



## FLORIDA HEALTH JUSTICE PROJECT, INC.

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October 26, 2020

Re: Urgent request to consider Florida's withdrawal as a Plaintiff in *California v. Texas*.

Dear Attorney General Moody,

We are writing to urgently and respectfully request that you withdraw as a Plaintiff from *California v. Texas*,<sup>i</sup> a case that your office inherited from Florida's prior Attorney General, Pam Bondi.

Legal scholars, including those who had opposed the Affordable Care Act (ACA) and who supported prior ACA legal challenges, have found the arguments in this case are utterly lacking in merit. A range of experts has characterized the plaintiffs' arguments as "absurd, ludicrous, flimsy and far-fetched."<sup>ii</sup> But, notwithstanding the lack of any legal merit, the case is now scheduled for oral argument before the Supreme Court on November 10, 2020. Given that one possible outcome would be a ruling limited to the current Plaintiff states, the need for Florida's withdrawal is all the more urgent.<sup>iii</sup>

Our plea is made in light of the potentially devastating consequences that could flow from the Court's ruling. The timing could not be worse, as Floridians continue to battle COVID-19, as well as the economic devastation of the shut-down. Any ruling that results in the weakening or repeal of the ACA would further undermine the health and wellbeing of millions of Floridians already suffering due to the ongoing COVID-19 pandemic.

The undersigned organizations and individuals are dedicated to ensuring access to affordable health care, particularly for Florida's most vulnerable residents. We bear witness to the hardship and devastation wrought by the ongoing COVID-19 crisis.

We are also acutely aware of the positive impact that the ACA has had on the lives of millions of Floridians and the potentially catastrophic consequences of this legal challenge. Since the implementation of the ACA in 2010, Florida has seen a dramatic reduction in its uninsured population.<sup>iv</sup> Florida leads the nation in health insurance enrollment under the ACA, with over 1.9 million Floridians signed up as of January this year.<sup>v</sup>

In October of this year, the Urban Institute estimated that a repeal of the ACA would lead to a 57% increase in the share of nonelderly Floridians without health insurance coverage.<sup>vi</sup> After the pandemic, the Economic Policy Institute reported that 867,110 Floridians lost employer provided health insurance (EPI).<sup>vii</sup> A repeal of the ACA would both prevent these newly uninsured Floridians from accessing much-needed subsidized coverage, as well as eliminate coverage for the almost 2 million Florida residents who were enrolled in a plan as of January 2020.<sup>viii</sup> In the

face of historic joblessness, depriving newly unemployed and uninsured Floridians of the necessary safety net provided through ACA marketplace subsidies would be a grave mistake.

In the coming months, the ACA will play a crucial role in Florida's ability to manage the COVID-19 crisis. With or without a vaccine, it is imperative that the maximum number of Floridians have access to affordable treatment. From a public health standpoint, an increase in Florida's uninsured population would be disastrous, as the uninsured often avoid seeking necessary medical attention.<sup>ix</sup>

The repeal of the ACA in the midst of the COVID-19 crisis would also be devastating for Florida's aging population. The ACA's prohibition of discrimination based on preexisting conditions and age are especially important.<sup>x,xi</sup> If the ACA were to be repealed, an estimated 8.4 million Floridians with pre-existing conditions could face higher premiums, benefit exclusions, or even outright denial of coverage.<sup>xii</sup>

The COVID-19 crisis has completely upended the conditions and premises under which Florida entered the lawsuit. Therefore, we, the undersigned, respectfully urge you to act in the interests of Floridians by withdrawing from *California v. Texas*.

Sincerely,

**Organizations:**

Florida Health Justice Project  
Florida Policy Institute  
Florida Voices for Health  
1199SEIU Florida UHE  
Advocacy Partners Team  
AFSCME  
Americans for Immigrant Justice  
Catalyst Miami  
Central Florida Jobs with Justice  
Children's Services Council of Broward County  
Community Justice Project  
Disability Rights Florida  
Florida Alliance for Retired Americans (FLARA)  
Florida Center for Fiscal and Economic Policy  
Florida Clinicians for Climate Action  
Florida Immigrant Coalition  
Florida Impact to End Hunger  
Florida NOW  
Hispanic Unity of Florida  
Huddle in the Harbor, Inc.  
La Gringa Aplanada, Inc.  
League of Women Voters of the Space Coast  
League of Women Voters of Florida  
Legal Aid Service of Broward County, Inc.  
LULAC Florida  
Lupus and Allied Diseases Association, Inc.

Miami Freedom Project  
Miami Workers Center  
National Association of Social Workers - Florida Chapter  
National Lawyers Guild South Florida Chapter  
Opportunity For All Floridians  
Organize Florida  
South Florida LCLAA  
Southern Legal Counsel  
St. Johns County Legal Aid  
The Common Ground Project  
TransSOCIAL, Inc.

**Individuals:**

Abbe Hurwitz	Diane Dimperio	Johanna Salazar
Alec Rodriguez	Dr. Wayne Stephens	John Raucci
Alison Yager	Edouard Jallad	John Streater
Ana Ciereszko	Eileen Petrovic	JoNel Newman
Analise Alvarez	Elissa Ghezzar	JoNell Potter
Andres Rodriguez	Emely Sanchez	Joni Silvestri
Angie Fisher	Emily Maser	Joshua Epstein
Ann Murray	Emily Swafford	Judith Walters
Antonela Peña	Ernesto Gomez	Judy Schrader
Ashley Mayfaire	Estefania Lalinde	Jules Catuogno
Ashley Vazquez	Ethel Sultana Andrews	July Reed
Barbara J Prager	Eugene Eccli	Karen Cheney
Ben Trotto	Felicia Bruce	Karen Woodall
Bernard Perlmutter	Felina Furer	Kathleen Arntsen
Beth Babcock	Francisco Rivera	Kevin J Byrne
Beth Hovind	Frank Roder	Krisite-Anne Padron
Blanca Mesa	Fred Elig	Lanelle Phillmon
Brian Larson	Frederick Anderson	Larri Thatcher
Brittney Peterkin	Gabriel Scheffler	Larsen McBride
Carol Mager	Gaby Gross	Laura Begault
Carol Peckins	Gale Chisholm	Lawrence Clermont
Caroline Bettinger-Lopez	Gideon Levy	Linda Ward
Chelsea Dunn	Gustavo Granados	Lindsay Corrales
Christine Reilly	Haley Coet	Linet Paz
Claudia Evans	Harriet Lancaster	Lisa Carpus
Claudia Ramirez, MSW	Carol A. Anderson	Louisa McQueeney
Cody Ibasfalean	Islara Souto	Madelyn Ferguson
Connie Alter	Jack Rosenkranz	Maja Veselinovic
Connor Torraca	Jane Trocheck Walker	Maria Lipnick
Daniela Camacho	Janet R. McAliley	Marian F. Griffiths MD
Daniela Foerch	Janice Poirier	Marilyn Grossman
Daniella Pacitti	Jay Jefferson	Marni Lennon
David B. Soule	Jeanette L. Hartzell	Martha Guillen
David Lawrence Jr.	Jennifer Hill	Martin Lucia
Deborah Snow	Jerry Buechler	Mary E. McLaughlin, PhD,
Deborah White	Jodi Ray	PA-C

Melanie Rosler  
Melissa Lipnick  
Melissa Swain  
Mercedes Pichard, Ed.D.  
Mina Hosseini  
Miriam Dickson  
Miriam Harmatz  
Moraly Arroyo  
Morgan Mayfaire  
Most Rev William R Cavins  
Murdina Campbell  
Nan Imbesi  
Nancy Cooper  
Nancy Kinnally  
Natalia Tohme  
Natalie K Castellanos  
Nydia Menendez  
O. Stryker  
Oneika Peterkin

Paige Peterkin  
Pamela Thomas  
Patricia Brigham  
Paul Nathanson  
Preston Drummer  
Rebekah  
Richard K. MacMaster  
Richard Owen  
Richard Polangin  
Robert E. Rosen  
Robert Walters  
Rosa Castro Feinberg, Ph. D.  
Samantha Howell, Esq.  
Sandra Munson  
Sara Gallo  
Sarah Nelson  
Sheila Payne  
Shenae Samuels  
Sofia Santiesteban

Stephen A. Meleski  
Steve Sampier  
Susan McCullough  
Susanne Zwingel  
Suzanne Rodriguez  
Sylvia Byrx  
Tamar Ezer  
Tammy D. Greer  
Tarik Mokhtech  
Tomica Smith  
Tyrus Fleetwood  
Valory Greenfield  
Vilma N Fry  
Vincent J. Lipsio  
Virginia Chirelli  
Walter T. Cermak  
Whitney Fung  
Winnie Perez  
Zoraida Maldonado

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<sup>i</sup> No. 19-840, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-840.html>. The case has been consolidated with *Texas v. California*, No. 19-1019, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-1019.html>.

<sup>ii</sup> *Suit Challenging ACA Legally Suspect but Threatens Loss of Coverage for Tens of Millions*, Center on Budget and Policy Priorities, (August 21, 2020), <https://www.cbpp.org/research/health/suit-challenging-aca-legally-suspect-but-threatens-loss-of-coverage-for-tens-of>. (Summarizing legal merits of the case from experts on both side of the aisle. “Legal experts, including experts opposed to the ACA and who supported other legal challenges to the law, almost uniformly agree that the arguments in this case are “absurd” or “ludicrous.” Two Republican state attorneys general (from Montana and Ohio) submitted an amicus brief stating, “to describe [the District Court’s position] is to refute it.” Republican Senator Lamar Alexander has called the Administration’s position that the 2017 tax bill effectively repealed the ACA “flimsy” and “as far-fetched as any I’ve ever heard.”).

<sup>iii</sup> MaryBeth Musumeci, *Explaining Texas v. U.S.: A Guide to the Case Challenging the ACA*, Kaiser Family Foundation, (September 1, 2020), <https://www.kff.org/health-reform/issue-brief/explaining-texas-v-u-s-a-guide-to-the-case-challenging-the-aca/>, (citing to the 5<sup>th</sup> Circuit’s slip opinion directing the trial court to consider the federal government’s new argument that any order prohibiting enforcement of the ACA should extend only to provisions that injure Plaintiffs and that the ruling only apply to the Plaintiff states) (emphasis added).

<sup>iv</sup> *Effect of the Affordable Care Act in Florida*, Ballotpedia, (Accessed October 9, 2020), [https://ballotpedia.org/Effect\\_of\\_the\\_Affordable\\_Care\\_Act\\_in\\_Florida](https://ballotpedia.org/Effect_of_the_Affordable_Care_Act_in_Florida).

<sup>v</sup> Justine Griffin, *Obamacare Demand Remains High in Florida as Enrollment Nears 2 Million*, Tampa Bay Times, (January 14, 2020), <https://www.tampabay.com/news/health/2020/01/14/obamacare-demand-remains-high-in-florida-as-enrollment-nears-2-million/>. See also *Marketplace Enrollment 2014-2020*, Kaiser Family Foundation, (Accessed October 12, 2020), <https://www.kff.org/health-reform/state-indicator/marketplace-enrollment/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22florida%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

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<sup>vi</sup> Linda J Blumberg, Michael Simpson, Matthew Buettgens, Jessica Banthin, and John Holahan, *The Potential Effects of a Supreme Court Decision to Overturn the Affordable Care Act: Updated Estimates*, Urban Institute, (October 2020), [https://www.urban.org/sites/default/files/publication/103072/the-potential-effects-of-a-supreme-court-decision-to-overturn-the-affordable-care-act-updated-estimates\\_01.pdf](https://www.urban.org/sites/default/files/publication/103072/the-potential-effects-of-a-supreme-court-decision-to-overturn-the-affordable-care-act-updated-estimates_01.pdf).

<sup>vii</sup> Ben Zipperer, Josh Bivens, *16.2 million workers have likely lost employer-provided health insurance since the coronavirus shock began*, Economic Policy Institute (May 14, 2020), <https://www.epi.org/blog/16-2-million-workers-have-likely-lost-employer-provided-health-insurance-since-the-coronavirus-shock-began/>, at Figure A.

<sup>viii</sup> Justine Griffin., *Obamacare Demand Remains High in Florida as Enrollment Nears 2 Million*, Tampa Bay Times, (January 14, 2020), <https://www.tampabay.com/news/health/2020/01/14/obamacare-demand-remains-high-in-florida-as-enrollment-nears-2-million/>. See also *Marketplace Enrollment 2014-2020*, Kaiser Family Foundation, (Accessed October 12, 2020), <https://www.kff.org/health-reform/state-indicator/marketplace-enrollment/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22florida%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>ix</sup> Jennifer Tolbert, *What Issues Will Uninsured People Face with Testing and Treatment for COVID-19?*, Kaiser Family Foundation, (March 16, 2020), <https://www.kff.org/coronavirus-covid-19/fact-sheet/what-issues-will-uninsured-people-face-with-testing-and-treatment-for-covid-19/>.

<sup>x</sup> *How the ACA is Helping Older Adults During COVID-19*, Justice in Aging, (June 25, 2020), <https://www.justiceinaging.org/wp-content/uploads/2020/06/How-the-ACA-is-Helping-the-Older-Adults-Most-Impacted-by-the-COVID19-Pandemic.pdf>.

<sup>xi</sup> Nicole Rapfogel, Emily Gee, and Mathew Brady, *Affordable Care Act Repeal by State*, Center for American Progress, (March 2, 2020), <https://www.americanprogress.org/issues/healthcare/news/2020/03/02/480997/affordable-care-act-repeal-state/>.

<sup>xii</sup> *Id.*