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March 12, 2014

Mr. Mark Langer
Clerk, United States Court of Appeals
for the D.C. Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: *Halbig v. Sebelius*, No. 14-5018 (D.C. Cir.)
(oral argument scheduled for March 25, 2014)

Dear Mr. Langer:

We respectfully submit a supplemental authority that bears on plaintiffs' assertion, made for the first time in reply, that "[i]t does not matter that this 'is not a class action'" and that the Court could extinguish the tax-credit claims of individuals who live in "states like Texas." Pl. Reply 26. In *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), and prior decisions, the Supreme Court held that the protections for non-parties are grounded in Due Process. Even when (unlike here) a suit is a class action, "before an absent class member's right of action [is] extinguishable due process require[s] that the member 'receive notice plus an opportunity to be heard and participate in the litigation'" and "an opportunity to remove himself from the class." *Id.* at 848 (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)). Moreover, there is a "constitutional requirement" that a "named plaintiff at all times adequately represent the interests of the absent class members." *Id.* at 848 n.24 (quoting *Shutts*, 472 U.S. at 812). Plaintiffs did not seek to represent a class, and their suit could not satisfy these constitutional requirements. For millions of people across the country, premium tax credits are not burdens to be avoided but federal benefits that they need to afford health insurance.

Sincerely,

s/ Alisa B. Klein

Alisa B. Klein
Counsel for the Appellees

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2014, I electronically filed the foregoing letter with the Clerk of the Court by using the appellate CM/ECF system. Counsel of record are registered CM/ECF users.

s/ Alisa B. Klein

ALISA B. KLEIN