including the minimum coverage provision, that free States to focus their resources on pressing healthcare needs within their borders and that afford States wide latitude to do so. In these ways, the Act builds on the successful tradition of cooperative federalism in which States jointly participate with the federal government to forge lasting solutions to our Nation's pressing problems.

Blue Cross and Blue Shield of Massachusetts

Blue Cross and Blue Shield of Massachusetts filed a "friend of the court" brief in support of the Affordable Care Act's minimum coverage provision. Massachusetts' health care reforms, which were the model for the Affordable Care Act, effectively achieved universal health coverage for that state's residents. Yet they were only able to do so because Massachusetts enacted a minimum coverage provision. Absent such a provision, the ACA's broader regulations of the insurance industry will fail because too many individuals will delay the purchase of insurance until the moment they become ill. Because the Constitution requires the Court to uphold laws which are an "essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated," the minimum coverage provision must be upheld.

California Endowment

Supreme Court litigator Kathleen M. Sullivan filed a brief on behalf of the California Endowment to present the Court with additional facts and arguments in favor of concluding that the minimum coverage requirement in the Affordable Care Act is fully within Congress's authority under the Commerce and Necessary and Proper Clauses of the United States Constitution. Further, The California Endowment's brief explains that the minimum coverage requirement has a real and tangible link to interstate commerce, and it is a market correction. Additionally, our brief relies on cutting-edge research and provides powerful empirical evidence from California. To view the brief, visit:
http://www.calendow.org/uploadedFiles/4548655_1_No.%2011-398%20HHS%20v%20Florida%20TCE%20Merits%20Amicus_AS%20FILED[1].pdf

Civil Rights

The "friend of the court" brief filed by the NAACP Legal Defense and Educational Fund, the American Civil Liberties Union, and The Leadership Conference on Civil and Human Rights, argues that the minimum coverage provision of the Patient Protection and Affordable Care Act reduces the exclusionary, harmful effects of the current health care system and enables covered persons to lead healthier, freer, and more productive lives, thereby advancing the twin goals of liberty and equal opportunity. Throughout our country, access to adequate healthcare for the most vulnerable members of society, including low-income families, people of color, women, seniors, and people with disabilities has been thwarted by the astronomical costs of health insurance, leading to harsh disparities in the quality of care. The minimum coverage provision addresses this problem by creating a regulatory framework that reduces the cost of insurance, ultimately making health care more affordable. Congress was well within its power to enact this milestone piece of legislation, which will allow millions of people who are currently uninsured to participate more fully and more equally in the life of our nation.

Constitutional and Tax Law Professors

Filed on behalf of a group of constitutional and tax law professors, this "friend of the court brief" argues that the minimum coverage provision falls within the scope of Congress's tax power. That power is very broad, and encompasses measures that have a regulatory purpose provided they serve the general welfare, raise some revenue, and do not violate an independent constitutional right or constitute an unapportioned direct tax. The minimum coverage provision easily meets these requirements. Moreover, Congress should not be deemed to disavow reliance on the tax power absent clear evidence to that effect, and such evidence is lacking here---on the contrary, substantial evidence suggests that Congress intended the provision to be a tax. The brief is signed by Professors Jack Balkin, Brian Galle, Ed Kleinbard, Gillian Metzger and Trevor Morrison.

Constitutional Scholars
The Constitutional Scholars' Amici Brief is filed on behalf of twenty law professors who have taught, studied, written about, and have expertise in the Constitution, constitutional history, and the structure and requisites of American federalism. While these professors take no position on the wisdom of the ACA—a question on which their views diverge—they agree that the ACA is constitutional. After exploring original understandings of the Commerce and Necessary and Proper Clauses and the time-tested principles used to determine the scope of congressional authority, the brief demonstrates that the minimum-coverage requirement is a straightforward exercise of Congress's power both to "regulate Commerce . . . among the several States" and to enact laws "necessary and proper" for carrying out its enumerated powers.

Democratic Members of Congress
Democratic leaders of the U.S. Senate and House filed a "friend of the court" brief in support of the Patient Protection and Affordable Care Act. The central and dispositive fact in this case is that the Affordable Care Act, including the provision that individuals maintain minimum health insurance coverage, is a congressional regulation of the interstate health insurance market. The effective regulation of health insurance, moreover, is critical to the effective functioning of the enormously important national health care market. The assertion that Congress lacks the legislative authority to regulate these national, commercial markets is an astonishing proposition. Its acceptance would mean that the Commerce Clause falls short of authorizing the full and effective regulation of interstate commerce. That novel claim is inconsistent with the Constitution and contrary to longstanding Supreme Court precedent.

Economic Scholars
The economic scholars brief is authored by over 40 economists who study health care, including four Nobel Laureates and two recipients of the John Bates Clark Medal for the outstanding American economist aged 40 and under, as well as former high-ranking economists in a number of prior administrations. The amicus economists show that the unique economics of the health care industry make the minimum coverage provision necessary. These unique features include the facts that virtually everyone will need care at some point in their life, that such care exceeds the amount that almost all uninsured individuals could afford, and that society – through legislation and long-standing norms – dictates that providers give unreimbursed care, the costs of which are passed along to people with insurance and taxpayers as a whole. People choosing to be without insurance -- a decision that is made in light of this "societal insurance" -- affect costs for all other people and, in turn, the workings of the economy as a whole. It is entirely reasonable for Congress to respond to this set of facts by mandating that people obtain at least some minimum coverage. These same features of medical care make the precedent for a minimum coverage provision not applicable in other markets. All other markets that have been part of the 'slippery slope' discussion are distinct from medical care in the nature of the economic consequences of not purchasing the good or service and in the implications for individuals of purchasing at different times. Finally, the amicus economists show that the arguments of the economists in opposition to the minimum coverage provision are seriously flawed. They are based on inapplicable data, assumptions that contradict the truth, and speculative conclusions without evidentiary support.

Health Care for All (Massachusetts Health Care Reform Groups)
Many of the Massachusetts groups most involved in the Commonwealth's historic 2006 health reforms have jointly authored a brief that supports the constitutionality of the minimum coverage provision under the Commerce Clause. Amici signers include Health Care For All; Health Law Advocates; The Massachusetts Hospital Association; The Massachusetts League of Community Health Centers; the Greater Boston Interfaith Organization; and Community Catalyst. While the Massachusetts reforms have been remarkably successful, Massachusetts's experience with health reform demonstrates that health care and health insurance are inherently interstate activities that cannot be comprehensively regulated without federal involvement. States attempting to act on their own will face barriers such as uninsured and underinsured patients from other states, as well as federal laws such as ERISA that limit the ability of states to regulate health insurance offered within the state. To view the full brief, visit: http://theincidentaleconomist.com/wordpress/wp-content/uploads/2012/01/11-398-tsac-Health-Care-for-All-Inc1.pdf.

Health Care Policy History Scholars
The Health Care Policy History Scholars brief is signed by 34 distinguished American historians, political scientists, and experts in health policy and health law who believe that the opinion of the Eleventh Circuit Court of Appeals holding the minimum coverage requirement to be unconstitutional fundamentally mischaracterizes the historical role of the federal government in shaping American health care policy. In fact, contrary to the assertions of the court below, Congress has long intervened to support and regulate the provision of institutional and professional health care in the United States. Congress also has an extensive history of using its constitutional authority to affect the supply of and demand for health insurance and the amount individuals pay for that insurance. Moreover, the way in which the minimum coverage requirement extends coverage—imposing a cost on those who fail to purchase health insurance in a timely manner to provide for their future health needs—is also not "wholly novel," as claimed by the appellate court. Finally, although the requirement has been widely criticized as a part of a "government takeover" of the health care system, in fact it is an idea promoted in the past by conservative political voices – including the NFIB – and comes from market-oriented approaches and proposals to achieve widely supported goals of ensuring quality, affordable and broadly accessible health care.

Health Law Scholars
The Health Law Professors brief is signed by approximately 100 health law professors, with Harvard's Charles Fried as counsel of record. This is a "Brandeis-style" brief that, rather than making legal arguments, addresses important facts about the extent and distribution of health care spending and utilization across the population and over time – for both insured and uninsured people. It also stresses the unique features of the health care and insurance market, as compared with other types of insurance or consumer goods.

Health Providers
Six organizations representing Doctors and Nurses; including, the American Academy of Pediatrics and the American Nurses Association submitted a "friend of the court" brief showing that the ACA's minimum coverage provision regulates trade in health care services by requiring most Americans to finance their health costs through insurance. It regulates an activity known as "adverse selection" where consumers delay purchasing health insurance until after they become likely to receive more in benefits than they pay into an insurance plan. And it enables the law's

protections for people with preexisting conditions to function without causing this problem of adverse selection to threaten insurers' ability to provide coverage. Each of these three facts alone is sufficient reason to uphold the law under the Constitution's Commerce and Necessary and Proper Clauses. To read the brief, visit: http://files.www.drsforamerica.org/about/recent-campaigns/Providers_Brief-SCOTUS.pdf

Hospitals
The American Hospital Association authored a "friend of the court" brief with the Association of American Medical Colleges, the Catholic Health Association of the United States, Federation of American Hospitals, National Association of Public Hospitals and Health Systems and the National Association of Children's Hospitals. Some 50 million Americans lack health insurance, the vast majority of them receive health care, and that care costs tens of billions of dollars each year. That cost is borne, in large measure, by third parties, including hospitals and health care systems as well as American taxpayers. This cost shifting substantially affects interstate commerce, and thus may be regulated by Congress.

Jewish Organizations
The amici Jewish organizations, JALSA, JCUA, JSPAN, JLC, and Professor Abigail R. Moncrieff, confront and combat the respondents' individual liberty arguments against the minimum coverage provision. Contrary to the respondents' and the Eleventh Circuit's assertions, this brief argues that the minimum coverage provision does not require a purchase of any unique product or service; it is instead merely a requirement for a standardized financial contribution to the national healthcare infrastructure from all legal residents who are able to pay. The brief goes on to point out that the states retain significant authority under the ACA to shape individuals' options for compliance with the minimum coverage provision, arguing that there is no need for monopolistic state authority here to protect individual freedom. Under the ACA, states retain many opportunities to diversify and to shape their citizens' experiences with insurance purchases and medical care.

Massachusetts Attorney General
Arguing that Massachusetts' own experience supports the federal government's basis for passing national health care reform, Attorney General Martha Coakley filed a brief in the U.S. Supreme Court supporting the federal Patient Protection and Affordable Care Act (PPACA). Massachusetts' health care reform law served as a blueprint for the PPACA. In her brief, the Attorney General argues that the successful results from the Massachusetts law enacted in 2006, including a reduction of the number of uninsured people utilizing the "free-care" pool (so-called "free riders"), demonstrate that Congress had a rational and constitutional basis to enact an individual coverage requirement in PPACA.

National Patient Groups
The American Cancer Society, American Cancer Society Cancer Action Network, American Diabetes Association and American Heart Association filed a brief emphasizing the importance of the individual responsibility provision to the law's critical patient protections that expand access to quality, affordable health care; reduce the cost burden on families; and refocus the health care system to emphasize prevention. The organizations argue that without the patient protections that the individual responsibility provision makes possible, large numbers of people with life-threatening chronic diseases will be denied care or charged far more than they can afford for it. To view the full amicus brief, visit: http://bit.ly/wL46Ve.

Patient Advocacy Groups
Fourteen groups representing people with disabilities, cancer patients, senior citizens and other health consumers filed a "friend of the court" brief on how the Affordable Care Act requirement that insurers cover people with preexisting conditions cannot function unless it also requires nearly everyone to carry insurance. If people are allowed to delay the purchase of insurance until they need expensive care they will drain all the money out of an insurance plan that they have not paid into. Seven states tried to enact a preexisting conditions law without a minimum coverage requirement and all seven states saw skyrocketing premiums, while the one state to do both, Massachusetts, saw its premiums go down 40 percent. This doesn't just make a minimum coverage requirement a good idea, it also makes it constitutional because, as Justice Scalia explained, "where Congress has the authority to enact a regulation of interstate commerce, it possesses every power needed to make that regulation effective." To view the full brief, visit:

Patients with Chronic Illness
Using stories of real people, Connecticut-based Advocacy for Patients with Chronic Illness filed a "friend of the court" brief to illustrate the harm to chronically ill Americans of not having accessible, affordable health insurance. Based on the experience of states that have attempted health reform without an individual mandate, it's critical to affordability to include healthy people in the pool to be able to provide coverage for those with pre-existing conditions. Since mandating coverage of pre-existing conditions clearly is within Congress's power under the Commerce Clause, the individual mandate is justified under the Necessary and Proper Clause.

Prescription Policy Choices and Health Professors
The Brief Amici Curiae for Prescription Policy Choices, Professors of Law, and Professors of Health Policy argues that the minimum coverage provision can be understood and upheld as a necessary and proper means of eliminating the market for self-insured healthcare transactions, a clearly legitimate end for Congress to pursue under its authority to regulate interstate commerce. This characterization of the minimum coverage provisions' goal is different from--and easier to analyze than--the parties' sense that the provision attempts to correct inefficiencies in the health insurance market. Congress well-established constitutional authority to eliminate interstate commercial markets, and minimum coverage is not only reasonably adapted but indeed is quite elegant as a means of eliminating the market for self-insured healthcare transactions. The responsibility provision effectively encourages individuals to shift out of that market in favor of its more efficient substitute market for fully-insured healthcare transactions.

Small Businesses
Small Business Majority and the Main Street Alliance filed a "friend of the court" brief outlining the small business case for upholding the Affordable Care Act in *U.S. Department of Health and Human Services, et al v. State of Florida, et al*. The brief addresses the serious economic impacts that cost-shifting and risk-shifting have had and would continue to have on small businesses across the country in an unreformed health care and health insurance marketplace. The brief details how, in light of these economic impacts on small businesses and interstate commerce, the Affordable Care Act and its individual coverage requirement are constitutional exercises of federal authority under the Commerce Clause and further supported by the Necessary and Proper Clause.

To view the full brief, visit:
http://smallbusinessmajority.org/_docs/briefs/011312_SCOTUS_brief.pdf or
http://mainstreetalliance.org/5437/aca-scotus-brief.

State Lawmakers
Constitutional Accountability Center's "friend of the court" brief is filed on behalf of more than 500 State Legislators from all 50 States – including legislators from every one of the States represented by the ACA's challengers – who believe that the Act is constitutional and are working hard in their States to implement the Act in a timely, efficient, and effective manner. The brief argues that under a faithful reading of the Constitution's text and history, the minimum coverage provision of the ACA is a valid exercise of Congress's Commerce Clause and Necessary and Proper Clause powers. The framers of our founding charter – including George Washington and Alexander Hamilton – came to the drafting table with the aim of giving the federal government power to provide national solutions to national problems. There is no constitutional right to freeload that is infringed by the individual responsibility aspect of the minimum coverage provision. Congress's regulation of decisions on how and when to finance health care services is constitutional. To read the brief, visit www.theusconstitution.org.

Washington State
Governor Gregoire believes increasing health care costs for the State and its residents threaten the economic vitality of the State, which relies not only on interstate commerce, but also heavily on international trade. Washington's experience directly refutes the Eleventh Circuit's ruling that Congress could not reasonably find that the minimum coverage provision was a necessary part of health insurance reform. When Washington law required coverage of preexisting conditions without requiring universal coverage—allowing individuals to wait until they were sick to participate in insurance—there was a "death spiral" in the individual insurance market that only made matters worse. Additionally, Washington's experience shows the problem of health care of the uninsured crosses state lines—for example, uninsured individuals in need of emergency care are transported to Washington's leading regional trauma center from many other states, placing some of the financial burden on the economy and institutions of the State. Finally, in Washington, promising efforts are underway to reform the delivery of health care to improve the health of consumers and lower the cost of their care; these efforts will only be successful with broad access to affordable insurance, including for small businesses. The minimum coverage provision of the ACA is critical to the success of these efforts. It is on the strength of these experiences in Washington that the Governor supports the Act's minimum coverage provision and concurs in its constitutionality.

Women's Groups
The National Women's Law Center's "friend of the court" brief is on behalf of 60 organizations in United States Department of Health and Human Services, et al v. State of Florida, et al. The brief explains what's at stake for women in the challenge to the new health care law and why the ACA, in correcting fundamental gender inequities in the health insurance and health care markets, is an appropriate exercise of federal Commerce Clause authority and therefore is constitutional. Organizations that joined the brief include American Association of University Women, Feminist Majority Foundation, Health Care for America Now, NARAL Pro-Choice America, National Council of Jewish Women, National Organization for Women Foundation, People For the American Way Foundation, and Planned Parenthood Federation of America, among many other organizations. To download the full brief with a full list of organizations that joined the brief, please visit:

http://www.nwlc.org/resource/amicus-brief-department-health-and-human-services-et-al-v-state-florida-et-al

Young Invincibles
Young Invincibles' "friend of the court" brief, filed in United States Department of Health and Human Services, et al v. State of Florida, supports the constitutionality of the Affordable Care Act (ACA), historic legislation that has already improved young adults' access to health care. The brief presents the important perspective of young adults, contrasting their staggering uninsurance rates, with the enormous benefits brought about by the ACA. Without the Affordable Care Act, 17 million young people would lose coverage. To download the full brief, please visit: http://www.younginvincibles.org/News/Releases/SupremeCourtACABrief.pdf