



United States Senate
WASHINGTON, DC 20510-0905

June 26, 2018

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Trump,

We write in opposition to your Administration's decision to support a lawsuit, *Texas v. U.S. Department of Health and Human Services (HHS)*, brought forward by Republican Attorneys General that urges a Federal court to strike down critical patient protections and create chaos across the entire health care system. In doing so, your Administration is not only supporting a lawsuit that is dangerous and destructive to the health care system, it is also turning its back on the 133 million Americans with pre-existing conditions, including 17 million children.

On February 26, Texas and 19 other state Attorneys General filed a frivolous lawsuit against the Administration in *Texas v. HHS* seeking to strike down the entire Affordable Care Act (ACA). On June 7, the DOJ filed a brief supporting this lawsuit and urging the Texas Court to overturn those protections for people with pre-existing conditions.

In his June 07, 2018 letter to Congress, U.S. Attorney General Jeff Sessions made clear that this decision to not defend Federal law in court came "with the approval of the President of the United States". As a result, the U.S. Department of Justice (DOJ) is now affirmatively arguing in court for an end to critical protections for people with preexisting conditions—"prohibiting discriminatory premium rates" (community-rating) and "guarantee[ing] issuance of coverage in the individual and group market" (guaranteed issue)¹— which prevent insurance companies from charging individuals higher premiums based health status and other factors, or denying them coverage altogether.

If these states and the DOJ prevail, health insurers will once again be able to discriminate against people with pre-existing conditions, women, and seniors by denying them coverage or charging higher premiums simply because they have had a medical event ranging from acne to cancer to having a baby.

You have repeatedly promised to protect guaranteed health coverage for individuals with pre-existing conditions.² You are now breaking this promise by using the courts to put insurance companies back in charge of patients' health care and giving them free rein to deny care to those who need it the most, including children, women, seniors, and the millions of

¹ 42 U.S.C. 300gg-1, 300gg-3, 300gg(4)(a), 42 U.S.C. 300gg (a)(1), 300gg(4)(b).

² CNN. Trump's health care plan: What he promises and what it really says. Tenth Republican Primary debate in February 2016. March 3, 2016, available at: <http://money.cnn.com/2016/03/03/news/economy/trump-health-care/>

Americans with pre-existing conditions. More than 30 groups representing patients, doctors, hospitals, medical schools, health insurers, workers, employers and others, warn that the DOJ's actions will "have a devastating impact on doctors, patients, and the American health care system as a whole"³ and could "strip health coverage and protections from nearly 30 million people."⁴ We call on you to reverse course and direct the DOJ to defend the patient protections that all Americans rely on today.

Approximately 133 million non-elderly Americans have a pre-existing condition and many are older adults, as the likelihood of having a pre-existing condition increases with age.⁵ Before the Affordable Care Act, health insurers denied or offered severely limited coverage to these millions of Americans with pre-existing conditions. Insurers could refuse to cover or charge higher premiums based on gender, as being a woman was considered a pre-existing condition. This practice cost women about \$1 billion a year in higher as compared to men.⁶ Insurers often also charged an "age tax" or higher premiums for older Americans, making coverage unaffordable.⁷

Today, federal law prohibits insurers from denying coverage or charging more for those individuals with pre-existing conditions.⁸ The law has significantly decreased the number of uninsured people with pre-existing conditions by 22 percent.⁹ The American people have made it clear that we cannot go back to the days when too many of our families were forced to pay unaffordable prices for inadequate coverage, remain locked in a job or go without health insurance altogether, and be at risk of medical debt or bankruptcy.

People across the country want Washington to stand with patients and families by working across party lines to improve health care and defend the patient protections they have today. Should you succeed in striking down these protections, it would result in disastrous consequences for millions of Americans whether they buy their own coverage or get it from an

³ Brief of the American Medical Association, American Academy of Family Physicians, American College of Physicians, American Academy of pediatrics, and American Academy of Child and Adolescent Psychiatry, Supporting Defendants, Texas vs. U.S. Department of Health and Human Services (2018). June 13, 2018. Pg. 34, available at: https://s3.amazonaws.com/assets.fiercemarkets.net/public/004-Healthcare/external_Q22018/AMA_AAFP+amicus.pdf

⁴ Brief of the Service Employees International Union Supporting Defendants, Texas v. United States of America, et al. (2018). June 14, 2018. Pg 5, available at: <https://www.healthleadersmedia.com/sites/hlmp/files/180615-aca-challenge-amicus-service-employees-international.pdf>

⁵ Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Health Insurance Coverage for Americans with Pre-Existing Conditions: The Impact of the Affordable Care Act, January 2017, available at: <https://aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf>.

⁶ https://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf

⁷ AARP. Don't Get Fooled: The Age Tax is a Real Thing, May 4, 2017, available at: <https://www.aarp.org/politics-society/advocacy/info-2017/older-adults-pay-more-with-age-tax-fd.html>

⁸ Timothy Stolfus Jost, "If Trump Administration has its Way, Insurance Coverage for Pre-existing Conditions Could Cost You More," CNN, June 14, 2018, available at: <https://www.cnn.com/2018/06/14/opinions/trump-administrations-threat-to-coverage-for-preexisting-conditions-jost/index.html>

⁹ Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Health Insurance Coverage for Americans with Pre-Existing Conditions: The Impact of the Affordable Care Act, January 2017, available at: <https://aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf>.

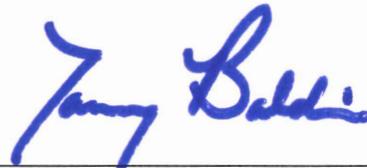
employer. This flies in the face of the commitments that you and other Republicans made that the tax law wouldn't affect people with pre-existing conditions. With this filing, the Administration is abandoning its legal and constitutional responsibilities to faithfully execute our nation's laws, opting instead to accomplish what they couldn't in Congress—taking away guaranteed health coverage and forcing millions of Americans to pay more, for less care.

We remain committed to improving health care coverage and making our nation's health care system work for all Americans. Yet, this latest sabotage attempt is the most dangerous yet. Your Administration's actions threaten to create soaring health care costs, unleash chaos in the market, and threaten the very well-being of the American people by placing unscrupulous insurance companies back in control. For this reason, we urge you to make good on your promise to stand with patients and work with us to improve the health care system rather than using taxpayer dollars to hurt the very individuals and families you promised to protect.

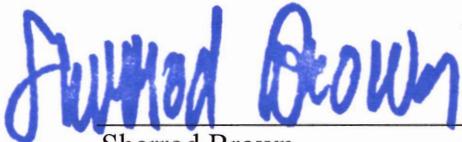
Sincerely,



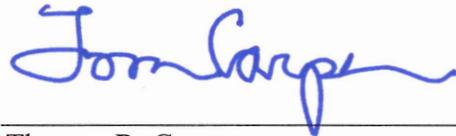
Bill Nelson
United States Senator



Tammy Baldwin
United States Senator



Sherrod Brown
United States Senator



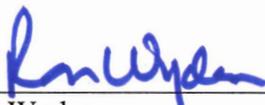
Thomas R. Carper
United States Senator



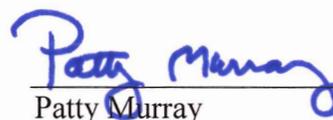
Tina Smith
United States Senator



Charles E. Schumer
United States Senator

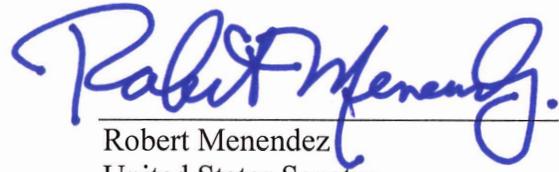


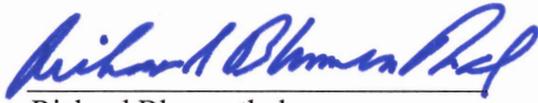
Ron Wyden
United States Senator



Patty Murray
United States Senator

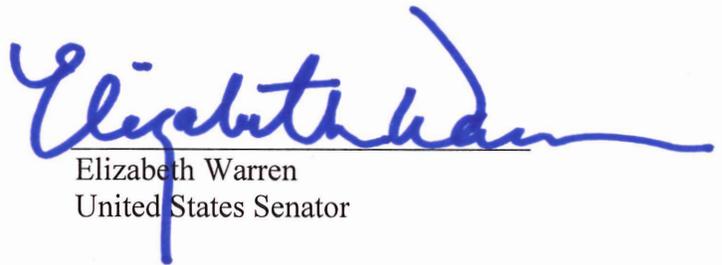

Sheldon Whitehouse
United States Senator

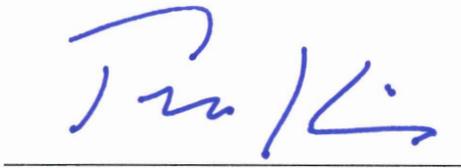

Robert Menendez
United States Senator

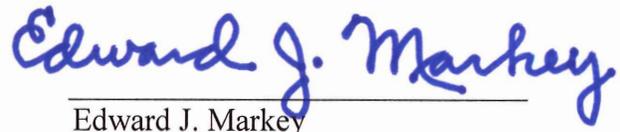

Richard Blumenthal
United States Senator


Mazie K. Hirono
United States Senator


Maria Cantwell
United States Senator


Elizabeth Warren
United States Senator

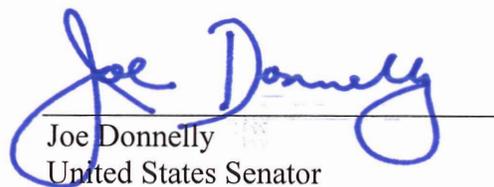

Tim Kaine
United States Senator


Edward J. Markey
United States Senator


Margaret Wood Hassan
United States Senator


Debbie Stabenow
United States Senator


Jack Reed
United States Senator

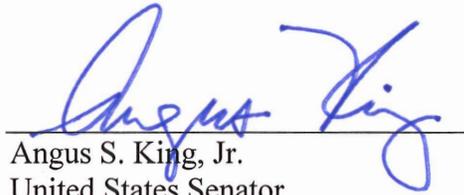

Joe Donnelly
United States Senator



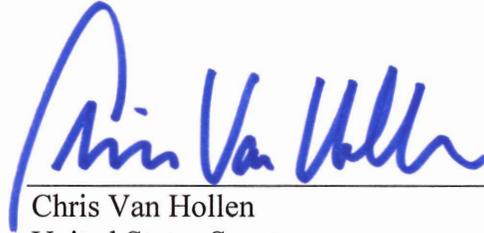
Claire McCaskill
United States Senator



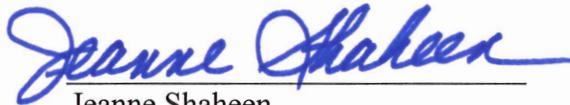
Richard J. Durbin
United States Senator



Angus S. King, Jr.
United States Senator



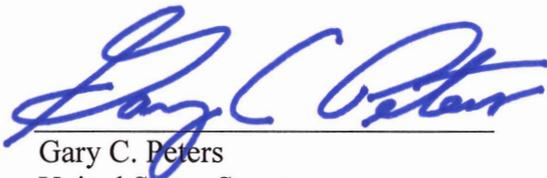
Chris Van Hollen
United States Senator



Jeanne Shaheen
United States Senator



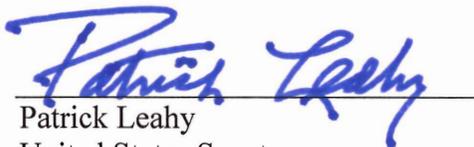
Kirsten Gillibrand
United States Senator



Gary C. Peters
United States Senator



Doug Jones
United States Senator



Patrick Leahy
United States Senator



Catherine Cortez Masto
United States Senator



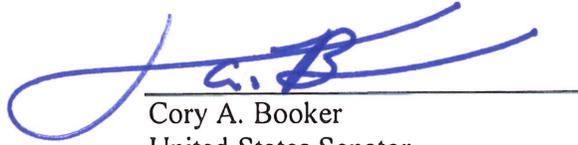
Jeffrey A. Merkley
United States Senator



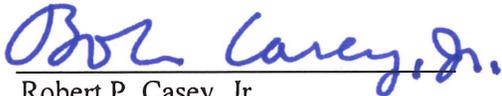
Kamala D. Harris
United States Senator



Christopher A. Coons
United States Senator



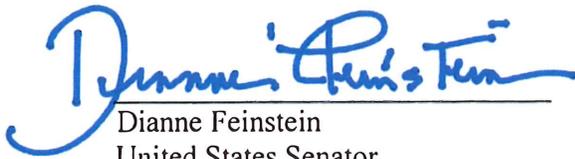
Cory A. Booker
United States Senator



Robert P. Casey, Jr.
United States Senator



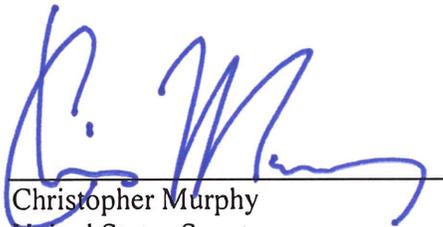
Mark R. Warner
United States Senator



Dianne Feinstein
United States Senator



Bernard Sanders
United States Senator



Christopher Murphy
United States Senator



Benjamin L. Cardin
United States Senator



Amy Klobuchar
United States Senator



Michael F. Bennet
United States Senator



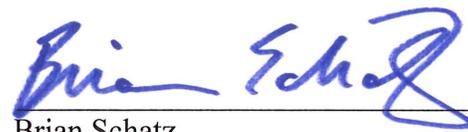
Martin Heinrich
United States Senator



Tom Udall
United States Senator



Jon Tester
United States Senator



Brian Schatz
United States Senator



Heidi Heitkamp
United States Senator



Tammy Duckworth
United States Senator