

In the  
**Supreme Court of the United States**

NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS, *et al.*,  
*Petitioners,*

v.

KATHLEEN SEBELIUS, SECRETARY  
OF HEALTH AND HUMAN SERVICES, *et al.*,  
*Respondents.*

---

STATE OF FLORIDA, *et al.*,  
*Petitioners,*

v.

UNITED STATES DEPARTMENT OF  
HEALTH & HUMAN SERVICES, *et al.*,  
*Respondents.*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

BRIEF OF AMERICAN PUBLIC HEALTH ASSOCIATION,  
AMERICAN ACADEMY OF PEDIATRICS, AMERICAN  
LUNG ASSOCIATION, AMERICAN SCHOOL HEALTH  
ASSOCIATION, ASSOCIATION OF SCHOOLS OF PUBLIC  
HEALTH, NATIONAL ASSOCIATION OF COUNTY AND CITY  
HEALTH OFFICIALS, NATIONAL ASSOCIATION OF LOCAL  
BOARDS OF HEALTH, NATIONAL HEALTH LAW PROGRAM,  
PUBLIC HEALTH LAW ASSOCIATION, PUBLIC HEALTH  
LAW CENTER AND PUBLIC HEALTH LAW & POLICY AS  
*AMICI CURIAE* IN SUPPORT OF RESPONDENTS  
REGARDING SEVERABILITY

---

MARTHA JANE PERKINS  
*Counsel of Record*  
COREY S. DAVIS  
NATIONAL HEALTH LAW PROGRAM  
101 E. Weaver St., # G-7  
Carrboro, NC 27510  
perkins@healthlaw.org  
(919) 968-6308

SARA ZIMMERMAN  
JENNIFER L. WILLIS  
PUBLIC HEALTH LAW & POLICY  
2201 Broadway, Suite 502  
Oakland, CA 94612  
(510) 302-3380

*Counsel for Amici Curiae*

*Counsel for Amici Curiae*

## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICI CURIAE.....	1
SUMMARY OF ARGUMENT.....	5
ARGUMENT.....	6
I. THE UNITED STATES HAS LONG ACTED TO PROTECT AND IMPROVE THE PUBLIC’S HEALTH.....	7
A. The Federal Government has Supported Public Health Since the Dawn of the Nation.....	8
B. Federal Public Health Efforts Expanded in the Wartime and Post- War Eras.....	10
II. PREVENTION AND PUBLIC HEALTH INITIATIVES PROVIDE WIDE- RANGING BENEFITS TO THE UNITED STATES.....	11
A. Public Health and Prevention Initiatives are Highly Effective in Improving Length and Quality of Life...	12
B. Public Health and Prevention Programs are More Important Now than Ever.....	14

1. Chronic disease is a large and growing threat.....	14
2. Poor health generates enormous economic costs and threatens national security.....	16
III. THE AFFORDABLE CARE ACT STRENGTHENS AND PRIORITIZES PUBLIC HEALTH AND PREVENTION....	19
A. Nationwide Programs Focused on Prevention and Public Health.....	19
B. Initiatives Focused on Specific Diseases, Conditions, and Barriers to Health .....	21
C. Improving Health in Communities, Schools and Workplaces .....	23
CONCLUSION .....	24

**TABLE OF AUTHORITIES**

**Page(s)**

**Case:**

*Florida v.*  
*U.S. Dep't. of Health & Human Servs.,*  
648 F.3d 1235 (11th Cir. 2011) ..... 7

**Statutes and Regulations:**

5 U.S.C. App. 1 (1939) ..... 10  
29 U.S.C. § 207..... 23  
42 U.S.C. § 300ff ..... 11  
42 U.S.C. § 300hh (2006)..... 11  
42 U.S.C.A. § 247b–9a (West 2011) ..... 21  
42 U.S.C.A. § 280g–10 (West 2011) ..... 21  
42 U.S.C.A. § 280h–4-5 (West 2011) ..... 24  
42 U.S.C.A. § 280k–1-3 (West 2011) ..... 22  
42 U.S.C.A. § 300u–10 (West 2011) ..... 20  
42 U.S.C.A. § 300u–11 (West 2011) ..... 20  
42 U.S.C.A. § 300u–13 (West 2011) ..... 23  
42 U.S.C. § 1396s (1993)..... 11  
Executive Order 13544, 75 Fed. Reg. 33,983  
(June 10, 2010)..... 20  
Health Care and Education  
Reconciliation Act of 2010, Pub. L. No.  
111-152, 124 Stat. 1029 (2010).....5

Patient Protection and Affordable Care Act  
("ACA") Pub. L. No. 111-148, 124 Stat. 119  
(2010)..... *passim*

ACA § 10407.....	21
ACA § 10408.....	21, 24
ACA § 10410.....	21
ACA § 10501(g) .....	21
ACA § 4001-4402.....	19
ACA § 4001.....	20
ACA § 4002.....	20
ACA § 4003.....	21
ACA § 4101.....	24
ACA § 4102.....	22
ACA § 4105.....	21
ACA § 4201.....	23
ACA § 4204.....	22
ACA § 4207.....	23
ACA § 4303.....	24
ACA § 4306.....	21

**Other Authorities:**

Alan S. Ryan et al., *Breastfeeding Continues  
to Increase Into the New Millennium*, 110  
*Pediatrics* 1103 (2002)..... 23

Alejandro de Quesada, *The U.S. Home  
Front 1941-45* (2008)..... 8, 10

American Cancer Society, *Cancer Facts and  
Figures 2011* (2011), [http://www.cancer.org/  
acs/groups/content/@epidemiologysurveillance/  
documents/document/acspc-029771.pdf](http://www.cancer.org/acs/groups/content/@epidemiologysurveillance/documents/document/acspc-029771.pdf) ..... 15

American Lung Association, *Lung Disease Data 2008* (2008), [http://www.lungusa.org/assets/documents/publications/lung-disease-data/LDD\\_2008.pdf](http://www.lungusa.org/assets/documents/publications/lung-disease-data/LDD_2008.pdf) ..... 16

An Act for the Relief of Sick and Disabled Seamen, 1 Stat. 605 (1798), *available at* <http://history.nih.gov/research/downloads/1StatL605.pdf> ..... 8

An Act to Change the Name of the Public Health and Marine-Hospital Service to the Public Health Service, to Increase the Pay of Officers of Said Service, and for Other Purposes, 37 Stat. 309 (1912)..... 9

An Act to Prevent the Introduction of Contagious or Infectious Diseases into the United States, 20 Stat. 37 (1878), *available at* <http://history.nih.gov/research/downloads/20StatL37.pdf> ..... 9

Arialdi M. Miniño et al., Nat'l Ctr. for Health Stats., *Deaths: Final Data for 2008*, 59 Nat'l Vital Stat. Rep. 17 (2011) ..... 14, 15

Barbara A. Ormond et al., *Potential National and State Medical Care Savings from Primary Disease Prevention*, 101 Am. J. Public Health 160 (2011)..... 14

Bruce Schackman et al., *The Lifetime Cost of Current Human Immunodeficiency Virus Care in the United States*, 44 Med. Care 994 (2006)..... 14

Ctrs. for Disease Control & Prevention, <i>2009 Adult Vaccination Coverage 1</i> (2010), <a href="http://www.cdc.gov/vaccines/stats-surv/nhis/2009-nhis.htm">http://www.cdc.gov/vaccines/stats-surv/nhis/2009-nhis.htm</a> .....	22
Ctrs. for Disease Control & Prevention, <i>Achievements in Public Health, 1900-1999: Changes in the Public Health System</i> , 48 Morbidity & Mortality Wkly. Rep. 1141 (1999) .....	9, 10
Ctrs. for Disease Control & Prevention, <i>National Diabetes Fact Sheet: National Estimates and General Information on Diabetes and Prediabetes in the United States</i> (2011) .....	15-16
Ctrs. for Disease Control & Prevention, <i>Ten Great Public Health Achievements-United States, 1900-1999</i> , 48 Morbidity & Mortality Wkly. Rep. 241 (1999).....	12-13
Cynthia L. Ogden & Margaret Carroll, Ctrs. for Disease Control & Prevention, <i>Prevalence of Overweight, Obesity, and Extreme Obesity Among Adults: United States, Trends 1960–1962 Through 2007–2008</i> (2010), <a href="http://www.cdc.gov/nchs/data/hestat/obesity_adult_07_08/obesity_adult_07_08.pdf">http://www.cdc.gov/nchs/data/hestat/obesity_adult_07_08/obesity_adult_07_08.pdf</a> .....	15
David M. Oshinsky, <i>Polio: An American Story</i> (2005) .....	13
Derek Wanless, <i>Securing Good Health for the Whole Population</i> (2004).....	11

Donald Lloyd-Jones, et al. <i>Heart Disease and Stroke Statistics – 2011 Update</i> . 123 Circulation e1 (2011) .....	14
Eric A. Finkelstein et al., <i>Annual Medical Spending Attributable to Obesity: Payer and Service-Specific Estimates</i> , 28 Health Affairs 822 (July 2009) .....	16, 17
Institute of Medicine (IOM) and National Research Council (NRC), <i>Improving Access to Oral Health Care for Vulnerable and Underserved Populations</i> (2011) .....	18
Justin G. Trogon et al., <i>The Economic Burden of Chronic Cardiovascular Disease for Major Insurers</i> , 8 Health Promotion Practice 234 (2007) .....	17
K. David Patterson, <i>Yellow Fever Epidemics and Mortality in the United States, 1693-1905</i> , 34 Soc. Sci. Med. 855 (1992) .....	9
Katherine Baicker et al., <i>Workplace Wellness Programs Can Generate Savings</i> , 29 Health Affairs 304 (2009) .....	24
Lawrence Gostin, et al., <i>The Law and the Public's Health: The Foundations</i> , in <i>Law in Public Health Practice</i> (Richard A. Goodman et al. eds., 1st ed. 2003) .....	12
Leif I. Solberg et al., <i>Repeated Tobacco-Use Screening and Intervention in Clinical Practice: Health Impact and Cost Effectiveness</i> , 31 Am. J. Prev. Med. 62 (2006).....	16



Liesbeth Duijts et al., *Breastfeeding Protects Against Infectious Diseases During Infancy in Industrialized Countries: A Systematic Review*, 5 *Maternal and Child Nutrition* 199 (2009) ..... 23

Margaret Kaiser, U.S. Dept. of Health & Human Servs., *The United States Public Health Service: An Historical Bibliography of Selected Sources* (1998) ..... 8

Michael B.A. Oldstone, *Viruses, Plagues, and History: Past, Present and Future* (1998) ..... 10

Michael V. Maciosek, *Greater Use of Preventive Services in U.S. Health Care Could Save Lives At Little Or No Cost*, 29 *Health Affairs* 1656 (2010) ..... 14

Michelle A. Green & Mary Bowie, *Essentials of Health Information Management* 6 (2005) ..... 10

Mission: Readiness, *Too Fat to Fight: Retired Military Leaders Want Junk Food Out of America's Schools* (2010), [http://cdn.missionreadiness.org/MR\\_Too\\_Fat\\_to\\_Fight-1.pdf](http://cdn.missionreadiness.org/MR_Too_Fat_to_Fight-1.pdf) ..... 18

Nat'l Inst. of Health, *Morbidity & Mortality: 2009 Chart Book on Cardiovascular, Lung and Blood Diseases* (2009), available at [http://www.nhlbi.nih.gov/resources/docs/2009\\_ChartBook.pdf](http://www.nhlbi.nih.gov/resources/docs/2009_ChartBook.pdf) ..... 17

National Prevention, Health Promotion and Public Health Council, <i>National Prevention Strategy</i> (2011), available at <a href="http://www.healthcare.gov/prevention/nphpphc/strategy/report.pdf">http://www.healthcare.gov/prevention/nphpphc/strategy/report.pdf</a> .....	20
Partnership for Prevention and U.S. Chamber of Commerce, <i>Leading by Example: Leading Practices for Employee Health Management</i> (2007) .....	18
Ralph C. Williams, <i>The United States Public Health Service, 1789-1950</i> (1951).....	8, 9
Ram Koppaka, <i>Ten Great Public Health Achievements—United States, 2001 – 2010</i> , 60 <i>Morbidity &amp; Mortality Wkly. Rep.</i> 619 (2011).....	13, 19
Rebecca Mitchell & Paul Bates, <i>Measuring Health-Related Productivity Loss</i> , 14 <i>Population Health Mgmt.</i> 93 (2011) .....	17-18
Robert Wood Johnson Foundation, <i>Return on Investment in Public Health: A Summary of Groundbreaking Research Studies</i> (2011), <a href="http://www.rwjf.org/files/research/72990.prevention.brief.pdf">http://www.rwjf.org/files/research/72990.prevention.brief.pdf</a> .....	13
Ross A. Hammond & Ruth Levine, <i>The Economic Impact of Obesity in the United States</i> , 3 <i>Diabetes, Metabolic Syndrome and Obesity: Targets and Therapy</i> 285 (2010).....	17

Sandra W. Roush et al., <i>Historical Comparisons of Morbidity and Mortality for Vaccine-Preventable Diseases in the United States</i> , 298 JAMA 2155 (2007).....	13
Sheldon H. Jacobson & Laura McLay, <i>The Economic Impact of Obesity on Automobile Fuel Consumption</i> , 51 Engineering Economist 307 (2006).....	18
Stanley A. Plotkin, <i>History of Vaccine Development</i> (Stanley A. Plotkin ed., 2011) .....	13
Tim Dall et al., <i>Economic Costs of Diabetes in the U.S. in 2007</i> , 31 Diabetes Care 596 (2008).....	16
U.S. Dep't. of Health & Human Servs., Ctrs. for Disease Control & Prevention, <i>The Health Consequences of Smoking: A Report of the Surgeon General</i> (2004).....	15
U.S. Dep't. of Health & Human Servs., Public Health Functions Steering Committee, <i>Public Health In America</i> (1994).....	11
Y. Claire Wang et al., <i>Health and Economic Burden of the Projected Obesity Trends in the USA and the UK</i> , 378 The Lancet 815 (2011).....	17

## INTEREST OF AMICI CURIAE<sup>1</sup>

The **American Public Health Association** (APHA) is the oldest and most diverse organization of public health professionals in the world. Founded in 1872, APHA represents a broad array of health providers, educators, environmentalists, policy-makers, and health officials working at all levels within and outside government. APHA aims to protect all Americans and their communities from preventable, serious health threats, and strives to ensure that community-based health promotion and disease prevention activities and preventive health services are universally accessible in the United States. APHA's goal is for the United States to become the healthiest nation in one generation.

Founded in 1930, the **American Academy of Pediatrics** (AAP) is a national, not-for-profit organization dedicated to furthering the interests of children's health. Since AAP's inception, its membership has grown from 60 pediatricians to over 62,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists. Over the past 80 years, AAP has become a powerful voice for children's health through education, research, advocacy, and the provision of expert advice.

---

<sup>1</sup> The parties have filed notices with the Clerk consenting to the filing of amicus briefs in this case. No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money to fund preparation or submission of this brief. No person, other than *amici* and *amici's* counsel, made a monetary contribution for the preparation or submission of this brief.

The **American Lung Association** is one of the nation's oldest voluntary health organizations, with more than 400,000 volunteers representing all 50 states and the District of Columbia, Puerto Rico, and the Virgin Islands. Lung disease is the third-leading cause of death in the United States, and is largely preventable. Because cigarette smoking is the leading cause of preventable death and disease in the world, claiming about 443,000 American lives each year, and is a major cause of lung cancer and chronic obstructive pulmonary disease (COPD), the American Lung Association has long been active in research, education, and public policy advocacy regarding the adverse health effects caused by tobacco use and exposure to secondhand smoke.

The **American School Health Association** (ASHA), founded in 1926, supports the terms of Title IV that modernize public health systems, increase access to clinical preventive services, spur the creation of healthier communities and schools, and support key innovations to improve public health under the provisions for the Public Health and the Prevention Fund. ASHA strongly supports the continuation of the Public Health Council in order to turn the nation's focus from sickness and disease to wellness and prevention. ASHA expresses its strong support for the ACA provision providing for the Prevention and Public Health Fund to expand and maintain national investment in prevention. ASHA's members and leadership also commend the Community Transformation Grants to community-based community preventive activities and the health grants for highly effective School Based Health Centers.

Established in 1953, the **Association of Schools of Public Health** (ASPH) represents the forty nine Council on Education for Public Health -accredited Schools of Public Health. In 2011, over 26,000 students were enrolled in graduate level degree programs at ASPH schools, and more than 200,000 current public health workers, principally those employed in the public sector, received short term professional training through programs centered at these schools. In addition to their education and training missions, schools of public health carry out cutting edge research to support the most effective approaches to improving the health of the public. This includes almost \$800 million annually of National Institutes of Health sponsored research as well as substantial work for the Centers for Disease Control and Prevention, the Health Resources and Services Administration, the Agency for Healthcare Research and Quality, the U.S. Agency for International Development, and many other federal agencies.

The **National Association of County and City Health Officials** (NACCHO), a non-profit organization, envisions health, equity, and well-being for all people in their communities through public health policies and services. As a leader, partner, catalyst, and voice for the nation's 2800 local health departments, NACCHO provides education, information, research, and technical assistance and facilitates partnerships among local, state, and federal agencies to ensure the conditions that promote health and equity, combat disease, and improve the quality and length of all lives.

The **National Association of Local Boards of Health** (NALBOH) informs, guides, and is the national voice for boards of health. Uniquely positioned to deliver technical expertise in governance and leadership, board development, health priorities, and public health policy, NALBOH strives to strengthen good governance where public health begins—at the local level. The Affordable Care Act’s prevention and public health provisions are important to NALBOH because they empower boards of health and local communities with vital resources and tools to ensure they can provide the programs, services, and policies necessary to prevent disease and promote health initiatives that result in healthier communities.

The **National Health Law Program** (NHeLP) is a 40-year-old public interest law firm that works to advance access to quality health care, improve the public's health, and protect the legal rights of lower-income people and people with disabilities. NHeLP engages in education, policy analysis, administrative advocacy, and litigation.

The **Public Health Law Association** (PHLA) was formed in 2003 as a non-profit membership organization. It serves as an independent voice for public health attorneys and other stakeholders who shape, use, teach, study, or conduct research in the highly dynamic field of public health law and policy. PHLA is dedicated to using public health law to promote healthy people and healthy communities through dialogue, partnerships, education, and research.

The **Public Health Law Center** (the Center) is a non-profit public interest legal resource center at

the William Mitchell College of Law in Saint Paul, Minnesota. The Center helps local, state, and national leaders improve public health by strengthening law. The Center frequently prepares amicus briefs in support of public policies that benefit the nation's health.

**Public Health Law & Policy (PHLP)** is a national nonprofit, composed of attorneys, policy analysts, and urban planners dedicated to building healthy communities nationwide. PHLP develops legal and policy tools to create lasting change, working with advocates, public officials, and others who want to improve public health conditions where they live and work. PHLP engages in policy research and analysis, technical legal assistance, and community-tailored training.

### **SUMMARY OF ARGUMENT**

For more than two centuries, the federal government has played a key role in creating, funding, and improving public health infrastructure and services. The Patient Protection and Affordable Care Act ("the ACA") expands the country's prevention and public health efforts through provisions intended to modernize public health systems, prevent chronic disease, increase access to preventive services, and spur the creation of healthier communities. Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010). Many of these provisions are already in effect, helping to improve the health of millions of Americans.



The briefs of the United States and supporting *amici* discuss the issue of severability in detail. *Amici* public health and prevention organizations write here to emphasize the crucial importance of federal public health and prevention initiatives not only for the well-being of millions of individuals but also for the United States itself. *Amici* provide the Court with a brief history of federal involvement in public health, an explanation of the importance of prevention and public health initiatives to the health, welfare and security of the country, and a detailed description of the key prevention and public health provisions contained in the ACA.

Given the federal government's longstanding commitment to improving and protecting public health, the ever-growing importance of public health and prevention for the health and security of the nation, and the stand-alone nature of these provisions, this Court should find for the government on the question of severability, should that question be reached.

### **ARGUMENT**

For over two hundred years, federal public health and prevention initiatives have provided extraordinary benefits to the United States and its people. Having tamed and conquered many of the infectious diseases that ravaged human populations for millennia, Americans can now expect that their children will survive to adulthood and that they will live to old age. But new and renewed threats make public health and prevention as crucial now as they were in previous centuries. Epidemic levels of chronic disease threaten to shorten the average

lifespan. Emerging threats such as drug-resistant contagions and bioterrorism require new techniques, tactics, and training. Therefore, the role of the federal government in directing and coordinating public health preparedness, research, and response is more important than ever.

*Amici* urge this Court to find for respondents on the question of severability, should that question be reached. As noted by the federal government and other amici, the ACA contains “hundreds of . . . provisions” that have a “manifest lack of connection to the individual mandate.” *Florida v. U.S. Dep’t of Health & Human Servs.*, 648 F.3d 1235, 1323 (11th Cir. 2011). The initiatives described in this brief are among those provisions and, as discussed below, have a direct, significant, and positive impact on prevention and public health.

## **I. THE UNITED STATES HAS LONG ACTED TO PROTECT AND IMPROVE THE PUBLIC’S HEALTH**

The federal government, in recognition of the fact that public health is a key component of a healthy population, productive workforce, and strong national defense, has long played an active role in providing essential public health infrastructure and services. This role has evolved over time, as agencies initially launched to address the health of merchant mariners and to support national security during wartime, are now invaluable tools in improving the health of the entire population. Effectively addressing the emerging threats posed by global pandemics, bioterrorism, and preventable chronic illnesses like obesity, diabetes, heart disease,

lung disease, and cancer is crucial not only to Americans' physical health, but to the country's economic competitiveness, financial health, and national security as well.

**A. The Federal Government has Supported Public Health Since the Dawn of the Nation**

The Public Health Service celebrated its bicentennial in 1998, commemorating 200 years of federal public health promotion. Margaret Kaiser, U.S. Dep't of Health & Human Servs., *The United States Public Health Service: An Historical Bibliography of Selected Sources* 1 (1998). Now a division of the Department of Health and Human Services (HHS), the Public Health Service began as a network of hospitals that became known as the Marine Hospital Service (MHS). Alejandro de Quesada, *The U.S. Home Front 1941-45*, at 27 (2008). This network was established in 1798 when Congress, recognizing that a strong merchant marine force was necessary for international commerce and to supplement the Navy in case of war, authorized the creation of a government-operated hospital service for merchant seamen. An Act for the Relief of Sick and Disabled Seamen, 1 Stat. 605 (1798), *available at* <http://history.nih.gov/research/downloads/1StatL605.pdf>; *see also* Ralph C. Williams, *The United States Public Health Service, 1789-1950*, at 25 (1951). Over time, the MHS's reach was extended to members of the Navy and Coast Guard, as well as certain veterans and dependents. Williams, *supra*, at 47-51.

Responding to the rising threat of contagious epidemics, including a yellow fever epidemic in 1877 that killed an estimated 100,000 to 150,000 Americans, the federal government expanded the MHS's focus to include infectious disease control and surveillance. K. David Patterson, *Yellow Fever Epidemics and Mortality in the United States, 1693-1905*, 34 Soc. Sci. Med. 855, 859 (1992); see also Williams, *supra*, at 113-175. In 1878, Congress furthered this effort by passing the first national quarantine act, which banned infected people, merchandise, and animals from entering the country, and tasked the MHS with enforcement. An Act to Prevent the Introduction of Contagious or Infectious Diseases into the United States, 20 Stat. 37 (1878), available at <http://history.nih.gov/research/downloads/20StatL37.pdf>. To assist in surveillance and quarantine efforts, the federal government created programs to track the spread of cholera, smallpox, plague, and yellow fever. Ctrs. for Disease Control & Prevention, *Achievements in Public Health, 1900-1999: Changes in the Public Health System*, 48 Morbidity & Mortality Wkly. Rep. 1141, 1143 (1999). To reflect this expanded role, in 1912 Congress officially changed the name of the Marine Hospital Service to the Public Health Service. An Act to Change the Name of the Public Health and Marine-Hospital Service to the Public Health Service, to Increase the Pay of Officers of Said Service, and for Other Purposes, 37 Stat. 309 (1912).

## **B. Federal Public Health Efforts Expanded in the Wartime and Post-War Eras**

In recognition of the importance of public health in a time of increasing international instability, in 1939 President Franklin D. Roosevelt placed the Public Health Service under the newly created Federal Security Agency, which was established to promote social and economic security, educational opportunity, and the health of American citizens. Reorganization Plan No. 1 of 1939, 5 U.S.C. App. 1 (1939). During World War II, the Public Health Service grew from 8,000 personnel in 1940 to over 16,000 by 1945 as it expanded to assist injured and disabled soldiers and address growing public health needs at home. de Quesada, *supra*, at 28.

Post-war, federal public health efforts increasingly focused on improving the nation's overall health. The Communicable Disease Center, forerunner of the Centers for Disease Control and Prevention, was created in 1946. Ctrs. for Disease Control & Prevention, *supra*, at 1143. In 1953, the national importance of public health was recognized by the creation of the cabinet-level Department of Health, Education and Welfare. Reorganization Plan No. 1 of 1953, 5 U.S.C. App. 1 (1953). In the 1960s and 1970s, efforts led by the Public Health Service resulted in the worldwide eradication of smallpox, which killed approximately 300 million people in the 20th century alone. Michael B.A. Oldstone, *Viruses, Plagues, and History: Past, Present and Future* 4 (1998); Michelle A. Green & Mary Bowie, *Essentials of Health Information Management* 6 (2005).

In recent years, the federal government has played an active role in protecting and improving public health through measures such as the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act, 42 U.S.C. § 300ff (1990), the Vaccines for Children Program, 42 U.S.C. § 1396s (1993), and the Office of Public Health Emergency Preparedness, which coordinates efforts against bioterrorism and other emergency health threats, 42 U.S.C. § 300hh (2006). As discussed in Section II, these and other federal public health initiatives are actively addressing today's major public health threats.

## **II. PREVENTION AND PUBLIC HEALTH INITIATIVES PROVIDE WIDE-RANGING BENEFITS TO THE UNITED STATES**

Public health can be described as an organized effort to prevent disease, prolong life, and promote health. *See* Derek Wanless, *Securing Good Health for the Whole Population* 3 (2004). Essential aspects of public health include monitoring community health status, investigating and diagnosing health problems and hazards, informing and educating the public about health issues, and researching and applying innovative solutions to public health problems. U.S. Dep't of Health & Human Servs., Public Health Functions Steering Committee, *Public Health In America* (1994).

The federal government is uniquely able to protect the American public from threats to public health by coordinating different branches and levels of government, and facilitating communication and response between them and those in need. For example, federal action is necessary to ensure a coordinated response to infectious disease outbreaks

that cross state or national borders. Likewise, only the federal government can effectively mount the coordinated response demanded by national-scale health crises, such as the recent dramatic increase in preventable chronic disease.

**A. Public Health and Prevention Initiatives are Highly Effective in Improving Length and Quality of Life**

Public health efforts have been tremendously successful in improving Americans' length and quality of life:

Public health's most dramatic accomplishment is the extension of the average life span, from 45 years at the turn of the twentieth century to nearly 80 years in 2002. Of these 35 years of "extra" longevity, only 5 or so can be attributed to advances in clinical medicine. Public health can take the credit for the other 30 years, thanks to improvements in sanitation, health education, the development of effective vaccines, and other advances.

Lawrence Gostin, et al., *The Law and the Public's Health: The Foundations*, in *Law in Public Health Practice* 3, 6 (Richard A. Goodman et al. eds., 1st ed. 2003).

Public health and prevention initiatives have resulted in marked successes in such disparate areas as survival of infants and mothers, safety of food and water, control of deadly infectious diseases, and prevention of tobacco-related illness. See Ctrs. for Disease Control & Prevention, *Ten Great Public Health Achievements-United States, 1900-1999*, 48 *Morbidity & Mortality Wkly. Rep.*, 241, 242-43

(1999). Infections such as typhoid and cholera, which were a major cause of illness and death early in the 20th century, are almost unheard of today. *Id.* at 242. Sustained public health efforts have led to the development and deployment of vaccines for a host of deadly ailments including measles, rubella, mumps, and rabies. Stanley A. Plotkin, *History of Vaccine Development* 3 (Stanley A. Plotkin ed., 2011). Polio, one of the most dreaded childhood diseases of the first half of the 20th century, has been nearly eradicated. David M. Oshinsky, *Polio: An American Story* 271, 273 (2005). Indeed, due in large part to public health and prevention activities, the age-adjusted death rate in the United States has reached a record low. See Ram Koppaka, Ctrs. for Disease Control & Prevention, *Ten Great Public Health Achievements-United States, 2001- 2010*, 60 *Morbidity & Mortality Wkly. Rep.* 619, 621 (2011).

Studies increasingly confirm the old adage that an ounce of prevention is worth a pound of cure. Strong and abundant evidence demonstrates that preventing illness, particularly chronic illness, is often more cost-effective than caring for individuals once they become ill. See Robert Wood Johnson Foundation, *Return on Investment in Public Health: A Summary of Groundbreaking Research Studies* (2011), [http://www.rwjf.org/files/research/72990\\_prevention.brief.pdf](http://www.rwjf.org/files/research/72990_prevention.brief.pdf). Immunizations, for example, are one of the most effective medical and public health interventions ever created. See, Sandra W. Roush et al., *Historical Comparisons of Morbidity and Mortality for Vaccine-Preventable Diseases in the United States*, 298 *JAMA* 2155, 2160 (2007). Likewise, for every HIV infection prevented, an estimated \$355,000 is saved in the cost of providing



lifetime HIV treatment. Bruce Schackman et al., *The Lifetime Cost of Current Human Immunodeficiency Virus Care in the United States*, 44 *Med. Care* 994 (2006).

Turning to chronic disease, estimates show that reducing diabetes and hypertension prevalence by five percent would save the United States approximately \$9 billion annually. Barbara A. Ormond et al., *Potential National and State Medical Care Savings from Primary Disease Prevention*, 101 *Am. J. Public Health* 160, 165 (2011). Similarly, increasing preventative actions such as childhood immunization, discussion of daily aspirin use, smoking cessation assistance and vision screening from current levels to 90% utilization could save \$3.7 billion annually in medical costs. Michael V. Maciosek, *Greater Use of Preventive Services in U.S. Health Care Could Save Lives At Little Or No Cost*, 29 *Health Affairs* 1656, 1658 (2010).

## **B. Public Health and Prevention Programs are More Important Now than Ever**

### **1. Chronic disease is a large and growing threat**

Chronic diseases remain the country's most frequent cause of sickness and death, killing seven out of every ten Americans. See Arialdi M. Miniño et al., Nat'l Ctr. for Health Stats., *Deaths: Final Data for 2008*, 59 *Nat'l Vital Stat. Rep.* 17 (2011). Every year, nearly 800,000 Americans have a first heart attack, and another 470,000 have a repeat heart attack. Donald Lloyd-Jones, et al. *Heart Disease and Stroke Statistics—2011 Update*. 123 *Circulation* e1, e2 (2011). Cardiovascular disease is responsible for one

out of every four U.S. deaths - roughly 600,000 Americans per year. Miniño, *supra*, at 17. Cancer, the second leading cause of death in the United States, afflicts 1.6 million Americans and claims more than half a million lives every year. *Id.*; American Cancer Society, *Cancer Facts and Figures 2011*, at 1 (2011), <http://www.cancer.org/acs/groups/content/@epidemiologysurveillance/documents/document/acspc-029771.pdf>. Lung disease is now the third leading cause of death in America. Miniño at 17. Approximately 90% of chronic respiratory disease is caused by tobacco smoking and is therefore almost completely preventable. U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, *The Health Consequences of Smoking: A Report of the Surgeon General* 464 (2004). The recent outbreaks of H1N1, H5N1 and SARS remind us that communicable disease is an ever-present threat; indeed, influenza and pneumonia kill over 50,000 Americans each year. Miniño, *supra*, at 17.

The chronic diseases of obesity, diabetes, and lung disease are responsible for debilitating health problems in increasing numbers of Americans. In 2010, 60% of Americans were overweight or obese, with 18% of 12-19 year olds meeting the criteria for obesity. Cynthia L. Ogden & Margaret Carroll, Ctrs. for Disease Control & Prevention, *Prevalence of Overweight, Obesity, and Extreme Obesity Among Adults: United States, Trends 1960-1962 Through 2007-2008*, at 1 (2010), [http://www.cdc.gov/nchs/data/hestat/obesity\\_adult\\_07\\_08/obesity\\_adult\\_07\\_08.pdf](http://www.cdc.gov/nchs/data/hestat/obesity_adult_07_08/obesity_adult_07_08.pdf). Diabetes, which often results from obesity, is the leading cause of kidney failure and blindness among adults aged 20-74 and a major contributing factor to heart disease and stroke. Ctrs.

for Disease Control & Prevention, *National Diabetes Fact Sheet: National Estimates and General Information on Diabetes and Prediabetes in the United States* 1 (2011). Nearly 26 million people now have diabetes – more than 8% of the American population – and 79 million (35% of U.S. adults) over age 20 have pre-diabetes. *Id.* More than 35 million Americans have chronic lung diseases. American Lung Association, *Lung Disease Data 2008*, at 7 (2008), [http://www.lungusa.org/assets/documents/publications/lung-disease-data/LDD\\_2008.pdf](http://www.lungusa.org/assets/documents/publications/lung-disease-data/LDD_2008.pdf).

## **2. Poor health generates enormous economic costs and threatens national security**

The poor health status of the American people is extremely costly in terms of direct expenditures. On average, annual health care costs are \$2,000 higher for smokers, \$1,400 higher for obese individuals, and \$6,600 higher for people with diabetes than for those without these conditions. Leif I. Solberg et al., *Repeated Tobacco-Use Screening and Intervention in Clinical Practice: Health Impact and Cost Effectiveness*, 31 *Am. J. Prev. Med.* 62, 65 (2006); Eric A. Finkelstein et al., *Annual Medical Spending Attributable to Obesity: Payer and Service-Specific Estimates*, 28 *Health Affairs* 822, 826 (July 2009); Tim Dall et al., *Economic Costs of Diabetes in the U.S. in 2007*, 31 *Diabetes Care* 596, 608 (2008). One of every five U.S. health care dollars is spent on caring for people with diabetes. Dall, et al., *supra*, at 596. If current trends continue, 65 million more adults will be obese in 2030 than today, leading to six million more Americans suffering from diabetes, five million from coronary heart disease and stroke,

and more than 400,000 more suffering from cancer than would be expected at current rates, at an increased cost of between 48 and 66 billion dollars per year. Y. Claire Wang et al., *Health and Economic Burden of the Projected Obesity Trends in the USA and the UK*, 378 *The Lancet* 815, 823 (2011).

Cardiovascular disease now accounts for nearly 20% of medical expenditures and 30% of Medicare expenditures. Justin G. Trogon et al., *The Economic Burden of Chronic Cardiovascular Disease for Major Insurers*, 8 *Health Promotion Practice* 234, 239 (2007). Meanwhile, the national annual health care cost of treating obesity-related diseases in adults is approximately \$147 billion. Finkelstein et al., *supra*, at 826. The cost of obesity is compounded when combined with other illnesses and diseases: obesity increases lifetime medical care costs for some diseases by 50%, and severe obesity can almost double these costs. Ross A. Hammond & Ruth Levine, *The Economic Impact of Obesity in the United States*, 3 *Diabetes, Metabolic Syndrome and Obesity: Targets and Therapy* 285, 287 (2010). Lung disease costs the U.S. economy a total of \$173 billion per year, including \$108 billion in direct health care expenditures. Nat'l Inst. of Health, *Morbidity & Mortality: 2009 Chart Book on Cardiovascular, Lung and Blood Diseases* 17 (2009), [http://www.nhlbi.nih.gov/resources/docs/2009\\_ChartBook.pdf](http://www.nhlbi.nih.gov/resources/docs/2009_ChartBook.pdf).

Poor health costs individuals, companies, and the country in numerous additional ways as well. Chronic diseases and other health conditions reduce economic output by \$260 billion per year. Rebecca Mitchell & Paul Bates, *Measuring Health-Related*

*Productivity Loss*, 14 *Population Health Mgmt.* 93(2011). Indirect costs from poor employee health including lower productivity, higher rates of disability, higher rates of injury, and more workers' compensation claims can be two to three times the costs of direct medical expenses. Partnership for Prevention and U.S. Chamber of Commerce, *Leading by Example: Leading Practices for Employee Health Management* 6 (2007). Poor oral health is significantly associated with disability and reduction in mobility. Institute of Medicine of the National Academies and National Research Council, *Improving Access to Oral Health Care for Vulnerable and Underserved Populations* 2-9 (2011).

Preventable disease also directly and negatively affects our national security. Between 1995 and 2008, 140,000 military recruits failed their physical entrance exams because they were overweight. Mission: Readiness, *Too Fat to Fight: Retired Military Leaders Want Junk Food Out of America's Schools* 2 (2010), [http://cdn.missionreadiness.org/MR\\_Too\\_Fat\\_to\\_Fight-1.pdf](http://cdn.missionreadiness.org/MR_Too_Fat_to_Fight-1.pdf). Alarmed that the epidemic of obesity threatens our national security, dozens of retired generals, admirals, and other senior leaders of the U.S. Armed Forces have issued a call to action to improve fitness and reduce unhealthy eating. *Id.* Chronic diseases such as obesity negatively affect our national security in other ways as well: passenger weight gain between 1960 and 2002 has required the use of almost one billion additional gallons of gasoline per year, further deepening our dependence on fossil fuels. Sheldon H. Jacobson & Laura McLay, *The Economic Impact of Obesity on Automobile Fuel Consumption*, 51 *Engineering Economist* 307, 320 (2006).

### **III. THE AFFORDABLE CARE ACT STRENGTHENS AND PRIORITIZES PUBLIC HEALTH AND PREVENTION**

As we move into the twenty-first century, public health and prevention agencies are evolving to meet the challenges posed by emerging threats such as chronic debilitating conditions, pandemic flu and other infectious disease, and natural and man-made disasters. Koppaka, *supra*, at 60. In response to these new challenges, the ACA strategically provides resources, builds expertise, and creates frameworks for quickly and effectively addressing current and emerging threats to Americans' health and well being.

The ACA is divided into ten titles. The individual mandate and Medicaid expansion challenged in this case are contained in Titles I and II. *Amici* focus here on key provisions contained in Title IV, entitled "Prevention of Chronic Disease and Improving Public Health." Title IV modernizes public health systems, increases access to clinical preventive services, spurs the creation of healthier communities, and supports key innovations to improve public health. ACA §§ 4001-4402.<sup>2</sup>

#### **A. Nationwide Programs Focused on Prevention and Public Health**

In Title IV, Congress crafted high-level programs to systematically guide public health research and infrastructure development: a national prevention strategy, federal funding initiatives, and programs

---

<sup>2</sup> This section also highlights additional prevention provisions found in Title X, the Manager's Amendment, that modify Title IV.

focused on specific health conditions. To oversee these activities, the ACA created the National Prevention, Health Promotion and Public Health Council (“Council”), tasked with providing federal coordination and leadership in prevention, wellness, and health promotion. ACA § 4001, 42 U.S.C.A. § 300u–10 (West 2011). Established in 2010, the Council is composed of the heads of seventeen federal agencies and chaired by the Surgeon General. Executive Order 13544, 75 Fed. Reg. 33, 983 (June 10, 2010). With input from the public and interested stakeholders, the Council has developed a National Prevention and Health Promotion Strategy that focuses on shifting from a focus on sickness and disease to one based on wellness and prevention. See National Prevention, Health Promotion and Public Health Council, *National Prevention Strategy* 3 (2011), available at <http://www.healthcare.gov/prevention/nphpphc/strategy/report.pdf>.

Congress also made a substantial investment in public health by creating a dedicated funding source for national investment in prevention and public health programs. This Prevention and Public Health Fund is designed “to provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health costs.” ACA § 4002, 42 U.S.C.A. § 300u–11 (West 2011). This significant investment, which begins at \$500 million per year and increases to \$2 billion per year, is intended to radically improve and expand the capacity of public health efforts, saving thousands of lives and potentially improving the health of many millions of Americans. *Id.*

The ACA also authorizes task forces to review the scientific evidence related to the effectiveness, appropriateness, and cost-effectiveness of clinical preventive services, and to develop evidence-based recommendations informed by those reviews. ACA § 4003, 42 U.S.C.A. § 280g–10 (West 2011). A focus on determining which interventions are most effective and cost-effective, and selectively encouraging those interventions, is present throughout the ACA, including many provisions that require initiatives funded under their auspices to utilize evidence-based practices. *See, e.g.*, ACA §§ 4105, 10408, 10410.

### **B. Initiatives Focused on Specific Diseases, Conditions, and Barriers to Health**

The ACA systematically takes on a number of America's most persistent and challenging health conditions by creating specific initiatives to address particular diseases. One such provision, a national diabetes prevention program targeted at adults at high risk for diabetes, includes a grant program for community-based model sites, as well as evaluation, monitoring, and technical assistance. ACA § 10501(g). Another provision requires that HHS create and disseminate national diabetes report cards and, to the extent possible, a report card for each state. ACA § 10407, 42 U.S.C.A. § 247b–9a (West 2011). It also requires HHS to study and report on the impact of diabetes on medical care and the appropriateness of medical education regarding the disease. *Id.* The ACA appropriates \$25 million each year during the 2010-2014 financial years period for demonstration projects to address the related problem of childhood obesity. ACA § 4306. The ACA also addresses the persistent and



preventable problem of poor oral health with a number of measures, including a five year public education campaign, the establishment of cooperative agreements with states, territories and tribal entities to establish programs to improve oral health, and grants for projects that demonstrate the effectiveness of dental disease management. ACA § 4102, 42 U.S.C.A. § 280k-1-3 (West 2011).

As discussed above, immunizations are extremely effective in reducing the incidence of many serious diseases, and continued development is necessary to combat the threat of pandemic contagion. Unfortunately, immunization rates in the United States consistently fall below recommended levels. Ctrs. for Disease Control & Prevention, *2009 Adult Vaccination Coverage* 1 (2010), <http://www.cdc.gov/vaccines/stats-surv/nhis/2009-nhis.htm>. Title IV addresses this problem with a number of activities designed to make vaccines more available and affordable. It authorizes the Secretary to negotiate and enter into contracts with manufacturers to purchase vaccines for adults and authorizes states to purchase vaccines at those negotiated prices. ACA § 4204. Title IV also requires demonstration programs to improve immunization coverage for adults, adolescents, and children, and requires a study of Medicare beneficiary access to vaccines. *Id.*

The ACA directly addresses, at the federal level, a problem that has been addressed to varying degrees in many states: the challenge faced by breastfeeding women returning to work after giving birth. Despite overwhelming evidence that breastfeeding and the exclusive provision of breast milk to infants improves health and saves money,

the percentage of American women who breastfeed remains far below recommendations of medical experts and governmental organizations. *See, e.g.,* Alan S. Ryan et al., *Breastfeeding Continues to Increase Into the New Millennium*, 110 *Pediatrics* 1103, 1104 (2002); Liesbeth Duijts et al., *Breastfeeding Protects Against Infectious Diseases During Infancy in Industrialized Countries: A Systematic Review*, 5 *Maternal and Child Nutrition* 199, 199 (2009). The ACA attempts to address this problem by requiring employers to provide an employee covered by the Fair Labor Standards Act with “reasonable break time . . . to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.” ACA § 4207 (amending 29 U.S.C. § 207).

### **C. Improving Health in Communities, Schools, and Workplaces**

Because healthy environments can drive improvements in public health and well-being, Congress included a number of initiatives in Title IV aimed at improving health through place-based approaches. Chief among these initiatives is a program to provide Community Transformation Grants to state and local governments, community-based organizations, and Indian tribes to implement and evaluate evidence-based community preventive activities aimed at reducing rates of chronic disease, addressing health disparities, and developing an evidence base for future prevention programming. ACA § 4201, 42 U.S.C.A. § 300u–13 (West 2011).

The ACA seeks to address children’s health through grants for School Based Health Centers. These centers are required to provide comprehensive

primary health services during school hours to children and adolescents. Grants will be directed to communities with barriers to primary health care and prevention services and those with high numbers of uninsured and underinsured children. ACA § 4101, 42 U.S.C.A. § 280h-4-5 (West 2011).

Research has shown that medical costs are reduced by approximately \$3.27 and absenteeism costs are reduced by approximately \$2.73 for every dollar spent on workplace wellness programs. Katherine Baicker et al., *Workplace Wellness Programs Can Generate Savings*, 29 *Health Affairs* 304, 308 (2009). The ACA supports workplace wellness in several ways. First, it provides for a five-year grant program emphasizing evidence-based research and best practices for small businesses to provide comprehensive workplace wellness programs. ACA § 10408. The ACA also directs the CDC to provide employers with technical assistance, consultation, tools, and other resources to improve their workplace wellness programs. ACA § 4303.

### CONCLUSION

Prevention and public health are essential to the health of the American people. Given the federal government's longstanding commitment to improving and protecting public health, the ever-growing importance of public health and prevention for the health and security of the nation, and the stand-alone nature of these provisions, this Court should find for the government on the question of severability, should that question be reached.

Respectfully submitted,

/s/ Martha Jane Perkins

MARTHA JANE PERKINS

*Counsel of Record*

COREY S. DAVIS

NATIONAL HEALTH LAW PROGRAM

101 E. Weaver St., # G-7

Carrboro, NC 27510

perkins@healthlaw.org

(919) 968-6308

SARA ZIMMERMAN

JENNIFER L. WILLIS

PUBLIC HEALTH LAW & POLICY

2201 Broadway, Suite 502

Oakland, CA 94612

(510) 302-3380

*Counsel for Amici Curiae*