

United States Senate
WASHINGTON, DC 20510

October 22, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, The Capitol
Washington, DC 20510

Dear Majority Leader McConnell:

We write to strongly urge you to delay confirmation of President Trump’s illegitimate Supreme Court nominee until after Inauguration Day. With voting already underway in the 2020 election, the American people deserve a voice in filling this lifetime appointment. The stakes could not be higher: in the midst of a global pandemic, a case currently pending before the Supreme Court threatens to rip health coverage away from millions of Americans.¹ It would be short-sighted, cruel, and deadly to confirm a nominee who will not commit to upholding the Patient Protection and Affordable Care Act (ACA)² under these circumstances.

The ACA was a historic step forward in the effort to provide access to quality, affordable health care for every American. An estimated 20 million people gained health insurance as a result of the law.³ The ACA prohibited health insurers from discriminating against people with pre-existing conditions, which protected as many as 133 million people – just over half of all non-elderly adults.⁴ It prohibited insurers from charging women more than men for their care and from excluding benefits such as maternity coverage from their plans.⁵ The ACA’s essential health benefits provision requires nearly all insurers to cover mental and behavioral health treatment on an equal basis with other types of care, ensuring access to needed services people

¹ Kaiser Family Foundation, “Explaining California v. Texas: A Guide to the Case Challenging the ACA,” MaryBeth Musumeci, September 1, 2020, <https://www.kff.org/health-reform/issue-brief/explaining-california-v-texas-a-guide-to-the-case-challenging-the-aca/>.

² Patient Protection and Affordable Care Act, H.R.3590, <https://www.congress.gov/bill/111th-congress/house-bill/3590>

³ Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, “Affordable Care Act Has Led to Historic, Widespread Increase in Health Insurance Coverage,” Kelsey Avery, Kenneth Finegold, and Amelia Whitman, September 29, 2016, <https://aspe.hhs.gov/system/files/pdf/207946/ACAHistoricIncreaseCoverage.pdf>; Department of Health and Human Services, “ASPE Issue Brief: Health Insurance Coverage and the Affordable Care Act, 2010-2016,” Namrata Uberoi, Kenneth Finegold, and Emily Gee, March 3, 2016, <https://aspe.hhs.gov/system/files/pdf/187551/ACA2010-2016.pdf>.

⁴ Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, “Health Insurance Coverage for Americans with Pre-Existing Conditions: The Impact of the Affordable Care Act,” January 5, 2017, <https://aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf>.

⁵ Kaiser Family Foundation, “Women’s Health Insurance Coverage,” January 24, 2020, <https://www.kff.org/womens-health-policy/fact-sheet/womens-health-insurance-coverage-fact-sheet/>.

struggling with mental illness and substance use disorder.⁶ The ACA also permanently reauthorized the Indian Health Care Improvement Act and made significant progress toward fulfilling the federal government’s trust and treaty obligations to provide health care for Native Americans.⁷ Striking down the ACA would undo this important progress and destabilize the Indian Health Service, thus imperiling Native Americans’ health and well-being.

Before the ACA, insurers regularly imposed “lifetime limits” on their coverage, cutting off coverage for people with high-cost medical needs.⁸ For babies born prematurely and children with disabilities, this sometimes meant hitting their lifetime caps before they were even old enough for school.⁹ The ACA ended this cruel practice, saving thousands of families from bankruptcy.¹⁰ In fact, Stacy Staggs testified to this at Judge Barrett’s hearing, explaining that without the ACA, her twin daughters — born via emergency C-section at 28 weeks — would have already hit their lifetime caps and been uninsurable.¹¹ It also guaranteed that young adults could stay on their parents’ insurance until the age of 26, which helped to cut the uninsured rate in half for young adults age 18 to 24.¹² The expansion of Medicaid allowed millions of people to access health care, improving health outcomes,¹³ increasing financial stability,¹⁴ and saving thousands of lives.¹⁵ Overall, in the eight years following the passage of the ACA in 2010, the percentage of non-elderly adults who struggled to pay a medical bill decreased 17%, the percentage who skipped a test or treatment fell 24%, and the share who failed to fill a prescription fell 27%.¹⁶

⁶ Department of Health and Human Services, “Health Insurance and Mental Health Services,” updated March 18, 2020, <https://www.mentalhealth.gov/get-help/health-insurance>.

⁷ J Health Care Poor Underserved, “The Affordable Care Act and Implications for Health Care Services for American Indian and Alaska Native Individuals,” Raven E. Ross, Lauren D. Garfield, Derek S. Brown, and Ramesh Raghavan, April 7, 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4824684/>.

⁸ Department of Health and Human Services, “Lifetime & Annual Limits,” <https://www.hhs.gov/healthcare/about-the-aca/benefit-limits/index.html#:~:text=Under%20the%20current%20law%2C%20lifetime,were%20enrolled%20in%20that%20plan>.

⁹ Vox, “The Obamacare provision that saved thousands from bankruptcy,” Sarah Kliff, March 2, 2017, <https://www.vox.com/policy-and-politics/2017/2/15/14563182/obamacare-lifetime-limits-ban>.

¹⁰ *Id.*

¹¹ Testimony of Stacy Staggs before the U.S. Senate Judiciary Committee, October 15, 2020, <https://www.judiciary.senate.gov/imo/media/doc/Staggs%20Testimony.pdf>.

¹² Center for Law and Social Policy, “Why the Affordable Care Act is Critical for Young Adults,” Jessica Gehr, April 2017, <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Why-the-ACA-Is-Critical-for-Young-Adults.pdf>.

¹³ Kaiser Family Foundation, “The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review,” Madeline Guth, Rachel Garfield, and Robin Rudowitz, March 17, 2020, <https://www.kff.org/medicaid/report/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review/>.

¹⁴ Health Affairs, “Medicaid Expansion Reduced Unpaid Medical Debt and Increased Financial Satisfaction,” Aaron Sojourner and Ezra Golberstein, July 24, 2017, <https://www.healthaffairs.org/doi/10.1377/hblog20170724.061160/full/>.

¹⁵ National Bureau of Economic Research Working Papers Series, “Medicaid and Mortality: New Evidence from Linked Survey and Administrative Data,” pg. 16, Sarah Miller, Norman Johnson, and Laura R. Wherry, July 2020, <https://www.nber.org/papers/w26081.pdf>.

¹⁶ Center on Budget and Policy Priorities, “ACA Substantially Improved Access to Care and Financial Security,” <https://www.cbpp.org/aca-substantially-improved-access-to-care-and-financial-security>.

By strengthening Medicare, the ACA also made historic strides on behalf of our nation's seniors and people with disabilities. The law eliminated the Medicare Part D prescription drug coverage gap or "donut hole"—ultimately saving nearly 12 million people with Medicare more than \$26 billion on prescription drugs from 2010 - 2016.¹⁷ Additionally, the ACA waived cost-sharing requirements for preventive services, like mammograms and colonoscopies, critical to preserving seniors' well-being, among many other reforms intended to enhance care quality and extend the fiscal health of the program.¹⁸

Now all of this progress is under threat. On November 10, the Supreme Court is scheduled to hear oral arguments in *California v. Texas*, a lawsuit that challenges the constitutionality of one provision of the ACA, but threatens to invalidate the entire law.¹⁹ This new attack on the ACA comes as more than 12 million Americans are unemployed.²⁰ The ACA's Medicaid expansion has already allowed millions of Americans to obtain insurance after losing employer-based coverage, with many more expected to enroll as the economic crisis continues.²¹ At the same time, more than 8 million Americans have been diagnosed with COVID-19.²² Many of these survivors may have long-lasting health effects that are still not well understood.²³ Without the ACA in place, anyone who ever tested positive for COVID-19 could be denied coverage because of a pre-existing condition, impairing their ability to access care for complications from the disease for years in the future.²⁴

At this crucial moment in our country's history, President Trump has chosen a Supreme Court nominee who has a long record of opposition to the ACA. In 2012, Amy Coney Barrett signed a petition opposing an administration rule that implemented the provision of the law that

¹⁷ Center for Medicare & Medicaid Services, "Nearly 12 million people with Medicare have saved over \$26 billion on prescription drugs since 2010," Press Release, January 13, 2017, [cms.gov/newsroom/press-releases/nearly-12-million-people-medicare-have-saved-over-26-billion-prescription-drugs-2010](https://www.cms.gov/newsroom/press-releases/nearly-12-million-people-medicare-have-saved-over-26-billion-prescription-drugs-2010).

¹⁸ Kaiser Family Foundation, "Potential Impact of California v. Texas Decision on Key Provisions of the Affordable Care Act," September 22, 2020, https://www.kff.org/health-reform/issue-brief/potential-impact-of-california-v-texas-decision-on-key-provisions-of-the-affordable-care-act/?utm_campaign=KFF-2020-Health-Reform&utm_medium=email&_hsmt=2&_hsenc=p2ANqtz-8GTrvxfQ8bQBawlvBFBdG-8s1hYtnZ-fx1jSqVwjO4j2cReWhPoZODwyBB1FkMKmYD3Kwkswn7nOS1RYEWLh7nEBo4Q&utm_content=2&utm_source=hs_email#medicare.

¹⁹ Kaiser Family Foundation, "Explaining California v. Texas: A Guide to the Case Challenging the ACA," MaryBeth Musumeci, September 1, 2020, <https://www.kff.org/health-reform/issue-brief/explaining-california-v-texas-a-guide-to-the-case-challenging-the-aca/>.

²⁰ U.S. Bureau of Labor Statistics, "Employment Situation Summary – September 2020," Press Release, October 2, 2020, <https://www.bls.gov/news.release/empsit.nr0.htm>.

²¹ Health Affairs, "COVID-19 Has Increased Medicaid Enrollment, But Short-Term Enrollment Changes Are Unrelated to Job Losses," Chris Frenier, Sayeh S. Nikpay, and Ezra Golberstein, August 6, 2020, <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00900>.

²² CDC COVID Data Tracker, Updated October 20, 2020, https://covid.cdc.gov/covid-data-tracker/#cases_casesinlast7days.

²³ Washington Post, "Covid 'long haulers' have nowhere else to turn – so they're finding each other online," Kelsey Ables, October 1, 2020, <https://www.washingtonpost.com/technology/2020/10/01/long-haulers-covid-facebook-support-group/>.

²⁴ The Guardian, "Covid-19 survivors could lose health insurance if Trump wins bid to repeal Obamacare," Dominic Rushe and Amanda Holpuch, June 27, 2020, <https://www.theguardian.com/us-news/2020/jun/27/obamacare-trump-covid-health-insurance>.

requires employers to include access to birth control as an essential health benefit.²⁵ More recently, in 2017, she criticized Chief Justice John Roberts’ opinion upholding the ACA and praised Justice Antonin Scalia’s dissent, which would have struck down the law.²⁶ Her position should come as no surprise: the Trump Administration is actively advocating for the Supreme Court to strike down the ACA, despite their inability to offer a viable alternative.²⁷

It is hard to imagine a more disastrous step to take in the midst of a deadly pandemic. As senators, we hear every day from constituents whose lives, health, and financial futures have been saved by the ACA. If you are not persuaded by our arguments, we hope you will benefit from hearing directly from the American people; it is our honor to include their stories below:

CALIFORNIA

Krystyna, Chula Vista, California

At age 60, Krystyna’s eyesight started to fail because of cataracts. She had always struggled to obtain insurance because of pre-existing conditions, including c-sections and epilepsy. The cost of coverage – when it was even offered to her – averaged between \$2,500 and \$3,000 a month, far more than she and her husband could afford.

In 2010, she was able to obtain coverage through the Affordable Care Act. Within weeks, she was able to have cataract surgery. This saved her life.

Krystyna described her reaction when she was able to get coverage through the California Health Exchange following passage of the ACA: “It was like manna from heaven. I cried. After all these years of struggling to obtain coverage, I was able to get insurance through the California Exchange, no questions asked about my pre-existing conditions. The premium was worth \$200 a month, as compared to the \$2,500 to \$3,000 monthly payments I would have to pay before the ACA – if I could even get an insurer to offer me coverage.”

As Krystyna further explained: “People just don’t understand what it was like – the incredible fear before the Affordable Care Act – having to worry about being able to cover medical expenses and not being able to find affordable insurance.”

CONNECTICUT

Conner, Ridgefield, Connecticut

Conner is a ten-year-old from Ridgefield, Connecticut. When he was four, Conner was diagnosed with Duchenne muscular dystrophy, an incurable and degenerative disease which will slowly rob him of his ability to run, walk, talk, and eventually, his ability to smile. Unless a

²⁵ Washington Post, “Judge Barrett’s writing criticizes the Supreme Court decision upholding Obama-era health law,” Amy Goldstein and Alice Crites, September 28, 2020, https://www.washingtonpost.com/health/judge-barrett-aca-health-care-law/2020/09/28/429d165e-ff4c-11ea-b555-4d71a9254f4b_story.html.

²⁶ *Id.*

²⁷ New York Times, “Trump Administration Asks Supreme Court to Strike Down Affordable Care Act,” Sheryl Gay Stolberg, June 26, 2020, <https://www.nytimes.com/2020/06/26/us/politics/obamacare-trump-administration-supreme-court.html>.

treatment or cure is discovered, he could lose his life. Conner has a pre-existing condition and will likely require complex, expensive medical care for his entire life.

Conner's parents wrote about the Affordable Care Act, its protections, and Judge Amy Coney Barrett's nomination. They wrote, "We are concerned that [the ACA's] protections will be stripped from our family leaving us without health care coverage that we desperately need for our son Conner." They wrote, "If Conner was ever denied health care coverage our family would be in a precarious situation. We work hard but we would never be able to afford to care for Conner without insurance."

Finally, Conner's parents wrote, "Doctors take an oath: 'first, do no harm' and it's our belief that Justices should take that oath to heart also."

Tracy, Norwalk, Connecticut

Despite being diagnosed with stage 4 endometriosis that caused an ongoing inability to achieve a healthy pregnancy, Tracy considered herself "one of the lucky ones." She had access to coverage and was able to get the fertility treatment she needed to assist her in getting and staying pregnant. However, she wrote that she is concerned about the future of the ACA and assisted reproductive treatment, such as IVF.

She wrote, "If the ACA is overturned, infertility would be considered a preexisting condition and not covered by most insurance plans. This includes the thousands of veterans rendered infertile in the line of duty."

Tracy wrote, "For all of us trying to build a family, I implore examination of this judicial nominee and her radical views, and protect the medical coverage at risk for millions of Americans who desperately depend on it."

HAWAII

Dean and Jordan, Hawaii

Dean and his daughter Jordan are from my home state of Hawaii. Jordan, who is an elementary school teacher at Ewa Beach Elementary School, has PNH – a very rare blood condition. To treat this condition, she gets infusions of a special medicine that costs around \$500,000 per year without insurance. Dean told me that "without this medicine, she will die."

Dean and Jordan live in fear that Republicans will strike down the ACA, which would allow her insurance company to put lifetime caps on her benefits, and she would be left without coverage for her life-saving medicine. Dean wrote to me to share how "extremely terrified" he is about his daughter losing access to adequate health care under the ACA. He's asked me to fight for her.

MASSACHUSETTS

Rebecca, Revere, MA:

“My name is Rebecca Wood. I live in Revere. Over the last four years, my daughter Charlie and I have done a lot of health care advocacy work on Capitol Hill. I'm always happy to share my ACA story.

Due to severe preeclampsia, Charlie was delivered at 26 weeks gestation and weighed 790g (about 1 pound 12 ounces). She was in the NICU for three months. Without the ACA, she would have exceeded a lifetime cap before ever coming home. Additionally, she would have been uninsurable because her birth is a preexisting condition.

With access to health care, Charlie was able to thrive despite some pretty significant diagnoses including cerebral palsy, apraxia, a feeding disorder (which required a g tube), and developmental delays. Now, at the age of 8, Charlie lives a very much typical life.”

OREGON

Jennifer, Portland, Oregon

“My mother had gone without insurance for a very very long time because she had pre-existing conditions. She had given birth twice, she had varicose veins, she had anxiety, and she had those migraines.

Because of those pre-existing conditions, she was denied insurance.

Because of those denials, the Arterlovenous Malformation (AVM) in her third choroid plexus was not found.

Because of those denials, at 10:10 a.m. on June 2, 2009, my mother died.

Her name was Peggy. She was 49 years old.

On the last day of my mother's life, May 29, 2009, she hung her first art show. She worked in the garden at my grandmother's house. She had lunch with my stepdad. And then she had a stroke, because that AVM burst. She never recovered.

Because of those denials, my mother's last words to me, while she lay in a bed in the ICU at Riverbend Hospital in Springfield, Oregon, were "I love you Jenni. I love you, I love you I love you."

I was not quite 27 years old. I had two children who my mother loved more than life itself, two grandbabies that I now have to raise without a mother of my own.

It's been more than ten years without my mother. Ten years without her big laugh and her big hoop earrings and her big personality and her big, big love.

My mother was a powerful force of nature, and she deserved so much more than 49 years on this earth. She deserved more art shows and more dance parties with her grandbabies and more

lunches with my stepdad. She deserved to be able to see me graduate from law school and marry my husband and buy my first house.

She deserved healthcare coverage.

We can't go back. We can't go back on the promise of the ACA. We have to make it stronger. Because if we don't, more people will have to raise their children without their mothers, and that's not ok. Revoking the protections that the ACA affords is a death sentence for millions of people. This is not hyperbole. My mother is dead. She was 49 years old. Her condition, had it been found, was treatable. Had she had insurance, my mother would be alive to see my 13-year-old play in the honors jazz band and run in his first track meet. She would be able to see my 11-year-old perform with the Oregon Music Education Association honors choir and play violin in the Ron Russell Middle School orchestra and play volleyball. But she's not here.

She got 49 years. She deserved so much more than that.”

PENNSYLVANIA

Trisha, Bucks County, Pennsylvania:

Trisha's husband died as their first child was being born. In a letter Trisha shared with Senator Casey, she said, "We were anxiously awaiting the birth of our first child. An hour and a half later two ambulances were in my driveway. As the paramedics were assessing the health of my baby and me, the paramedic from the other ambulance told me that my husband could not be revived." Her letter went on to say, "My husband's death may have been prevented. Like many of Americans, we have difficulty with our health insurance. My husband had to leave his job for one year to complete an internship requirement to complete his doctorate in psychology. The internship was unpaid, and we could not afford COBRA the extension of health insurance. Because of pre-existing conditions, neither my husband's health issues nor my pregnancy would be covered under private insurance."

Barbara, Allegheny County, Pennsylvania:

“The pandemic has changed many things in my life, isolating me from my friends and my family. But one thing that hasn't changed is the very high cost of my prescription drugs. I am 74 years-old, and I have bleeding ulcers, high blood pressure, high cholesterol, migraine headaches, diabetes, and COPD. I also live with chronic back pain. I pay about \$500 every month on prescription medications and over-the-counter treatments.

At every turn, I am nickled and dimed. My medication for my ulcers costs \$300. My inhaler for my COPD costs \$150. My oxygen costs \$33. My eye vitamins to help keep cataracts at bay cost \$40. My nausea treatment costs \$20. But that's just some of my costs. I also pay for diabetes test strips, special toothpastes, mouthwash and tablets for my dry mouth, pain medications, and more.

If I didn't have to pay so much for health care, I'd probably feel like I hit the lottery. Overturning the Affordable Care Act could cause my prescription drug costs to skyrocket if the Medicare “donut hole” reopens. But I just can't afford to be nickled and dimed anymore.”

WISCONSIN

Kiara – Arcadia, Wisconsin

“I was born with an extremely rare connective tissue disorder called Loeys-Dietz Syndrome that was just identified in my lifetime, so few treatment options are available. Immediately after birth I had to have several operations to correct a cleft palate and a hernia. My father recalls changing the tape on my feeding tube and crying when I asked "Why are you hurting me, daddy?" From there I learned to walk with leg braces to correct the alignments of joints and provide strength and stability. I remember being able to pick out packer helmets and logos to put on them whenever I grew tall enough to need new braces. I first went to preschool with a cast on my leg and have a few specific memories of times I realized I might not have been "normal" like the other kids. They didn't go to the doctor all the time, they didn't have chronic pain, and they didn't have any orthopedic deformities like I did. But up until middle school, I still managed to pretend that I was just like everyone else. I spent two years in and out of back braces before it was decided that some of the orthopedic deformities were more than cosmetic and needed to be fixed. I had to undergo dozens of surgeries to fix a pectus excavatum (sunken chest) and severe scoliosis. Since then, I've been experiencing complications from surgery and severe chronic pain and headaches. I also know that I will eventually need to have my aorta repaired to prevent aortic dissection. I am now 19 and still fighting to control my pain and physical health. I study political science at the University of Wisconsin - Madison with hopes of one day campaigning on the idea of affordable Healthcare for all. Although things are sometimes difficult, the Affordable Care Act has granted me the ability to pursue a college education without fear of losing health insurance. I can stay on my father's health insurance until age 26 and therefore do not need to worry about working while in school just for the insurance. I don't need to worry about overworking my already exhausted body just to have the right to see a doctor when needed. In my current state, it would be highly unlikely I could work full time and receive health insurance through employment, and I cannot afford insurance on my own as a student. Having those protections for 7 more years has given me security and time to address the situation. My condition and the treatments it requires have proven to be very expensive. Before the ACA, I would often hear my parents discuss what could happen if they could not insure me through my father's job. And although it can still be difficult to get treatments approved, I know now that I cannot be completely denied insurance because of my uncontrollable preexisting conditions. Without the ACA, it is very likely I would not be able to receive medical care, which would eventually kill or bankrupt me. The ACA has given me the opportunity to be a normal college student and to pursue a normal life.”

Lindsey – Milwaukee, Wisconsin

“In August 2012 I was diagnosed at age 35 with invasive breast cancer. My treatment plan consisted of surgery, chemotherapy and radiation. The diagnosis was devastating obviously. The ongoing treatment plan continues to this day with annual visits to my cancer team and diagnostic testing every six months including a mammogram and a MRI. In November 2017 my husband was diagnosed with Rheumatoid Disease. He takes life saving medication every month that costs approximately \$5000 without insurance. Without this medication, his organs and joints would slowly deteriorate ultimately causing a painful death. Additionally, he has a severe hearing impair which caused him to lose his sales job in January of 2019. He is currently receiving financial benefits through social security disability. We rely on health insurance from my

employer to afford medical treatment and prescription drugs that keep me cancer free, my husband painfree [and my brother-in-law able to function and lead a quality life]. Health insurance without restrictions on pre-existing conditions is vital to the physical and financial health of my family. The ability to afford life saving medical treatment allows us to be productive citizens of the American society. In all of our situations, we did not give ourselves these conditions. We are worthy, patriotic citizens that deserve to live a quality life in spite of our pre-existing health conditions.”

Mary Lynn – Oregon, Wisconsin

Mary Lynn’s husband took his own life, and as a result, it was very difficult for her to find an insurance policy that would cover mental health care for her children, who were 12 and 14 at the time. She was on disability and Medicare at the time, so was unable to add her children to her own policy.

She tried to purchase an expensive plan for her kids so that they could access psychiatric care for the trauma they experienced from their father’s death. However, she was notified by the insurer that the plan could not be used to cover this care, since as a result of their dad’s suicide, they were determined to have a preexisting condition that excluded mental health coverage. Although she tried to explain that her kids were actually adopted, it didn’t matter to the company, and she was forced to pay for their psychiatric care out of pocket with virtually no assistance.

She was unable to find a plan that would cover their mental health care until her children became eligible for the state’s Medicaid program several years later. An attempt to overturn the ACA could result in attempts by insurers to exclude coverage for mental health care once again, hurting families like Mary Lynn’s that have already gone through unspeakable loss.

Sincerely,

Elizabeth Warren
United States Senator

Tammy Baldwin
United States Senator

Richard Blumenthal
United States Senator

Mazie K. Hirono
United States Senator

Dianne Feinstein
United States Senator

Robert P. Casey, Jr.
United States Senator

Jeffrey A. Merkley
United States Senator

CC: National Institutes of Health Director, Dr. Francis Collins, and Centers for Disease Control and Prevention Director, Dr. Robert Redfield.