

No. 19-10011

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

TEXAS, *et al.*,
Plaintiffs-Appellees,

v.

UNITED STATES, *et al.*,
Defendants-Appellants.

THE STATES OF CALIFORNIA, *et al.*,
Intervenors-Defendants-Appellants.

**On Appeal from the United States District Court
for the Northern District of Texas**

No. 4:18-cv-167-O

Hon. Reed O'Connor, Judge

**DECLARATION OF ALFRED J. GOBEILLE IN SUPPORT OF STATE
DEFENDANTS' MOTION TO SET EXPEDITED BRIEFING SCHEDULE AND
FOR CALENDARING PRIORITY**

I, Alfred J. Gobeille, declare:

1. I am the Secretary of the Vermont Agency of Human Services (AHS). I have served in this position since January 2017. AHS was created by the Vermont Legislature in 1969 to serve as the umbrella organization for all human service activities within state government. AHS is led by the Secretary, who is appointed by the Governor. The Secretary's Office is responsible for leading the agency and its departments: the Department for Children and Families; the Department of Corrections, the Department of Disabilities, Aging and Independent Living; the Department of Mental Health; and the Department of Vermont Health Access (DVHA). DVHA is the state office responsible for the management of Medicaid, the State Children's Health Insurance Program, and other publicly funded health insurance programs in Vermont. As such, it is the largest insurer in Vermont in terms of dollars spent and the second largest insurer in terms of covered lives. DVHA is responsible for administering Vermont Health Connect, which is the State's health insurance marketplace. I have either personal knowledge of the matters set forth below or, with respect to those matters for which I do not have personal knowledge, I have reviewed information gathered from AHS records and other publicly available information. This declaration is submitted in support of the State Defendants' Motion to Set an Expedited Briefing Schedule and for Calendaring Priority.

2. As of June 2018, 27,123 individuals obtained health insurance through Vermont Health Connect. 22,128 of them (81.6%) received federal tax subsidies to defray the cost of premiums. Each county in Vermont has only two insurers offering coverage through Vermont Health Connect. The loss of even a single insurer would negatively impact the stability and competitiveness of Vermont's health insurance markets.

3. If the district court's decision in this case is upheld on appeal, it would cause severe harm to the State of Vermont, to its residents, and to its economy. In addition to loss of benefits and services and federal investments to support Vermont's healthcare system, dismantling or suspending implementation of the Affordable Care Act (ACA) would cause Vermont to

experience harm and increased costs from the dismantling of the State's own administrative structure and apparatus, created in compliance with, and to work in conjunction with, the ACA.

a. **The ACA directs hundreds of millions of dollars directly to Vermont via Medicaid expansion, the Public Health Fund, and for federal premium subsidies.**

b. **The ACA increased access to affordable coverage.**

- i. Overall the number of individuals with insurance has increased. In Vermont, the number of covered individuals increased from 583,674 in 2012 to 604,800 in 2018, according to the 2018 Vermont Household Health Insurance Survey (VHHIS). Over the same period, the number of uninsured Vermonters was more than cut in half, dropping from 42,800 in 2012 to 19,800 in 2018. This correlates to an uninsured rate of 6.8% in 2012 and 3.2% in 2018.
- ii. The ACA expanded coverage through two key mechanism: Medicaid expansion for those individuals with the lowest incomes, and federal health subsidies to purchase coverage in new health insurance Exchanges, like Vermont Health Connect, for those individuals with moderate incomes.
- iii. Medicaid is an important source of healthcare insurance coverage and has resulted in significant coverage gains and reduction in the uninsured rate, both among the low-income population and within other vulnerable populations. Vermont can be described as a "pre-expansion" state in the sense that it offered state health programs—the Vermont Health Access Plan and Catamount Health—to Vermonters with incomes up to 300% of the federal poverty level (FPL) years before Medicaid expansion. The change in Medicaid eligibility under the ACA from considering assets to only focusing on income also benefitted farmers and other land rich, cash

poor Vermonters who previously could not afford health insurance and did not qualify for benefits, but now qualify either for Medicaid or for health insurance subsidies. The uninsured rate for Vermonters with income up to 138% FPL (the expanded Medicaid threshold) dropped from 9.6% in 2012 to 2.0% in 2018. Significantly, by 2018, the most economically vulnerable Vermonters were just as likely to have health coverage as high-income Vermonters.

- iv. Creation of health insurance exchanges is an important reform made by the ACA. In Vermont, as of June 2018, 22,128 people received federally subsidized coverage as a result of the ACA.

c. The ACA has positive economic benefits on states.

- i. Studies have shown that states expanding Medicaid under the ACA , including Vermont, have realized budget savings, revenue gains, and overall economic growth.

d. The ACA expanded programs in Medicaid to provide States with increased opportunities to increase access to home and community-based services.

- i. In 2011, Vermont was awarded a five-year \$17.9 million Money Follows the Person (MFP) grant from CMS to help people living in nursing facilities overcome the barriers that have prevented them from moving to their preferred community-based setting. The grant works within the Choices for Care program and provides participants the assistance of a Transition Coordinator and up to \$2,500 to address barriers to transition.
- ii. Effective April 1, 2016, Vermont received a continued \$8 million award for services through September 30, 2019.

e. The ACA resulted in better quality and more accessible, affordable healthcare for consumers.

- i. The ACA created robust consumer protections to help ensure individuals can access the healthcare system.
- ii. Largely due to the ACA's provision that adult children can be covered by their parents' health plan until age 26, the number of uninsured young adults in Vermont between the ages of 18 and 24 was slashed from 10,800 in 2009 to 1,900 in 2018;
- iii. More than 78,000 Vermonters enrolled in qualified health plans as of June 2018 are benefitting from the ACA's mandated preventive services, including access to birth control, cancer screenings, and immunizations for children;
- iv. More than 78,000 Vermonters enrolled in qualified health plans as of June 2018 are benefitting from access to essential health benefits such as substance use disorder treatment and cancer screenings.
- v. The ACA has led to improved access to care (45% drop from 2009 to 2018 in the number of individuals who needed medical care from a doctor but did not receive it because they could not afford it).
- vi. The ACA has led to improved financial security for Vermont families. The number of Vermonters who had trouble paying medical bills fell more than 40,000 from 2009 to 2018, a 30% drop. In addition, the number of Vermonters who were contacted by a collection agency about owing money for unpaid medical bills fell by 22% over the same period.
- vii. Under the ACA, no individual can be rejected by an insurance plan or denied coverage of essential health benefits for any health condition present prior to the start of coverage. Once enrolled, plans cannot deny coverage or raise rates based only on the enrollee's health.
- viii. In addition, the ACA created additional consumer protections and rights such as: ending lifetime and yearly dollar limits on coverage of essential

health benefits; improving consumer understanding of the coverage they are getting; holding insurance companies accountable for rate increases; making it illegal for health insurance companies to cancel health insurance due to illness; protecting patient choice of doctors; and free access to breastfeeding equipment and support; the right to appeal a health plan decision.

4. Beyond the impact of striking down the entire ACA, the very threat of that looming possibility may negatively impact the health insurance market in Vermont. Our health insurance market, as well as similar markets across the nation, will benefit from the certainty that will come from a resolution of the legal questions at issue in this case. Therefore, an expedited decision will grant a degree of stability to the marketplaces, which in turn will allow insurers and regulators to set fair and accurate prices for health insurance as they plan for the 2020 plan year and beyond.

5. Certainty and the ability to plan ahead is especially important in a small state such as Vermont. Our State's General Assembly is a part-time Legislature, and is generally in session from January through May. Budget articles are prepared in the fall of the preceding year and are voted on in April and May after vetting through various committees. Once the General Assembly adjourns (usually in May), it does not reconvene until the following January except in extraordinary circumstances, making it difficult to adapt to major and sudden federal policy changes that impact Vermonters.

6. Uncertainty as to the status of federal health law and policy, including questions about the constitutionality of the ACA and its implementing regulations, also makes it harder for insurers and the State to gauge what the insurance marketplace will look like in the coming years. Because of this increased sense of uncertainty, DVHA has engaged stakeholders in contingency planning and is considering market stabilization initiatives. In turn, the task of preparing and approving insurance premium rates has become more complicated and time-

consuming, because both insurers and the State are operating without full knowledge of the effects of sudden legal or policy changes.

7. Uncertainty as to the status of federal health law and policy additionally makes it difficult to plan and prioritize the costly IT infrastructure projects and maintenance needed to operate Vermont's health insurance programs effectively and in compliance with the appropriate regulations. Changes in federal policy and the surrounding uncertainty have already resulted in increased premiums, as insurers raise prices to cover perceived additional risk. For example, qualified health plan premium rates approved for the 2019 plan year included an increase of 1.6% due the zeroing out of the ACA's tax penalty for those who lack minimum essential coverage. Although the Vermont Legislature recently enacted a state-level individual mandate, it is not scheduled to go into effect until 2020. *See* 2018 Vt. Acts & Resolves No. 182.

I declare under penalty of perjury under the laws of the United States and the State of Vermont that the foregoing is true and correct to the best of my knowledge.

Executed on February 1, 2019, in Waterbury, Vermont.

A handwritten signature in black ink, appearing to read "Alfred J. Gobeille", written over a horizontal line.

Alfred J. Gobeille
Secretary, Vermont Agency of Human Services

Wm. C. Smith