

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, STATE OF CALIFORNIA, COMMONWEALTH OF MASSACHUSETTS, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAII, STATE OF ILLINOIS, STATE OF MAINE, STATE OF MARYLAND, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF NORTH CAROLINA, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, and STATE OF WISCONSIN,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ALEX M. AZAR II, *in his official capacity as Secretary of Health and Human Services*, and ROGER SEVERINO, *in his official capacity as Director of the Office for Civil Rights at the United States Department of Health and Human Services*,

Defendants.

Civil Action No. 1:20-cv-5583

**MOTION OF AMICI NATIONAL HEALTH LAW PROGRAM ET AL., FOR
LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

Amici move this Court for leave to file the *amicus curiae* brief previously submitted as Docket Number 76 in the above-captioned matter in support of Plaintiffs' Renewed Motion for Summary Judgment on Administrative Procedure Act claims (Dkt. No. 108).

1. This Court has "broad discretion" to allow third parties to file *amicus curiae* briefs. See *Auto. Club of N.Y. v. Port Auth. of N.Y. and N.J.*, No. 11-6746, 2011 WL 5865296, at *1 (S.D.N.Y. Nov. 22, 2011); *United States v. Yaroshenko*, 86 F. Supp. 3d 289, 290 (S.D.N.Y. 2015). "A court may grant leave to appear as an amicus if the information offered is 'timely and useful,'" or where "amicus curiae offers insights not available from the parties, thereby aiding the Court." *Andersen v. Leavitt*, No. 03-6115, 2007 WL 2343672, at *2 (E.D.N.Y. Aug. 13, 2007) (quoting *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999)) (internal citations omitted); see also *United States v. El-Gabrownny*, 844 F. Supp. 955, 957 n. 1 (S.D.N.Y. 1994) (noting courts have permitted participation of *amici curiae* where they "are of aid to the court and offer insights not available from the parties."). In addition, courts have allowed third parties to file briefs as *amici curiae* where they have "relevant expertise and a stated concern for the issues at stake in [the] case." *District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d. 227, 237 (D. D.C. 2011). *Amici* satisfy these criteria.

2. *Amici* the National Health Law Program, Disability Rights Defense and Education Fund, Justice in Aging, American Association of People with Disabilities, American Association on Health & Disability, Arizona Center for Law in the Public Interest, Asian & Pacific Islander American Health Forum, Asian Resources, Inc., Association of Asian Pacific Community Health Organizations, Autistic Self Advocacy

Network, California Advocates for Nursing Home Reform, California Pan-Ethnic Health Network, Center for Civil Justice, Center for Elder Law & Justice, Center for Law and Social Policy (“CLASP”), Center for Medicare Advocacy, Center for Public Representation, Children Now, CommunicationFIRST, Community Legal Aid Society Inc. (Delaware), Disability Law Center of Alaska, Disability Rights California, Disability Rights North Carolina, Disability Rights Wisconsin, Equip for Equality, Georgia Advocacy Office, Health Law Advocates, Inc., Hispanic Federation, Kentucky Equal Justice Center, Legal Aid Society of San Mateo County, Legal Council for Health Justice, Maternal and Child Health Access, Medicare Rights Center, Mississippi Center for Justice, National Association of Councils on Developmental Disabilities, National Council on Aging, National Council on Independent Living, National Council on Interpreting in Health Care, National Federation of the Blind, National Hispanic Council on Aging, National Immigration Law Center, Pennsylvania Health Law Project, PRC, Public Citizen Foundation, Public Justice Center, SAGE (Advocacy and Services for LGBT Elders), SC Appleseed Legal Justice Center, Southeast Asia Resource Action Center, Tennessee Justice Center, Virginia Poverty Law Center, and Western Center on Law and Poverty have a strong interest in ensuring that the regulations adhere to the statute and that people receive the full protection of Section 1557. *See* 5 U.S.C. § 702.

3. The proposed *amicus curiae* brief offers the Court a unique perspective as health, disability, elder justice, legal services, and civil rights advocacy organizations dedicated to eliminating disparities in health care. *Amici* are significantly familiar with the 2020 Rule and its predecessor rule issued by HHS in 2016, as well as the widespread

barriers to accessing appropriate medical care that have resulted in disparities among people with disabilities or chronic health conditions, individuals with Limited English Proficiency (“LEP”), older adults, women, and LGBTQ+ individuals. *Amici’s* brief discusses the history and purpose of the ACA as a statute to end discrimination in health care experienced by these communities and the harm to these populations that would occur from the 2020 Rule’s changes. Several *amici* previously filed a related brief in another legal challenge to the 2020 Rule, *State of Washington v. U.S. Dep’t of Health and Human Servs.*, 2:20-cv-01105 (E.D. Wash. filed July 16, 2020).

4. For the foregoing reasons, *amici* respectfully request permission to file their *amicus curiae* brief in support of Plaintiffs’ Renewed Motion for Summary Judgment (Dkt. No. 108). *Amici’s* brief was previously filed in support of Plaintiffs’ Motion for Partial Summary Judgment (Dkt. Nos. 62) as ECF Docket Number 76.

Dated: December 8, 2020

Respectfully submitted,

NATIONAL HEALTH LAW PROGRAM
/s/ Cathren Cohen

Cathren Cohen
Abigail Coursolle*
Elizabeth Edwards*
Jane Perkins*
3701 Wilshire Blvd., Suite 750
Los Angeles, CA 90010
Tel. (310) 204-6010 Email:
cohen@healthlaw.org
coursolle@healthlaw.org
edwards@healthlaw.org
perkins@healthlaw.org

Silvia Yee*
Carly A. Myers*

Disability Rights Education & Defense
Fund

3075 Adeline Street, Suite 210

Berkeley, CA 94703

Tel. (510) 644-2555

Email:

syee@dredf.org

cmyers@dredf.org

Denny Chan*

Carol A. Wong*

Regan Bailey*

Justice in Aging

1444 Eye Street, N.W., Suite 1100

Washington, DC 20005

Tel. (202) 683-1990

Email:

dchan@justiceinaging.org

cwong@justiceinaging.org

rbailey@justiceinaging.org

*Not admitted to S.D.N.Y.