No. 11-400

IN THE

Supreme Court of the United States

STATE OF FLORIDA, *et al.*,

Petitioners,

v.

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

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF *AMICUS CURIAE* THE DISABILITY RIGHTS LEGAL CENTER IN SUPPORT OF RESPONDENTS AND IN FAVOR OF AFFIRMING THE CONSTITUTIONALITY OF THE MEDICAID EXPANSION PROVISIONS OF THE AFFORDABLE CARE ACT

PAULA D. PEARLMAN
SHAWN KRAVICH
CANCER LEGAL RESOURCE CENTER OF THE DISABILITY RIGHTS LEGAL CENTER
800 S. Figueroa Street
Suite 1120
Los Angeles, CA 90017
(866) 843-2572

CHRIS M. AMANTEA
Counsel of Record
DOUGLAS M. MANCINO
IAN T. MAHER
ALAN M. WITLEN
HUNTON & WILLIAMS LLP
550 S. Hope Street, Suite 2000
Los Angeles, CA 90071
camantea@hunton.com
(213) 532-2000
Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

POLICY ARGUMENTS FAVOR MEDICAID EXPANSION PROVIDED FOR BY THE AFFORDABLE CARE ACT 5

A. Medicaid Expansion Will Address the Uninsured Medical Coverage Epidemic in the United States 6

B. The Economic Costs Associated with Cancer and Other Chronic Illnesses are Great but can be Reduced by Preventative Screening 7

CONCLUSION 10

TABLE OF AUTHORITIES

FEDERAL CASES

Florida v. United States Dep't of Health & Human Servs., 648 F.3d 1235 (11th Cir. 2011) 6

Fullilove v. Klutznick, 448 U.S. 448 (1980) 4

FEDERAL STATUTES

Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119, as amended by the Health Care and Education and Reconciliation Act, 111-152, 124 Stat. 1029 2

MISCELLANEOUS

Cancer Facts & Figures 2012, AMERICAN CANCER SOCIETY (2012) 2, 4, 7, 8

Cancer Facts & Figures 2008, AMERICAN CANCER SOCIETY (2008) 8, 9

Stan Dorn, *Uninsured and Dying Because of It: Updating the Institute of Medicine Analysis on the Impact of Uninsurance on Mortality*, URBAN INSTITUTE (Jan. 2008) 2

TABLE OF AUTHORITIES–Continued

U.S. Census Bureau, P60-238, *Income, Poverty, and Health Insurance Coverage in the United States: 2009* (2010) 6

BRIEF OF *AMICUS CURIAE* THE DISABILITY RIGHTS LEGAL CENTER IN SUPPORT OF RESPONDENTS[1] AND IN FAVOR OF AFFIRMING THE CONSTITUTIONALITY OF THE MEDICAID EXPANSION PROVISIONS OF THE AFFORDABLE CARE ACT

INTEREST OF *AMICUS CURIAE*

The Disability Rights Legal Center (DRLC) is a non-profit organization dedicated to championing the rights of people with disabilities through education, advocacy, and litigation. DRLC accomplishes its mission through many programs, including the Cancer Legal Resource Center (a joint program with Loyola Law School, Los Angeles), the Education Advocacy Program, the Community Advocacy and Outreach Programs, and the Civil Rights Litigation Program. Since 1975, DRLC has handled countless disability rights cases under state and federal civil rights laws challenging discriminatory practices by government, business, and educational institutions.

A central tenet to championing the rights of people with disabilities includes the promotion of access to adequate, affordable healthcare for those with any kind of health condition, including people with pre-existing conditions such as cancer. DRLC has a particular interest in cancer-related legal issues through its national Cancer Legal Resource Center (CLRC) program. The CLRC provides free informa-

[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution to its preparation or submission.

tion and resources on cancer-related legal issues such as access to government benefits and health care, employment and taking time off work, insurance coverage, and estate planning to cancer patients, survivors, caregivers, health care professionals, employers, and others coping with cancer nationwide.

From the CLRC's direct work with populations affected by cancer, the CLRC understands that access to government benefits such as Medicaid is an area of primary concern to people with cancer and their families. The onset of cancer is most often unexpected: many people learn of their cancer diagnosis when uninsured or underinsured. In 2012 alone, approximately 577,190 Americans are expected to die from cancer, which amounts to 1,500 deaths a day. *Cancer Facts & Figures 2012*, AMERICAN CANCER SOCIETY, at 1 (2012), http://www.cancer.org/acs/groups/content/@epidemiologysurveilance/documents/document/acspc-031941.pdf. Indeed, 137,000 adults ages 25 to 64 died because of a lack of health insurance from 2000 through 2006. Stan Dorn, *Uninsured and Dying Because of It: Updating the Institute of Medicine Analysis on the Impact of Uninsurance on Mortality*, URBAN INSTITUTE, at 2 (Jan. 2008). The high cost of private insurance and limited opportunities for low-income people seeking affordable alternatives lead to a high population of uninsured or underinsured individuals, many of whom may miss out on life-saving opportunities for preventative care before diseases advance to uncontrolled limits.

Though the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119, as amended by the Health Care and Education and Reconciliation Act, 111-152, 124 Stat. 1029 (collectively the "Afford-

able Care Act," "ACA," or the "Act") significantly expanded opportunities for all people, including people with disabilities, to access healthcare, the Affordable Care Act would fall short of providing access to millions of individuals—many of whom are people with disabilities—if not for the comprehensive Medicaid expansion that the Affordable Care Act contemplates. For many, Medicaid coverage will enable new diagnoses and treatments of cancer and other chronic conditions early on—decreasing cost and complication from late diagnosis and increasing survivorship. Accordingly, the DRLC strongly supports the Congressional expansion of Medicaid eligibility under the Affordable Care Act.

SUMMARY OF ARGUMENT

The Cancer Legal Resource Center is a program of the Disability Rights Legal Center with specialized knowledge of healthcare access for people with cancer. As such, cancer will be used as an example to illustrate the experience of people with all types of chronic illness. However, cancer is just one of multiple chronic diseases that have the potential to effectively be combated by Medicaid expansion pursuant to the Affordable Care Act.

Expansion of Medicaid under the ACA will allow lower income uninsured individuals to have access to preventative medical services that will lower long-term healthcare costs of state and local governments. When serious health conditions such as cancer are caught early, treatment options generally become shorter and less expensive. Moreover, costs associated with emergency room services are reduced because individuals who have health insurance are able to be proactive about screening and early detec-

tion and are more likely to seek treatment before a medical emergency arises. Further, earlier detection and treatment will increase the overall rate of survivorship of diseases like cancer.

Cancer is the second leading cause of death in the United States where an estimated one in four people in the country will die from this disease. *Cancer Facts & Figures 2012*, AMERICAN CANCER SOCIETY, at 1 (2012), http://www.cancer.org/acs/groups/content/@epidemiologysurveilance/documents/document/acspc-031941.pdf. Many of these deaths could have possibly been prevented with more routine screenings for cancer, especially for those who are currently uninsured.

Aside from the financial savings related to an expanded Medicaid program, if any of these deaths can be prevented, then Congress has rationally and reasonably exercised its Spending Clause powers for this social benefit alone. It is well-established that, incident to that power, Congress has the authority to attach conditions to the receipt of federal funds for purposes of achieving certain policy objectives, including those that Congress could not otherwise satisfy through direct regulation. *See, e.g., Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980) ("Congress is empowered to 'further broad policy objectives by conditioning the receipt of federal monies upon compliance by the recipient with federal statutory and administrative directives.'").

ARGUMENT

Since its inception in 1965, Medicaid has focused on providing healthcare coverage to low income people who are blind, who have disabilities, or who are 65 or over. Changing Medicaid to include all

non-elderly individuals with incomes below 138 percent of the federal poverty level represents a social safety net to provide healthcare services for low income individuals.

While the states are focused on what is perceived to be increased costs for the provision of medical coverage through the Affordable Care Act, ultimately medical costs to the states will be reduced with preventative care that will become available under the Act. Thus, rather than a coercive expansion of Medicaid, the Act will likely result in cost savings by preventing emergency room visits, identifying and treating conditions at an earlier and less costly stage for treatment, or otherwise employing recognized preventative care and cost reduction practices that reduce long-term spending and expensive treatments. Many of these expensive treatments and costs associated with acute untreated illness and diseases such as cancer are already borne by state and local governments through government-funded emergency rooms and hospitals that serve the uninsured. These costs and services are currently being provided without direct federal government reimbursement. The Act's Medicaid funding provision will cover services that are already being provided by the states. Moreover, it does this in a way that will ultimately reduce long-term costs on states.

POLICY ARGUMENTS FAVOR MEDICAID EXPANSION PROVIDED FOR BY THE AFFORDABLE CARE ACT

On March 23, 2010, the Affordable Care Act was enacted into law. Title II of the Affordable Care Act addresses the role of public programs, and establishes a detailed and much needed program for ex-

panded access to Medicaid. To be sure, the Medicaid program is the cornerstone for the Government's expanded health care coverage.

A. Medicaid Expansion Will Address the Uninsured Medical Coverage Epidemic in the United States

The number of people uninsured for medical coverage in the United States has reached epidemic proportions. According to the last census, over 50 million people (spread across every income bracket) currently have no medical coverage. *Florida v. United States Dep't of Health & Human Servs.*, 648 F.3d 1235, 1248 (11th Cir. 2011) (citing U.S. Census Bureau, P60–238, *Income, Poverty, and Health Insurance Coverage in the United States: 2009*, at 23 tbl.8 (2010), *available at* http://www.census.gov/prod/2010pubs/p60-238.pdf.). Many of these individuals either do not seek medical coverage at all or are denied access to much-needed medical services, including preventative care. *Id.* at 1247. The ACA expands Medicaid eligibility and provides significant Medicaid subsidies to those who most need it.

Indeed, "[a]s a result of the act's Medicaid expansion, an estimated 9 million of the 50 million currently uninsured will be covered for health care by 2014 (and 16 million by 2016 and 17 million by 2021)." *Id.* at 1263. Additionally, states will only pay a small percentage of the increased cost associated with the expansion. *Id.* at 1267-68 ("the states will only have to pay incidental administrative costs associated with the expansion until 2016; after which, they will bear an increasing percentage of the cost, capping at 10% in 2020.").

B. The Economic Costs Associated with Cancer and Other Chronic Illnesses are Great but can be Reduced by Preventative Screening

According to the National Institute of Health, the overall costs of cancer in 2007 amounted to $226.8 billion. *Cancer Facts & Figures 2012*, AMERICAN CANCER SOCIETY, at 3 (2012), http://www.cancer.org/acs/groups/content/@epidemiologysurveilance/documents/document/acspc-031941.pdf. Costs will only increase in the future due to an increasingly growing and aging population. In fact, trends show that by 2050, the number of new cancer patients is expected to double to 2.6 million people. *Id*. at 33. As the second leading cause of death in the United States, cancer represents a significant source of financial and social cost to this country. *Id*. at 1.

Even among these tragic numbers, there are certain socioeconomic groups that are hit harder than others. People with a lower socio-economic status represent a disproportionate number of cancer deaths. For example, a recent study showed that the mortality rate for African-American and white men who had 12 or fewer years of education was more than three times higher than that of college graduates. *Id*. at 43. While this higher mortality rate may be attributed to activities that increase one's risk of developing cancer such as smoking or having a poor diet, it is also the result of higher barriers to healthcare among lower income individuals.

Uninsured individuals are more likely than insured individuals to only seek medical intervention when faced with an emergency. They tend not to seek preventative care or will not put as much effort

into managing chronic health conditions. *Cancer Facts & Figures 2008*, AMERICAN CANCER SOCIETY, at 29 (2008), http://www.cancer.org/acs/groups/content/@nho/documents/document/2008cafffinalsecuredpdf.pdf. Cancer, in particular, is a disease whose treatment plan and prognosis can vary widely according to what stage it is detected. A cancer's stage is determined by the primary tumor's size and whether the cancer has spread to other areas of the body. *Cancer Facts & Figures 2012*, AMERICAN CANCER SOCIETY, at 2 (2012), http://www.cancer.org/acs/groups/content/@epidemiologysurveilance/documents/document/acspc-031941.pdf.

Regular screening for cancer can result in early detection and removal of cancerous growths when the disease is the most treatable and when the chance of survival is highest. The types of cancer that can be detected early through screening, which account for at least half of all new cancer cases, include breast, colon, rectal, cervical, prostate, oral cavity, and skin cancer. *Id*. at 1. Many of these types of cancer can be screened by general practitioners; accordingly, as Medicaid expansion provides otherwise unavailable opportunities for health care access, patients are increasingly more likely to get access to life-saving information when it can help them the most. There are also significant cost reduction benefits to early screening and detection as well. Indeed, survivorship aside, no study is required to demonstrate the medical cost differences between the preventative removal of a pre-cancerous skin legion—a standard out-patient procedure—and the intensive chemotherapy and radiation treatments of stage-four melanoma.

Despite widespread knowledge that early detection is key in the treatment of cancer, studies have repeatedly found that compared to those who have Medicaid or private health insurance, individuals without insurance are less likely to get screenings for cervical, breast, and colorectal cancer. *Cancer Facts & Figures 2008*, AMERICAN CANCER SOCIETY, at 30 (2008), http://www.cancer.org/acs/groups/content/@nho/documents/document/2008cafffinalsecuredpdf.pdf. For example, according to a study conducted in 2005 by the National Health Interview Survey (NHIS), 74.5 percent of women with private insurance and 56.1 percent of women on Medicaid had a mammogram in the past two years. *Id.* By contrast, only 38.1 percent of uninsured women had a mammogram in that same time period. *Id*. The biggest reasons for not seeking this type of preventative care are cost and the lack of access to affordable healthcare. *Id*. at 29. Both of these impacts are mitigated by the Medicaid expansion provisions of the ACA.

CONCLUSION

We urge the Court to consider the ultimate cost savings attributed to preventative care and early treatment, as well as funding for treatment that would flow to the states, and to affirm the decision below and uphold the constitutionality of the Affordable Care Act.

Respectfully submitted,

PAULA D. PEARLMAN
SHAWN KRAVICH
CANCER LEGAL RESOURCE CENTER OF THE DISABILITY RIGHTS LEGAL CENTER
800 S. Figueroa Street
Suite 1120
Los Angeles, CA 90017
(866) 843-2572

February 17, 2012

CHRIS M. AMANTEA
Counsel of Record
DOUGLAS M. MANCINO
IAN T. MAHER
ALAN M. WITLEN
HUNTON & WILLIAMS LLP
550 S. Hope Street
Suite 2000
Los Angeles, CA 90071
camantea@hunton.com
(213) 532-2000
Counsel for Amici Curiae