

[*EN BANC* ORAL ARGUMENT SCHEDULED FOR DECEMBER 17, 2014]

**No. 14-5018**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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JACQUELINE HALBIG, ET AL.,

*Appellants,*

v.

SYLVIA MATHEWS BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET  
AL.,

*Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA (No. 13-623(PLF))

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***AMICI CURIAE* BRIEF OF THE AMERICAN CANCER SOCIETY,  
AMERICAN CANCER SOCIETY CANCER ACTION NETWORK,  
AMERICAN DIABETES ASSOCIATION, AND AMERICAN HEART  
ASSOCIATION SUPPORTING APPELLEES URGING AFFIRMANCE OF  
THE TRIAL COURT'S SUMMARY JUDGMENT ORDER**

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rules 26.1 and 29(b), *Amici* hereby submit the following corporate disclosure statement:

The American Cancer Society, Inc. is a nonprofit corporation. It is not publicly held, and no corporation or other publicly held entity owns more than 10 percent of its stock.

The American Cancer Society Cancer Action Network, Inc. is a nonprofit corporation. It is not publicly held, and no corporation or other publicly held entity owns more than 10 percent of its stock.

The American Diabetes Association is a nonprofit corporation. It is not publicly held, and no corporation or other publicly held entity owns more than 10 percent of its stock.

The American Heart Association is a nonprofit organization. It is not publicly held, and no corporation or other publicly held entity owns more than 10 percent of its stock.

**CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES**

Pursuant to D.C. Circuit Rule 28(a)(1), *Amici* certify as follows:

**(A) Parties and *Amici***

All parties, intervenors, and *amici* appearing before the district court, the original three-judge panel, and this Court are listed in the Brief for Appellants.

**(B) Rulings Under Review**

References to the rulings at issue appear in the Brief for Appellants.

**(C) Related Cases**

References to the related cases appear in the Brief for Appellants.

s/ Mary P. Rouvelas \_\_\_\_\_

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**CERTIFICATE OF COUNSEL REGARDING FILING OF SEPARATE  
BRIEF BY THESE *AMICI***

Pursuant to D.C. Circuit Rule 29(d), counsel for *Amici* certify that a separate brief is necessary, because no other *amicus* brief of which *Amici* are aware will address issues raised in this brief. Specifically, *Amici* are the only entities providing statistical and other information to the Court from a nonpartisan public health perspective that includes patient advocacy groups and discusses the scientific link between health insurance coverage and medical outcomes. This brief of *Amici* focuses on points relevant to the issues before this Court but that are not made or adequately elaborated upon in the principal brief or other *amicus* briefs. In light of their nonpartisan activities discussed below, these *Amici* are uniquely prepared to assist the Court in understanding those points.

s/ Mary P. Rouvelas \_\_\_\_\_

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**GLOSSARY**

<i>ACA or Act</i>	Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 11-152, 124 Stat. 1029
<i>Amici</i>	The parties filing this brief: American Cancer Society, American Cancer Society Cancer Action Network, American Diabetes Association, and American Heart Association

### INTEREST OF *AMICI*<sup>1</sup>

The American Cancer Society, American Cancer Society Cancer Action Network, American Diabetes Association, and American Heart Association (collectively, “*Amici*”) are the largest and most prominent nonpartisan organizations representing the interests of patients, survivors, and families affected by the widespread chronic conditions of cancer, diabetes, and heart disease and stroke, respectively. These conditions result in a significant portion of the nation’s health care spending.

The fight against cancer, diabetes, heart disease, and stroke requires access to affordable, quality health care and health insurance. *Amici* therefore strongly supported the nationwide availability of federal tax credits under the provisions of the Patient Protection and Affordable Care Act (“Affordable Care Act,” “Act,” or “ACA”) during its consideration by Congress. We desire to assist the Court in understanding why those provisions of the Act are so important to millions of cancer, diabetes, heart disease, and stroke patients and survivors, as well as their families. Undisputed evidence shows that, absent affordable health insurance,

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<sup>1</sup> This brief is filed pursuant to the Order entered on September 4, 2014 setting due dates for *amicus* briefs. Counsel for plaintiffs and for the government have consented to the filing of this brief. *Amici* certify that this brief was authored in whole by counsel for *Amici* and no part of the brief was authored by any attorney for a party. No party, nor any other person or entity, made any monetary contribution to the preparation or submission of this brief.

people with these chronic diseases have poorer health outcomes and require more costly care. In enacting the Affordable Care Act, Congress intended to and did address these known problems. However, without the availability of tax credits to all eligible Americans (not just those who happen to purchase insurance from state-run Exchanges as Appellants contend), the Act's benefits will be immediately denied to 4.6 million people currently receiving tax credits in 34 states and potentially denied to the 12.5 million individuals who are eligible for credits, many of whom suffer from the chronic diseases addressed by *Amici*.<sup>2</sup>

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<sup>2</sup> The 4.6 million figure was calculated by multiplying the number of individuals currently enrolled in a federally-facilitated marketplace (excluding Idaho and New Mexico) by 86 percent, the number of individuals receiving financial assistance in the form of tax credits who are enrolled through federally-facilitated marketplaces. Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, *Issue Brief: Health Insurance Marketplace: Summary Enrollment Report for the Initial Annual Open Enrollment Period For the Period: October 1, 2013 – March 31, 2014 (Including Additional Special Enrollment Period Activity Reported Through 4-19-14)* 34 tbl.C2, 15 tbl.5 (2014), available at [http://aspe.hhs.gov/health/reports/2014/MarketPlaceEnrollment/Apr2014/ib\\_2014\\_Apr\\_enrollment.pdf](http://aspe.hhs.gov/health/reports/2014/MarketPlaceEnrollment/Apr2014/ib_2014_Apr_enrollment.pdf). The number of eligible individuals in federally-facilitated marketplaces, 12.5 million, was calculated by adding the number of persons eligible for tax credits in the 34 states listed as “federally-facilitated marketplace” or “partnership marketplace.” Kaiser Fam. Found., *State-by-State Estimates of the Number of People Eligible for Premium Tax Credits Under the Affordable Care Act* 3 tbl.1 (2013), available at <http://kaiserfamilyfoundation.files.wordpress.com/2013/11/8509-state-by-state-estimates-of-the-number-of-people-eligible-for-premium-tax-credits.pdf>; Kaiser Fam. Found., *State Decisions for Creating Health Insurance Marketplaces* (May 28, 2013), <http://kff.org/health-reform/state-indicator/health-insurance-exchanges/>. Even these estimates do not fully represent the scope of the potential impact. Many states are considering eliminating their state Exchanges, for reasons entirely

The American Cancer Society is the nationwide, community-based voluntary health organization dedicated to eliminating cancer as a major health problem. The American Cancer Society has three million volunteers nationwide. Our extensive scientific findings have established that health insurance status is strongly linked to medical outcomes. Cancer patients with adequate insurance coverage are more likely to be diagnosed at an earlier stage of disease resulting in lower medical costs, more thorough treatment, better outcomes, and lower rates of death. Accordingly, the American Cancer Society identified the lack of affordable health insurance as a major impediment to advancing the fight against cancer. Along with its nonpartisan advocacy affiliate, the American Cancer Society Cancer Action Network, the American Cancer Society strongly advocates guaranteeing all Americans adequate, available, and affordable health care that is administratively simple. The American Cancer Society Cancer Action Network has nearly one million grassroots volunteers nationwide, including thousands who participated in efforts supporting enactment of the ACA. During consideration of the Affordable Care Act, the American Cancer Society Cancer Action Network was a source of

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unrelated to this litigation, which would prevent even more individuals from receiving tax credits. *See e.g.*, John Reichard, *Oregon Votes to Switch Enrollment to Federal Health Insurance Exchange*, The Commonwealth Fund (Apr. 25, 2014), <http://www.commonwealthfund.org/publications/newsletters/washington-health-policy-in-review/2014/apr/april-28-2014/oregon-votes-to-switch-to-federal-exchange> (explaining that Oregon has decided to close its state-run exchange and indicating that other states may follow suit).

scientific data for Congress and was the leading voice for cancer patients and their families seeking to make health insurance affordable for all Americans.

The American Diabetes Association is a nationwide, nonprofit, voluntary health organization founded in 1940 with over 400,000 members and approximately 14,000 health professional members. Its mission is to prevent and cure diabetes and to improve the lives of all people affected by diabetes. The American Diabetes Association is the most authoritative source for clinical practice recommendations, guidelines, and standards for the treatment of diabetes. As part of its mission, the American Diabetes Association works to improve access to high quality medical care and treatment for all people with, and at risk for, diabetes. In seeking to prevent diabetes, protect the rights of patients, and improve access to affordable and adequate insurance for people with diabetes, and based on clear evidence that lack of health insurance leads to increased risk of diabetes complications, the American Diabetes Association supported provisions in the Affordable Care Act that specifically impact people with diabetes, including the provisions making health care affordable.

The American Heart Association is the nation's oldest and largest voluntary health organization dedicated to fighting heart disease and stroke—the first and fourth leading causes of death in the United States. Since 1924, the American Heart Association and its more than 22 million volunteers and supporters have

focused on reducing disability and death from cardiovascular disease and stroke through research, education, community-based programs, and advocacy. The American Heart Association and its American Stroke Association division have set goals to improve the cardiovascular health of all Americans by 20 percent and to reduce cardiovascular disease and stroke mortality by 20 percent by 2020. Based on well-documented research that uninsured and under-insured Americans with heart disease and stroke experience higher mortality rates, poorer blood pressure control, greater neurological impairments and longer hospital stays after a stroke, the American Heart Association/American Stroke Association worked to represent the needs and interests of heart disease and stroke patients during the Congressional debates on health care reform and supported provisions of the Act making health care more affordable.

### **SUMMARY OF ARGUMENT**

All Americans use or will use health care services, and the lifetime risks that individual Americans will acquire one of the diseases or conditions towards which *Amici* direct their efforts are high. Moreover, the costs of treating such serious conditions are often staggering and beyond the financial means of many individuals and families. The question is thus not *whether* individual Americans will incur health care expenses, but *how* those expenses will be financed. How

care is financed, in turn, directly impacts access to vital health care services and the quality of health outcomes.

*Amici* were all actively involved in the legislative process leading to enactment of the Affordable Care Act. During that process, Congress was made aware of, and relied upon, data establishing that people have poorer health outcomes and require more costly, long-term, and invasive treatment without affordable health insurance.

The provisions of the Affordable Care Act making federal premium tax credits available to eligible Americans with limited or no means to pay for health insurance are critical to increasing access to insurance and, by extension, to quality care and better outcomes for patients with chronic diseases and conditions. These key provisions were included in the Act by Congress in response to known failures in the health insurance market that left individuals—especially those affected by serious and chronic conditions such as cancer, diabetes, heart disease, and stroke—without insurance and facing overwhelming costs and poor health outcomes. Congress corrected these failures in order to achieve its broader legislative goals of protecting patients and reducing costs by improving the availability, affordability, and quality of health insurance. The ACA's premium tax credit provisions will not

accomplish what Congress intended without the availability of tax credits to all eligible Americans.<sup>3</sup>

*Amici* submit that the district court was correct in finding that “the plain text of the [Affordable Care Act], the statutory structure, and the statutory purpose make clear that Congress intended to make premium tax credits available on both state-run and federally-facilitated Exchanges.” *Halbig v. Sebelius*, Civil Action No. 13-623 (PLF), 2014 WL 129023, at \*18 (D.D.C. Jan. 15, 2014). The district court’s conclusion is fully supported by the Fourth Circuit’s recent decision in *King v. Burwell*, 759 F.3d 358 (4th Cir. 2014). In that case, the Fourth Circuit agreed that “the [government has] the better of the statutory construction arguments.” but the majority concluded that “the statute is ambiguous and subject to at least two different interpretations.” *Id.* at 372. *See also id.* at 376 (Davis, J., concurring) (explaining that the IRS Rule that makes tax credits available to all consumers is “the correct interpretation of the Act and is required as a matter of

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<sup>3</sup> Critically, the Act’s tax credits provide a safety net for individuals whose employers are eliminating health plans or who will not be able to afford employer-provided plans in the future. *See e.g.*, Michelle Andrews, *Health Premiums and Costs Set to Rise for Workers Covered at Work*, NPR (Oct. 14, 2014 10:28 AM), <http://www.npr.org/blogs/health/2014/10/14/356097499/health-premiums-and-costs-set-to-rise-for-workers-covered-at-work>; Shelly Banjo et al., *Wal-Mart to End Health Insurance for Some Part-Time Employees: Cutback to Affect 30,000 Who Work Fewer Than 30 Hours a Week*, Wall St. J. (Oct. 7, 2014 7:37 PM), <http://online.wsj.com/articles/wal-mart-to-end-health-insurance-for-some-part-time-employees-1412694790>.

law.”). The Fourth Circuit deferred to the IRS’s “permissible construction” of the Act because “denying tax credits to individuals shopping on federal Exchanges would throw a debilitating wrench into the Act’s internal economic machinery,” “widely available tax credits are essential to fulfilling the Act’s primary goals,” and the IRS Rule avoids the “unforeseen and undesirable consequence” that “Americans unable to purchase insurance without the credits would be forced to pay a penalty that Congress never envisioned imposing on them.” *Id.* at 374-76.

## ARGUMENT

### **I. ACCESS TO AFFORDABLE HEALTH CARE IS ESSENTIAL FOR MANAGING CHRONIC DISEASES**

The need for health care is difficult to predict and practically inevitable at some point in life. Looking solely at the diseases that are the focus of *Amici*:

- One out of two men and one out of three women will develop some form of cancer in their lifetime, even excluding certain skin cancers and early-stage tumors. Am. Cancer Soc’y, *Cancer Facts and Figures 2014* 1 (2014), available at <http://www.cancer.org/acs/groups/content/@research/documents/webcontent/acspc-042151.pdf>.
- Currently, an estimated 29.1 million Americans have diabetes. Ctr. for Disease Control & Prevention, *National Diabetes Fact Sheet 2014* 1 (2014), available at <http://www.cdc.gov//diabetes/pubs/statsreport14/national-diabetes-report-web.pdf>.
- If present trends continue, 40 percent of all Americans and over 50 percent of Hispanic men, Hispanic women, and African American

women will develop diabetes in their lifetime. Edward W. Gregg et al., *Trends in Lifetime Risk and Years of Life Lost Due to Diabetes in the USA, 1985-2011: A Modelling Study*, *Lancet Diabetes & Endocrinology* (2014), available at [http://www.thelancet.com/journals/landia/article/PIIS2213-8587\(14\)70161-5/fulltext#article\\_upsell](http://www.thelancet.com/journals/landia/article/PIIS2213-8587(14)70161-5/fulltext#article_upsell).

- By 2050, as many as one in three adult Americans are expected to have diabetes. James P. Boyle et al., *Projection of the Year 2050 Burden of Diabetes in the US Adult Population: Dynamic Modeling of Incidence, Mortality, and Prediabetes Prevalence*, *Population Health Metrics*, Oct. 2010, at 1, 4.
- An estimated 83.6 million American adults (more than one in three) have one or more types of cardiovascular disease. Alan S. Go et al., *Heart Disease and Stroke Statistics—2014 Update: A Report from the American Heart Association* 115 (2013), available at <http://circ.ahajournals.org/content/early/2013/12/18/01.cir.0000441139.02102.80.full.pdf>.
- The lifetime risk for developing cardiovascular disease among those starting free of known disease is almost two in three for men and greater than one in two for women. *Id.* at 116 (citing John T. Wilkins et al., *Lifetime Risk and Years Lived Free of Total Cardiovascular Disease*, 308 *J. Am. Med. Ass'n* 1795, 1798 (2012)).

Combined, these statistics demonstrate the virtual certainty that all Americans will need health care at some point in their lives to combat these chronic diseases or myriad other health conditions that people experience. Without affordable health insurance, patients and their families will continue to bear the burden of substantial health care costs, later stage diagnosis, and assume the risk of being denied the lifesaving care they need.

Good health and the chance for positive outcomes from illness must not be dependent upon a person's ability to pay for care. *Amici* abhor reports of patients who cannot afford to seek care when a cancer is at an early stage, foregoing potentially life-saving chemotherapy treatments, and left helpless as their condition worsens. We find it tragic when high costs force people with diabetes to delay treatment or skip taking needed medications for so long that they lose a limb due to amputation. We are frustrated by the reluctance of people experiencing heart attack symptoms to call 9-1-1 out of concern that they cannot afford a large medical bill, thereby depriving themselves of access to quick diagnosis and treatment in the Emergency Department that can mean the difference between life and death.

These natural, indeed nearly universal, human responses are why *Amici* have drawn hundreds of thousands of members and millions of volunteers and donors to efforts to help increase access to affordable and quality care for those with debilitating or life-threatening diseases. As nonpartisan organizations dedicated to addressing the devastating impact of these diseases, *Amici* know that basic, preventive health care and life-saving treatments are fundamental to successful health outcomes for all Americans.

## **II. TAX CREDITS MUST BE AVAILABLE TO ALL ELIGIBLE AMERICANS SEEKING HEALTH INSURANCE AS A NECESSARY AND PROPER FOUNDATION FOR MAKING HEALTH CARE**

## **AFFORDABLE AS CONGRESS INTENDED UNDER THE AFFORDABLE CARE ACT**

The debates over health care reform and Congress's enactment of the Affordable Care Act were spurred by the failures of our health care system and high costs of health insurance. These failures hurt not only the nation's economic well-being, but also the health and well-being of individual Americans. For these and other reasons explained below, improving the health insurance system to make coverage more affordable was a primary Congressional focus. As the district court properly recognized:

In adopting the ACA, Congress believed that the Act would address the lack of access by many Americans to affordable health care, ACA § 1501(a)(2)(E)-(G), *codified at* 42 U.S.C. § 18091(2)(E)-(G), and would lead to “near-universal coverage.” ACA § 1501(a)(2)(D), *codified at* 42 U.S.C. § 18091(2)(D). Indeed, Title I of the ACA is titled “Quality, Affordable Health Care for *All* Americans.”

*Halbig*, 2014 WL 129023, at \*16 (emphasis by the district court). The Fourth Circuit likewise noted that “widely available tax credits are essential to fulfilling the Act's primary goals and...Congress was aware of their importance when drafting the bill.” *King*, 759 F.3d at 374.

### **A. The Act addresses the problem of cancer, diabetes, heart disease, and stroke patients and survivors who want and need health insurance but often cannot afford it**

The cost of services to treat cancer, diabetes, heart disease, and stroke can be beyond the reach of all but the wealthiest individuals absent some form of

insurance. These chronic conditions have significant financial implications for patients, survivors, and their families.

One study found that 23 percent of colon cancer patients reported being in debt as a result of expenses related to cancer treatment, with an average debt of \$26,860. Veena Shankaran et al., *Risk Factors for Financial Hardship in Patients Receiving Adjuvant Chemotherapy for Colon Cancer: A Population-Based Exploratory Analysis*, 30 J. Clinical Oncology 1608, 1610 (2012). More recently, a study published in June of 2013 found that cancer patients are more than two and a half times as likely to file for bankruptcy as people who do not have cancer. Scott Ramsey et al., *Washington State Cancer Patients Found to be at Greater Risk for Bankruptcy than People Without a Cancer Diagnosis*, Health Aff., June 2013, at 5-6, available at <http://content.healthaffairs.org/content/early/2013/05/14/hlthaff.2012.1263.full.pdf+html>. Similarly, the high cost of treating cardiovascular disease is a leading cause of medical bankruptcy. David U. Himmelstein et al., *MarketWatch: Illness and Injury as Contributors to Bankruptcy*, W5 Health Aff. 63, 69 (2005) <http://content.healthaffairs.org/content/early/2005/02/02/hlthaff.w5.63.full.pdf>. Among families with high levels of medical debt resulting in bankruptcy, those with stroke had average out-of-pocket medical costs of \$23,380 and those with heart disease had average medical costs of \$21,955. David U. Himmelstein et al.,

*Medical Bankruptcy in the United States, 2007: Results of a National Study*, 122 Am. J. Med. 741, 745 (2009).

The problem is not merely anecdotal. One of every three people diagnosed with cancer under age 65 are uninsured or have been uninsured at some point since diagnosis. Am. Cancer Soc’y Cancer Action Network, *A National Poll: Facing Cancer in the Health Care System* 4 (2010), available at <http://www.acscan.org/healthcare/cancerpoll>. Of the cancer patients under 65 who reported being uninsured, 37 percent attributed their lack of health insurance to not being able to find an affordable plan. *Id.* at 11.

Likewise, approximately 7.3 million (or 15 percent of) adults who report having cardiovascular disease are uninsured, and nearly one of four cardiovascular disease patients and one of three stroke patients have gone without coverage at some point since their diagnosis. Am. Heart Ass’n, *FACTS: Breaking Down the Barriers: The Uninsured with Heart Disease and Stroke* (2013) (citing Analysis of 2006-10 NHIS Data Conducted by The George Washington University Center for Health Policy Research for the American Heart Association (Aug. 2011) (on file with the American Heart Association)), available at [http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm\\_304486.pdf](http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_304486.pdf); Am. Heart Ass’n, *Affordable Access to Health Care: Top Priorities of Heart Disease and*

*Stroke Patients: Results from an American Heart Association Patient Survey* (2010), [http://www.heart.org/idc/groups/heart-public/@wcm/@global/documents/downloadable/ucm\\_314679.pdf](http://www.heart.org/idc/groups/heart-public/@wcm/@global/documents/downloadable/ucm_314679.pdf). More than half of the uninsured with cardiovascular disease cite cost as the reason they lack coverage. Am. Heart Ass'n, *FACTS, supra* (citing Analysis of 2006-10 NHIS Data Conducted by The George Washington University Center for Health Policy Research for the American Heart Association (Aug. 2011) (on file with the American Heart Association)).

**B. Without affordable health insurance, people have poorer health outcomes and require more costly invasive and long-term treatment**

The lack of affordable health insurance has serious consequences for patients with and survivors of cancer, diabetes, heart disease, and stroke. Individuals without health insurance are less likely to receive preventive treatment or early detection screenings and are more likely to delay treatment.

A 2010 American Cancer Society Cancer Action Network poll determined that, of individuals under age 65 who have cancer or a history of cancer, 34 percent reported delaying care because of cost in the preceding twelve months. Am. Cancer Soc'y Cancer Action Network, *A National Poll: Facing Cancer in the Health Care System* 17 (2010), available at <http://www.acscan.org/healthcare/cancerpoll>. More specifically, 29 percent

delayed needed health care, 19 percent delayed getting a recommended cancer test or treatment, and 22 percent delayed a routine cancer check-up. *Id.* at 18. At every level of education, individuals with health insurance are about twice as likely as those without it to have access to critical cancer early detection procedures, such as mammography or colorectal screenings. Elizabeth Ward et al., *Association of Insurance with Cancer Care Utilization and Outcomes*, 58 *Cancer J. for Clinicians* 9, 21 (2008). In addition, a study from February of 2014 showed that uninsured adolescents and young adults are at higher risk of advanced stage cancer diagnosis. See Anthony Robbins et al., *Insurance Status and Distant-Stage Disease at Diagnosis Among Adolescent and Young Adult Patients with Cancer Aged 15 to 39 Years: National Cancer Data Base, 2004 Through 2010*, 120 *Cancer* 1212 (2014). Specifically, uninsured females aged 15 to 39 were nearly twice as likely as those with private insurance to be diagnosed with cancer that has metastasized to distant parts of the body, referred to as “distant stage” cancer. *Id.* at 1214. Uninsured males in that age group were 1.5 times as likely as those with private insurance to be diagnosed with metastatic cancer. *Id.*

With respect to heart disease, an American Heart Association survey found that more than half of the cardiovascular patients responding reported difficulty paying for medical care. Am. Heart Ass’n, *Affordable Access to Health Care*, *supra*. Of those patients, 46 percent said they had delayed getting needed medical

care, 43 percent had not filled a prescription, and 30 percent had delayed a screening test prior to diagnosis. *Id.* Fewer than half of uninsured adults had their cholesterol checked within the recommended timeframe. Sara R. Collins et al., The Commonwealth Fund, *Insuring the Future: Current Trends in Health Coverage and the Effects of Implementing the Affordable Care Act: Findings from the Commonwealth Fund Biennial Health Insurance Survey, 2012* 12 (2013). Even during a heart attack, studies show that uninsured patients are more likely to delay seeking medical care. Kim G. Smolderen et al., *Health Care Insurance, Financial Concerns in Accessing Care, and Delays to Hospital Presentation in Acute Myocardial Infarction*, 303 J. Am. Med. Ass'n 1392, 1395-99 (2010).

The same patterns occur with respect to uninsured individuals with diabetes. “Among persons aged 18 to 64 with diabetes mellitus, those who had no health insurance during the preceding year were six times as likely to forgo needed medical care as those who were continuously insured.” J.B. Fox et al., *Vital Signs: Health Insurance Coverage and Health Care Utilization—United States, 2006-2009 and January-March 2010*, 59 Morbidity & Mortality Wkly. Rep. 1448, 1448 (2010). Individuals with diabetes who have private health insurance see a doctor over four times as often as those who do not have insurance. Am. Diabetes Ass'n, *Economic Costs of Diabetes in the U.S. in 2012*, 36 Diabetes Care 1033, 7-9 tbls.9 & 10 (Supp. 2013),

<http://care.diabetesjournals.org/content/suppl/2013/03/05/dc12-2625.DC1/DC122625SupplementaryData.pdf>. Those without insurance are more than 30 percent more likely to visit emergency departments than those with private insurance. *Id.* Lack of health insurance also leads to cases of diabetes going undiagnosed, delaying the start of needed treatment and increasing the risks of complications. Among those with diabetes, 42.2 percent of individuals without health insurance were undiagnosed, compared with 25.9 percent for those with insurance. Xuanping Zhang et al., *The Missed Patient with Diabetes: How Access to Health Care Affects the Detection of Diabetes*, 31 *Diabetes Care* 1748, 1749 (2008).

Unfortunately, as a result of lack of preventive care and delayed treatment, uninsured patients have poorer health outcomes and require more costly long-term and invasive treatment than individuals with insurance. This is illustrated by an extensive American Cancer Society study published in 2008 showing that uninsured Americans are less likely to get screened for cancer, more likely to be diagnosed with cancer at an advanced stage, and less likely to survive that diagnosis than their insured counterparts. *See* Elizabeth Ward et al., *Association of Insurance with Cancer Care Utilization and Outcomes*, 58 *Cancer J. for Clinicians* 9 (2008).

Insurance status impacts health outcomes for cancer patients at every level: they delay preventive screenings due to cost, the cancer is not discovered until it has developed to an advanced stage as a result, and those individuals who actually receive treatment are subject to more invasive and aggressive medical interventions. For example, aside from age, health insurance status was found to be the strongest predictor of cervical cancer stage at diagnosis. Stacy A. Fedewa et al., *Association of Insurance Status and Age with Cervical Cancer Stage at Diagnosis: National Cancer Database, 2000-2007*, 102 Am. J. Pub. Health 1782, 1784-85 (2012). Similarly, in a study that included a cohort of nearly 850,000 patients with malignant tumors, uninsured patients were over four times more likely to be diagnosed with advanced-stage breast cancer and 1.4 times more likely to be diagnosed with advanced-stage cervical cancer than those with insurance. *Id.*; Elizabeth M. Ward et al., *The Association of Insurance and Stage at Diagnosis Among Patients Aged 55 to 74 Years in the National Cancer Database*, 16 Cancer J. 614, 619 (2010) (demonstrating that uninsured cancer patients under 65 have a 14.7 percent chance of being diagnosed with stage IV cancer, compared to a risk of only 3.52 percent for those with private insurance in the same age group).

Further, cancer patients diagnosed at an advanced stage experience lower survival, more debilitating and invasive treatment, and greater long-term treatment-related morbidity, if they are treated at all. Michael T. Halpern et al., *Insurance*

*Status and Stage of Cancer at Diagnosis Among Women with Breast Cancer*, 110 *Cancer* 403, 408 (2007). For example, uninsured patients diagnosed with stage IV colorectal cancer are almost four times as likely to receive no treatment for their cancer compared to patients with private insurance. Anthony S. Robbins et al., *Insurance Status and Survival Disparities Among Nonelderly Rectal Cancer Patients in the National Cancer Data Base*, 116 *Cancer* 4178, 4180 (2010) (indicating that 96 percent of privately insured patients received either chemotherapy or surgery for stage IV colorectal cancer, compared to only 85 percent of uninsured patients).

Likewise, uninsured patients with cardiovascular disease experience higher mortality rates and poorer blood pressure control than their insured counterparts. See Tefera Gezmu et al., *Disparities in Acute Stroke Severity, Outcomes, and Care Relative to Health Insurance Status*, 23 *J. Stroke & Cerebrovascular Disease* 93, 95-97 (2014) (demonstrating that multiple factors lead to higher mortality rates for the uninsured including delaying seeking medical attention, lack of a regular primary care physician to monitor common risk factors, and lengthier hospital stays due to the inability to be transferred to a rehabilitation facility); Brent M. Egan et al., *The Growing Gap in Hypertension Control Between Insured and Uninsured Adults: National Health and Nutrition Examination Surveys 1988-2010*, 8 *J. Am. Soc'y Hypertension* 7, 7-8 (Supp. 2014) ("By 2010, hypertension was

controlled in 29.8 percent of uninsured and 52.5 percent of insured adults...[a difference of] 22.7 percent”); Andrew P. Wilper et al., *Health Insurance and Mortality in US Adults*, 99 Am. J. Pub. Health 1, 4 (2009) (estimating that over 44,000 people died due to lack of health insurance); O. Kenrik Duru et al., *Health Insurance Status and Hypertension Monitoring and Control in the United States*, 20 Am. J. Hypertension 348, 350-52 (2007).

Similarly, those who suffer an ischemic stroke<sup>4</sup> and are uninsured experience greater neurological impairments, longer hospital stays, and up to a 56 percent higher risk of death than the insured. Jay J. Shen & Elmer Washington, *Disparities in Outcomes Among Patients with Stroke Associated with Insurance Status*, 38 Stroke 1010, 1013 (2007). Patients with no health insurance were also twice as likely to have a diabetic complication as patients with health insurance. Nina E. Flavin et al., *Health Insurance and the Development of Diabetic Complications*, 102 S. Med. J. 805, 807 (2009).

To address the failures of the health insurance market and the tragic consequences those failures have for individuals, especially cancer, diabetes, heart disease, and stroke patients and survivors, Congress provided federal premium tax

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<sup>4</sup> Ischemic strokes account for 87 percent of all stroke incidents and are by far the most common type. Alan S. Go et al., *Heart Disease and Stroke Statistics—2014 Update: A Report from the American Heart Association* 140 (2013), available at <http://circ.ahajournals.org/content/early/2013/12/18/01.cir.0000441139.02102.80.full.pdf>

credits to make health insurance affordable. By ensuring that health insurance is available to all individuals regardless of financial status, the Affordable Care Act protects patients with chronic conditions from the negative health and financial outcomes that accompany being uninsured or underinsured.

At no point in the legislative process did any of the *Amici* understand, or see evidence that any of the legislators or other participants in the drafting process understood, that the availability of tax credits and the resulting affordability of health insurance under the ACA would depend on whether their state chose to establish its own health insurance Exchange or have the federal government create an Exchange on the state's behalf. Had our organizations received any indication that this was intended or even contemplated, we would have objected to any suggestion that the health and finances of patients with serious diseases should be made dependent upon the entity administering their state's Exchange. We would have objected even more strongly to any suggestion that patients' lives and health should be used as a bargaining chip to induce states to establish exchanges themselves, rather than relying on the federal government. Our experience is fully consistent with the district court's conclusion that "there is no evidence that either the House or the Senate considered making tax credits dependent upon whether a state participated in the Exchanges. To the contrary, Congress assumed that tax

credits would be available nationwide.” *Halbig*, 2014 WL 129023, at \*18 (emphasis added).

As discussed above, the ACA’s premium tax credit provisions cannot accomplish what Congress intended without the availability of tax credits to all eligible Americans. Without the tax credits provided by the Act, cancer, diabetes, heart disease, and stroke patients and survivors who cannot not afford health insurance will continue to be plagued by the serious financial and health consequences associated with a lack of insurance.

### **CONCLUSION**

For the foregoing reasons and those stated in Appellees’ brief and the other *amicus* briefs filed in support of Appellees, *Amici* submit that the district court’s decision granting the government’s summary judgment motion and denying the plaintiffs’ cross-motion should be affirmed. *See King*, 759 F.3d at 372-76.

Dated: October 30, 2014.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following:

This brief complies with the type-volume limitations of Fed. R. App. P. 29(d) because it contains 4,936 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(5), because it has been prepared in a proportionally spaced typeface using Microsoft 2010 in Times New Roman 14-point font.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of October, 2014, a true and correct copy of the foregoing was filed with the Clerk of the D.C. Circuit Court via the Court's CM/ECF system, which will send notice of such filing to all counsel in this appeal who are registered CM/ECF users.

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