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July 09, 2019

The Honorable Elijah Cummings  
Chair, Committee on Oversight and Reform  
U.S. House of Representatives  
Washington, D.C. 20510

The Honorable Jim Jordan  
Ranking Member, Committee on Oversight and Reform  
U.S. House of Representatives  
Washington, D.C. 20510

Re: Hearing on “The Trump Administration’s Attack on the ACA: Reversal in Court Case Threatens Health Care for Millions of Americans”

Dear Chairman Cummings and Ranking Member Jordan,

The National Women’s Law Center (NWLC) thanks the Committee on Oversight and Reform for convening a hearing to examine the Trump Administration’s decision to reverse its legal position in *Texas v. United States*, to stop defending the Affordable Care Act (ACA), and to assert that the entire ACA should be invalidated.

Since 1972, NWLC has fought for gender justice in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. NWLC uses the law in all its forms to break down the barriers that harm all of us—especially those who face multiple forms of discrimination, including women of color, LGBTQ people, and low-income women and families.

NWLC submits this letter to highlight the disastrous effect losing the ACA would have on women.

**Losing the ACA would mean women lose insurance coverage, threatening their health, economic security, and well-being.**

The Affordable Care Act has made great strides in expanding insurance coverage to women, improving women’s health and financial security. Prior to the ACA, approximately 19 million women in the U.S., over 19% of women, were uninsured.<sup>i</sup> The numbers were even higher for women of color. Now, according to NWLC calculations, almost 90 percent of women in this country have health insurance coverage.<sup>ii</sup> This includes over 34 million women of color,<sup>iii</sup> who historically have been more likely to be uninsured, be poor, and go without health care because of cost. Having insurance makes it more likely that individuals will obtain health care services. A study conducted after the ACA’s first open enrollment period found that 60 percent of the newly insured reported they visited a health care provider or paid for a prescription. Of those, 62 percent said they could not have accessed or afforded this care previously.<sup>iv</sup>

Additionally, health insurance coverage provided by the ACA expanded women’s personal and professional possibilities. By providing health coverage not tied to employment, the ACA allows women to seek positions that may offer higher wages or better opportunities. The ACA’s coverage of birth control allows women to determine whether and when to start a family, improving their educational and career opportunities.

Losing the ACA would mean women lose insurance coverage, with devastating results to their health, well-being, and opportunities. Half of uninsured women reported going without health care in 2016 because of cost.<sup>v</sup> Uninsured women generally receive less preventive care, such as pap smears and

mammograms. Lack of insurance often leads to poorer health outcomes. Uninsured individuals are diagnosed at more advanced disease stages than the insured. The uninsured also have higher mortality rates.<sup>vi</sup>

The Trump-Pence Administration's decision to abandon the ACA threatens the gains this country has made in reducing the uninsurance rates among women, putting women's health, economic opportunities, and lives on the line.

### **Losing the ACA would reinstate discriminatory insurance practices that harm women.**

The ACA also changed the landscape for women by addressing the discrimination they faced in the individual market, which often led women to bear significant costs or go without health care.

The ACA remedied the long-standing practice of refusing to sell insurance to people with "pre-existing conditions." As NWLC documented in its groundbreaking 2008 report, *Nowhere to Turn: How the Individual Health Insurance Market Fails Women*, insurance companies were rejecting women for health coverage for a variety of reasons that are unique to them, such as having had a Cesarean delivery, prior pregnancy, or breast or cervical cancer, or receiving medical treatment for domestic or sexual violence.<sup>vii</sup> Now, thanks to the ACA, the approximately 67 million women with pre-existing conditions in this country can no longer be denied health coverage.<sup>viii</sup>

The ACA also targeted practices unfair to women, such as charging women more than men for the same coverage, a practice known as gender rating. According to NWLC research, before the ACA took effect, gender rating was rampant in the individual market: 92% of best-selling plans on the individual market practiced gender rating - costing women approximately \$1 billion a year.<sup>ix</sup> Our research revealed that among 25-year-olds in 2009, women were charged up to 84% more than men for individual health plans that exclude maternity coverage.<sup>x</sup> And it was common in 2009 for a female non-smoker to be charged more than a male smoker in the individual insurance market simply because she is a woman.<sup>xi</sup> The ACA ended gender rating, protecting women's health and financial stability.

The ACA ensured that health insurance covers most of women's major health needs. Prior to the ACA, most plans in the individual market failed to cover services important to women. For example, according to NWLC research, in 2008, only 12% of individual market plans covered maternity services.<sup>xii</sup> This saddled women with huge bills, since hospitals charge an average \$32,000 to \$51,000 for births. Now, under the ACA, individual and small group plans must cover a list of essential benefits, including maternity services, and other services that women need, like prescription drugs and substance abuse and mental health services.

The ACA addressed the problem of women facing high out-of-pocket costs for critical preventive health services. Prior to the ACA, women were more likely than men to forego needed preventive services due to cost. The ACA includes a provision requiring all new plans to cover a set of evidence-based women's preventive services, including birth control and well-woman visits, without out-of-pocket costs. Now, according to NWLC calculations, nearly 62.8 million women have this coverage.<sup>xiii</sup> Women have reaped significant savings as a result. In fact, in just one year, women saved \$1.4 billion on birth control pills alone.<sup>xiv</sup> This provision has also improved the use of health services. Studies have shown that the ACA's birth control benefit has corresponded with an increase in use of contraception, particularly the most effective methods.

The ACA also includes an important non-discrimination provision, Section 1557, which is the first-ever federal broad prohibition on sex discrimination in health care and health insurance. This historic provision also prohibits discrimination based on race, color, national origin, age, and disability.

The Trump-Pence Administration's refusal to defend the ACA amounts to sanctioning discrimination against women.

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The Affordable Care Act not only expanded health insurance coverage to millions of individuals who were previously uninsured, it changed the landscape for women's health insurance coverage and access to lifesaving health services. The Trump-Pence Administration's roll-back of the ACA in court – as well as through guidance, regulations, and executive decisions – threatens the important gains women have made in obtaining health coverage that allows them to stay healthy and economically secure. The end of the ACA could return us to a world where insurance companies can indiscriminately charge women more than men for health coverage, deny women coverage of critical services, and impose high costs that effectively deter women from accessing care that is essential to their health and well-being. This not only harms women's health, it also undermines the economic security of families and communities.

Thank you for the opportunity to submit this letter. If you have additional questions or need additional information, please contact Dorianne Mason at [dmason@nwlc.org](mailto:dmason@nwlc.org) or (202) 729-6179.

Sincerely,



Gretchen Borchelt  
Vice President for Reproductive Rights and Health

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<sup>i</sup> National Women's Law Center analysis of 2011 health insurance data from the U.S. Census Bureau Current Population Survey's (CPS) 2012 Annual Social and Economic Supplements, available at [http://www.census.gov/hhes/www/cpstc/cps\\_table\\_creator.html](http://www.census.gov/hhes/www/cpstc/cps_table_creator.html).

<sup>ii</sup> National Women's Law Center, Millions of Women Have Gained Health Insurance Coverage Thanks to the Affordable Care Act (Apr. 11, 2018), <https://nwlc.org/resources/millions-of-women-have-gained-health-insurance-coverage-thanks-to-the-affordable-care-act/>.

<sup>iii</sup> *Id.*

<sup>iv</sup> Commonwealth Fund, Gaining Ground: Americans' Health Insurance Coverage and Access to Care After the Affordable Care Act's First Open Enrollment Period (July 10, 2014), <http://www.commonwealthfund.org/publications/issue-briefs/2014/jul/health-coverage-access-aca>.

<sup>v</sup> Kaiser Family Foundation, Women's Coverage, Access, and Affordability: Key Findings from the 2017 Kaiser Women's Health Survey (Mar. 3, 2018), <https://www.kff.org/womens-health-policy/issue-brief/womens-coverage-access-and-affordability-key-findings-from-the-2017-kaiser-womens-health-survey/>.

<sup>vi</sup> Maria Castellucci, Lack of Insurance is Tied to Higher Death Rates, New Study Shows, Modern Healthcare, Jan. 26, 2017, <https://www.modernhealthcare.com/article/20170626/NEWS/170629912/lack-of-insurance-is-tied-to-higher-death-rates-new-study-shows>.

<sup>vii</sup> National Women's Law Center, Nowhere to Turn: How the Individual Health Insurance Market Fails Women (2008) (on file with NWLC).

<sup>viii</sup> Theresa Chalhoub, Aditya Krishnaswamy, and the National Partnership for Women and Families, "Moving Backward: Efforts to Undo Pre-Existing Condition Protections Put Millions of Women and Girls at Risk," Center for American Progress, June 21, 2018, available at <https://www.americanprogress.org/?p=452643>.

<sup>ix</sup> National Women's Law Center, Turning to Fairness: Insurance Discrimination against Women Today and the Affordable Care Act 7 (March 2012). Accessed at: [http://www.nwlc.org/sites/default/files/pdfs/nwlc\\_2012\\_turningtofairness\\_report.pdf](http://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf)

<sup>x</sup> National Women's Law Center, Still Nowhere to Turn: Insurance Companies Treat Women Like a Pre-Existing Condition (2009), available at <https://nwlc.org/wp-content/uploads/2015/08/stillnowheretoturn.pdf>.

<sup>xi</sup> *Id.*

<sup>xii</sup> National Women's Law Center, Nowhere to Turn: How the Individual Health Insurance Market Fails Women (2008) (on file with NWLC).

<sup>xiii</sup> National Women's Law Center, New Data Estimate Nearly 62.8 Million Women Have Coverage of Birth Control Without Out-of-Pocket Costs, Nov. 6, 2018, <https://nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/>.

<sup>xiv</sup> Nora V. Becker & Daniel Polsky, Women Saw Large Decrease in Out-of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing, 34 HEALTH AFFAIRS 1204 (July 2015), available at <http://content.healthaffairs.org/content/34/7/1204.abstract>.