

TESTIMONY OF

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**House Judiciary Committee – Subcommittee on regulatory Reform,
Commercial and Antitrust Law: Hearing on H.R.372, the Competitive
Health Insurance Reform Act of 2017**

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Good Morning Chairman Marino, Ranking Member Cicilline and members of the Committee. I would like to thank you for having this hearing on my bill, the Competitive Health Insurance Reform Act, and for the time you have devoted to studying the issue of McCarran-Ferguson anti-trust exemptions for health insurance.

As Congress once again faces the preeminent task of repairing our nation's health care system, first and foremost, we must establish the proper foundation for a competitive and consumer-driven health insurance marketplace. The Competitive Health Insurance Reform Act of 2017 will restore the application of federal anti-trust and competition laws to the health insurance industry.

Ending this special-interest exemption is the essential first step to broader healthcare reform. Popular cost-reducing reform priorities – such as selling insurance across state lines and developing diverse consumer-driven plans – are predicated on the robust competitive markets this bill will ensure.

As a healthcare provider for more than 25 years, I understand first-hand the importance of a competitive and dynamic health insurance market. Patients, doctors, and hospitals alike benefit when health insurers compete to provide a variety quality coverage options.

As a dentist, I have a unique perspective of the power a truly competitive marketplace can have on price control. Staying as far away as possible from government-run healthcare and utilizing doctor-led insurance practices, dentistry has been able to deliver care at a cost that closely matches inflation – unlike general medicine whose costs have risen more than 20 times that.

The McCarran-Ferguson Act of 1945 exempted the insurance industry from the Sherman Act and the Clayton Act – acts that have the purpose of ensuring fair competition. This broad exemption was intended to assist the newly developing business of insurance so that those companies could set sustainable premiums by permitting data sharing between insurance companies.

It is important to note, that this industry-specific exemption was created and built around antiquated rudimentary practices for data collection and information processing. The health insurance industry of 1945 was far different than that of today. Today's health insurance industry is highly concentrated into vertically integrated behemoths, with immense computing power able to access and process more information than the quaint insurers of the 1940's could ever dream of. It seems the only thing that hasn't changed, is the special-interest anti-trust exemption that only this market enjoys.

However, after 70 years, it is apparent that the broad-stroked exemption created by Congress in the 1940's was not wise. Over the decades – and expeditiously since the passage of Obamacare in 2009 – the health insurance market has devolved into one of the least transparent and most anti-competitive industries in the United States. These antiquated exemptions are no longer necessary. There is no reason in law, policy, or logic for the insurance industry to have special exemptions that are different from *all* other businesses in the United States.

The interpretation of anti-trust law has narrowed dramatically over the decades. Many of the practices which insurers say they need this exemption to do, such as analyzing historical loss data, have proven to be permissible by the FTC and the courts over the decades since McCarran-Ferguson was passed. This narrowing of scope has resulted in a zombie law whose efficacy and usefulness has long since expired yet it lurks to scare off potential legitimate legal challenges from states, patients, and providers. These entities do not have the tools, money or manpower to challenge these monopolies in court or head-on in the current market. Only the federal government, with its resources, can enforce the laws which rebalance the playing field fairly.

Repeal of this specific section of the McCarran-Ferguson Act, which applies only to health insurance, has strong bipartisan support. A form of this legislation passed the Democratic-controlled House during the 111th Congress by a vote of 406 - 19

and passed the Republican-led House in the 112th Congress by a voice vote.

Similar legislation has been introduced by multiple Democratic members of the House and the text of my bill has been included in the Republican Study Committee's healthcare reform bill for the last four congresses in a row. This pro-market reform was even included in the Republican Party Platform adopted at the National Convention in Cleveland last summer.

The continued exemption of the health insurance industry from the full application of federal anti-trust laws has had an unfair impact on consumers; it shows up as artificially higher premiums, unfair insurance restrictions, harmful policy exclusions, and simply no diversity of choice.

As a dentist, I know how important robust competition is to dynamic and effective health insurance. It should protect the patient as well as the health care provider. It should uniformly apply associated checks and balances that incentivize competition and prevent monopolies. Today, in the health care market, those equally applied anti-trust protections don't exist.

I don't have a crystal ball that will tell us what the future of healthcare will look like. I don't think anybody knows. But I can tell you that history is an important guide. The 70-year anti-trust exemption for health insurance has strangled

competition and resulted in a consolidated, anti-competitive, and non-transparent scheme controlled by 5 mega corporations. That's not what we want for the future.

Instead, let's liberate the market by removing this anti-trust exemption. Imagine what could exist when we put the patient first and demand that health insurance companies compete for their business. This market should be patient-centric, provide a variety of affordable, quality options, and empower patient involvement and accountability.

The passage of the Competitive Health Insurance Reform Act into law is an important first step towards increasing competition in health insurance markets, and will assist with setting the foundation for real, competitive, and patient-centered healthcare reform.

I would like to thank the Chairman, Ranking Member and members of the Committee for their time and work on this issue.