

**Congress of the United States**  
**Washington, DC 20515**

March 22, 2020

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Dear President Trump,

We write to urge you to reconsider your Administration's position in *Texas v. United States* as well as your Administration's actions to undermine the Patient Protection and Affordable Care Act (P.L. 111-148) (ACA) in light of the 2019 novel coronavirus (COVID-19) pandemic. During this period of crisis and great uncertainty, we must move beyond partisan attacks on the ACA and instead come together to protect the health care of all Americans.

The ACA overhauled the individual insurance market, enabled states to expand their Medicaid programs to cover more individuals, and allowed millions of previously uninsured Americans to enroll in affordable, quality plans. Additionally, the ACA created important protections for Americans with pre-existing conditions.

In the lawsuit *Texas v. United States*, your Administration has taken the position that the zeroing out of the individual mandate penalty in the Tax Cuts and Jobs Act of 2017 (P.L. 115-97) makes the entire ACA unconstitutional.<sup>1</sup> The Supreme Court could issue a ruling on this case as soon as October 2020. If the Court rules in your favor, our entire health care system will be thrust into crisis. The millions of Americans covered by Medicaid expansion and ACA marketplace plans could lose their health insurance. Patients with pre-existing conditions, including patients recovering from COVID-19, could lose coverage or face discrimination and impossible rate increases. During this pandemic and its aftermath, our health system cannot bear more stress and uncertainty. We strongly urge you to reverse your position in *Texas v. United States* in order to protect Americans during and after this pandemic.

Your Administration has also issued numerous regulations to undermine the ACA and reduce Americans' access to health care coverage, which has left our nation more vulnerable during this pandemic. You expanded the availability of short-term and "junk" health insurance plans, which

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<sup>1</sup>Musumeci, MaryBeth. "Explaining Texas v. U.S.: A Guide to the Case Challenging the ACA" *Kaiser Family Foundation* (March 20, 2020). <https://www.kff.org/health-reform/issue-brief/explaining-texas-v-u-s-a-guide-to-the-case-challenging-the-aca/>

do not offer sufficient consumer protections and coverage.<sup>2</sup> Your own Administration acknowledged in its rulemaking that people who purchase such plans and then experience a serious illness “could face financial hardship.”<sup>3</sup> Today, thousands of Americans with COVID-19 are fighting for their lives in intensive care, and millions of Americans are facing severe financial hardship. COVID-19 patients covered by junk plans will undoubtedly face devastating hospital bills, and all Americans covered by junk insurance are at increased financial risk in an already tumultuous economy.

In addition to expanding the availability of junk plans, your Administration has greatly decreased funding for advertising and outreach during the annual open enrollment period. The Centers for Medicare and Medicaid Services (CMS) spent \$10 million to publicize and market ACA plans for the 2020 enrollment period,<sup>4</sup> whereas CMS spent \$100 million on advertising for the 2017 enrollment period.<sup>5</sup> These cuts have been especially harmful for underserved and hard-to-reach populations, who now may be most in need of coverage during this difficult time. The uninsured rate has already increased during your time as President. According to the U.S. Census, 27.5 million Americans lacked health insurance in 2018, an increase of 1.9 million since 2017.<sup>6</sup> We fear that the uninsured rate will continue to climb due to current and ongoing job losses related to COVID-19.

We are glad that your Administration is considering a special enrollment period for uninsured Americans to enroll in an ACA marketplace plan in light of the COVID-19 pandemic. Along with many of our colleagues, we had previously called on your Administration to take this important step to protect the uninsured during this challenging time.<sup>7</sup> We request that you move forward with plans for a special enrollment period, and that you institute a robust Navigator program so that all uninsured individuals, or individuals covered by junk plans who want to switch to a quality plan, are aware of their options and can make informed decisions.

During this pandemic and period of economic turmoil, we must focus on using every tool at our disposal to expand and strengthen health care for Americans in need. Rather than supporting a lawsuit to end states’ Medicaid expansions, your Administration should work with states to bolster their Medicaid programs during COVID-19. Rather than allowing companies to peddle junk plans, your Administration should ensure all Americans have the opportunity to enroll in comprehensive health care coverage through ACA plans.

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<sup>2</sup> The White House, “Presidential Executive Order Promoting Healthcare Choice and Competition Across the United States” (October 2, 2017). <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-healthcare-choice-competition-across-united-states/>

<sup>3</sup> “Short-Term, Limited-Duration Insurance” *Federal Register* (February 21, 2018).

<https://www.federalregister.gov/documents/2018/02/21/2018-03208/short-term-limited-duration-insurance>  
<sup>4</sup> Centers for Medicare & Medicaid Services, “Federal Health Insurance Exchange 2020 Enrollment” (October 25, 2019). <https://www.cms.gov/newsroom/fact-sheets/federal-health-insurance-exchange-2020-open-enrollment>

<sup>5</sup> Jost, Timothy. “CMS Cuts ACA Advertising By 90 Percent Amid Other Cuts To Enrollment Outreach” *Health Affairs* (August 31, 2017). <https://www.healthaffairs.org/doi/10.1377/hblog20170901.061790/full/>

<sup>6</sup> Berchick, Edward R., Jessica C. Barnett and Rachel D. Upton, “Health Insurance Coverage in the United States: 2018” *United States Census Bureau*. <https://www.census.gov/library/publications/2019/demo/p60-267.html>

Once again, we strongly urge you to act in the best interest of the American people by immediately ending your efforts to overturn and undermine the ACA. Thank you for your prompt consideration of this urgent matter.

Sincerely,



Robert Menendez  
United States Senator



Cory A. Booker  
United States Senator



Bill Pascrell, Jr.  
Member of Congress