IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

No. 1:20-CV-05583-AKH

[PROPOSED] *AMICUS CURIAE* BRIEF OF COUNTY OF SANTA CLARA, CITY OF CHICAGO, AND 45 LOCAL GOVERNMENTS IN SUPPORT OF PLAINTIFFS' RENEWED MOTION FOR SUMMARY JUDGMENT

James R. Williams, County Counsel
Greta Hansen, Chief Assistant County Counsel
Douglas M. Press, Assistant County Counsel
Laura S. Trice, Lead Deputy County Counsel
Lorraine Van Kirk, Deputy County Counsel*
Mary E. Hanna-Weir, Deputy County Counsel
Jeremy A. Avila, Deputy County Counsel
70 W. Hedding Street, East Wing, 9th Floor
San José, California 95110
Attorneys for County of Santa Clara, California

Mark A. Flessner, Corporation Counsel
Stephen J. Kane, Deputy Corporation Counsel
Rebecca Hirsch, Assistant Corporation Counsel
121 North LaSalle Street, Room 600
Chicago, IL 60602
Attorneys for the City Chicago, Illinois

*Appearing *pro hac vice*

Counsel for Amici Curiae County of Santa Clara, California and the City of Chicago, Illinois

[Additional *Amici Curiae* listed on next page]

Additional *Amici Curiae*

City of Albuquerque, New Mexico

City of Alexandria, Virginia

City of Austin, Texas

City of Boulder, Colorado

City of Berkeley, California

City of Cambridge, Massachusetts

Town of Carrboro, North Carolina

Mayor James Diossa and the City of Central Falls, Rhode Island

City of Columbus, Ohio

Cook County, Illinois

City of Dayton, Ohio

City of Duluth, Minnesota

City of Hayward, California

Howard County, Maryland

City of Holyoke, Massachusetts

City of Houston, Texas

Iowa City, Iowa

King County, Washington

City of Los Angeles, California

County of Los Angeles, California

City of Middletown, Connecticut

County of Monterey, California

City of New York, New York

City of Oakland, California

City of Palm Springs, California

City of Portland, Oregon

City of Providence, Rhode Island

Mayor Thomas P. McNamara, City of Rockford, Illinois

City and County of San Francisco

City of Santa Cruz, California

County of Santa Cruz, California

City of Santa Fe, New Mexico

City of Santa Monica, California

City of Seattle, Washington

Shelby County, Tennessee

City of Somerville, Massachusetts

City of Saint Paul, Minnesota

Borough of State College, Pennsylvania

City of Tacoma, Washington

City of Tempe, Arizona

City of West Hollywood, California

Mayor Keith A. James and the City of West Palm Beach, Florida

City of Wilmington, Delaware

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Heart of Atlanta Motel, Inc. v. United States,
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King v. Burwell,
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Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n,
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Nat'l Fed'n of Indep. Bus. v. Sebelius,
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Obergefell v. Hodges,
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Roberts v. U.S. Jaycees,
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Romer v. Evans,
517 U.S. 620 (1996) 10

Walker v. Azar,
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Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health & Hum. Servs.,
--- F.Supp.3d ----, 2020 WL 5232076 (D.D.C. Sept. 2, 2020 .... 1, 4

CONSTITUTIONS AND STATUTES

20 U.S.C. § 1688 2

26 U.S.C. § 501 20

42 U.S.C. § 18022 8

42 U.S.C. § 18091 20

42 U.S.C. § 18116 3

Cal. Health & Safety Code § 127400 20

Cal. Welf. & Inst. Code § 17000 20

Fla. Stat. § 154.011 20

Tex. Health & Safety Code Ann. § 61.022 20

Texas Constit. art. 9, § 4 20

REGULATIONS AND RULES

42 C.F.R. pt. 438 1

42 C.F.R. pt. 440 1

42 C.F.R. pt. 460 1

45 C.F.R. pt. 86 1

45 C.F.R. pt. 92 .... 1, 2, 3

45 C.F.R. pt. 147 1

45 C.F.R. pt. 155 1

45 C.F.R. pt. 156 1

Nondiscrimination in Health and Health Education Programs or Activities,
Delegation of Authority, 85 Fed. Reg. 37,160 (June 19, 2020) .... *passim*

Nondiscrimination in Health Programs and Activities (Notice of Proposed Rulemaking),
80 Fed. Reg. 54,172 (Sept. 8, 2015) 5, 6, 15

Nondiscrimination in Health Programs and Activities,
81 Fed. Reg. 31,376 (May 18, 2016) .... *passim*

COMMENTS

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Comment of City of New York,
HHS-OCR-2019-0007-150529 (Aug. 13, 2019) 24

Comment of City of Oakland,
HHS-OCR-2019-0007-151126 (Aug. 13, 2019) 24

OTHER AUTHORITIES

145 Cong. Rec. H1879 8

145 Cong. Rec. H1886 7

145 Cong. Rec. H3447 8

145 Cong. Rec. S13624 8

145 Cong. Rec. S13799 8

156 Cong. Rec. H1582 8

Larisa Antonisse et al.,
Kaiser Family Found., *The Effects of Medicaid Expansion Under the ACA: Updated Findings from a Literature Review* (Mar. 28, 2018) 8, 9

Andrew Atkeson,
Nat'l Bureau of Econ. Res., *Economic Benefits of COVID-19 Screening Tests* (Oct. 2020) 19

Avert,
Pre-exposure Prophylaxis for HIV Prevention (Feb. 25, 2020) 18

Aleta M. Baldwin et al.,
Sexual Minority Women's Satisfaction with Health Care Providers and State-level Structural Support: Investigating the Impact of Lesbian, Gay, Bisexual, and Transgender Nondiscrimination Legislation, 27 Women's Health Issues 271 (2017) 12

Maureen R. Benjamins & Steven Whitman,
Relationships Between Discrimination in Health Care and Health Care Outcomes Among Four Race/Ethnic Groups, 37 J. Behav. Med. 403 (2014) 14

Katelyn Burns,
This is the Cruelest Thing the Trump Administration has Done to Trans People Yet, Washington Post (May 29, 2019) 11

Cal. Ass'n of Pub. Hosps. & Health Sys.,
Impact of Medi-Cal Expansion: Santa Clara Valley Health & Hospital System (2017) 17

Cal. Ass'n of Pub. Hosps.,
Impact of Medi-Cal Expansion: Natividad Medical Center (2017) 17

California Association of Public Hospitals,
Impact of Medi-Cal Expansion: San Francisco Health Network (2017) 17

K.G. Castro et al.,
Estimating Tuberculosis Cases and Their Economic Costs Averted in the United States Over the Past Two Decades, 20 Int'l J. Tuberculosis Lung Disorder 926 (2016) 19

City & Cnty. of San Francisco,
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City & Cnty. of San Francisco,
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City of Chicago,
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Sustainable Oakland, *Oakland Fund for Children and Youth (OFCY) Is Growing* 21

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Cnty. of Santa Clara Health Sys.,
Healthcare Access Program, CSCHS #715.0 20

Cnty. of Santa Clara,
About the Office of LGBTQ Affairs 22

Eileen Condon et al.,
Associations Between Maternal Experiences of Discrimination and Biomarkers of Toxic Stress in School-Aged Children, 23 Maternal & Child Health J. 1147 (2019) 16

Ctrs. for Disease Control & Prevention,
Coronavirus Disease 2019: People Who Are at Higher Risk (Apr. 15, 2020) 19

Ctrs. for Disease Control & Prevention,
TB in the United States: A Snapshot (Sept. 2018) 19

Ctrs. for Medicare & Medicaid Servs.,
CMS Fast Facts, *CMS Program Data – Populations* (2020) 2

Dep't of Health & Hum. Servs., Ctrs. for Disease Control & Prevention,
Patient-Centered Care for Transgender People: Recommended Practices for Health Care Settings (Apr. 1, 2020) 15

Dep't of Health & Hum. Servs., Office of Disease Prevention and Health Promotion,
Access to Health Services, *Healthy People 2020* 15

Dep't of Health & Hum. Servs., Office of Disease Prevention & Health Promotion,
Discrimination, *Healthy People 2020* 15

Dep't of Health & Hum. Servs., Office of Disease Prevention and Health Promotion,
Lesbian, Gay, Bisexual, and Transgender Health, *Healthy People 2010*, ... 15

Dawn Ennis,
This Man Is Eliminating Protections Against Healthcare Discrimination For More Than 1 Million Americans, Forbes (June 14, 2020) 11

Jennifer J. Frost et al.,
Return on Investment: A Fuller Assessment of the Benefits and Cost Savings of the US Publicly Funded Family Planning Program, 92 Milbank Q. 667 (2014)....................19

Craig Garthwaite et al.,
Hospitals as Insurers of Last Resort, 10 Am. Econ. J. Applied Econ. 1 (2018) 19

Alex C. Geisinger & Michael A. Stein,
Expressive Law and the Americans with Disabilities Act, 114 Mich. L. Rev. 1061 (2016)....................10

Gilbert Gonzales,
State Health Access Data Assistance Center, *State Estimates of Limited English Proficiency (LEP) by Health Insurance Status* (2014) 8

Erica L. Green *et al.*,
'*Transgender' Could Be Defined Out of Existence Under Trump Administration*, N.Y. Times (Oct. 21, 2018) 10

Mark L. Hatzenbuehler et al.,
The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study, 100 Am. J. Pub. Health (2010)....................12

Health Care Cost Institute,
2016 Health Care Cost and Utilization Report (2018)....................18

Nia J. Heard-Garris et al.,
Transmitting Trauma: A Systematic Review of Vicarious Racism and Child Health, 199 Soc. Sci. & Med. 230 (2018) 6

Alyssa R. Hersh et al.,
Repeat Screening for Syphilis in the Third Trimester of Pregnancy: A Cost-Effectiveness Analysis, 132 Obstetrics & Gynecology 699 (Sept. 2018) 19

HHS,
HS Action Plan to Reduce Racial and Ethnic Health Disparities (2011)....................7

John Holahan et al., Kaiser Fam. Found.,
The Cost and Coverage Implications of the ACA Medicaid Expansion: National and State-by-State Analysis....................6

Karen W. Hoover et al.,
Continuing Need for Sexually Transmitted Disease Clinics After the Affordable Care Act, 105 Amer. J. Public Health S690 (2015) 23

Houston Health Dep't,
Houston Community Health Improvement Plan 2018–2021 (2020) 17

Houston Health Dep't,
Houston Health Department Launches I am Life™ Campaign to Educate Audiences about Preventing HIV Through PrEP, Treatment as Prevention (TasP) to End HIV Transmission (May 2, 2019) 23

Howard County,
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Howard County Office of Human Rights,
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Human Rights Campaign,
San José, California 2019 Municipal Equality Index Scorecard 22

Johns Hopkins Bloomberg School of Public Health,
Primary Care Visits Available to Most Uninsured But at a High Price (May 5, 2015) 18

Kaiser Fam. Found.,
Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the U.S. (2018) 8

Kaiser Fam. Found.,
Total Medicaid MCO Enrollment (2018) 2

LAC+USC Medical Center,
LGBTQ+ Resource Guide 21

Los Angeles Cnty. Health Servs.,
Friendly and Knowledgeable Providers 21

Larissa A. McGarrity & David M. Huebner,
Is Being Out About Sexual Orientation Uniformly Healthy?: The Moderating Role of Socioeconomic Status in a Prospective Study of Gay and Bisexual Men, 47 Annals Behav. Med. 28 (2014)) 15

Nat'l Academies Sci., Engineering, & Medicine,
Achieving Health Equity via the Affordable Care Act (2015) 7

Nat'l Academies Inst. of Med.,
Care Without Coverage: Too Little, Too Late (2002) 18

Nat'l Ass'n of Cty's,
Counties' Role in Health Care Delivery and Financing (2007) 5

NYC Health + Hospitals,
About NYC Care 20

NYC Health + Hospitals,
Partners in LGBTQ Healthcare 20

Catherine E. Oldenburg et al.,
State-*Level Structural Sexual Stigma and HIV Prevention in a National Online Sample of HIV-Uninfected MSM in the United States*, 29 AIDS 837 (2015) 12

Yin Paradies,
A Systematic Review of Empirical Research on Self-reported Racism and Health, 35 Int'l J. Epidemiology (2006) 13

Elizabeth A. Pascoe & Laura Smart Richman,
Perceived Discrimination and Health: A Meta-Analytic Review, 135 Psych. Bull. 513 (2009) 13

Ellen D. B. Riggle et al.,
Does It Matter Where You Live? Nondiscrimination Laws and the Experiences of LGB Residents, 7 Sexuality Res. & Soc. Pol'y 168 (2010) 12

Eileen Salinsky,
Nat'l Health Policy Forum, *Governmental Public Health: An Overview of State and Local Public Health Agencies* (Aug. 18, 2010) 5, 23

Elizabeth A. Samuels et al.,
"*Sometimes You Feel Like the Freak Show": A Qualitative Assessment of Emergency Care Experiences Among Transgender and Gender-Nonconforming Patients*, 71 Annals of Emergency Medicine 170 (2018) 17

San Francisco Dep't of Pub. Health,
Gender Health SF 20

Santa Clara Valley Medical Center Hospital & Clinics:
Gender Health Center 11

Jessica Schubel & Matt Broaddus, Ctr. on Budget & Pol'y Priorities,
Uncompensated Care Costs Fell in Nearly Ever State as ACA's Major Coverage Provisions Took Effect (May 23, 2018) 8, 17

Carter Sickels,
Being Trans Shouldn't Exclude Me From Health Laws, Atlantic (June 20, 2020) 11

Benjamin T. Squire et al.,
At-Risk Populations and the Critically Ill Rely Disproportionately on Ambulance Transport to Emergency Departments, 56 Annals Emergency Med. 341 (2010) 18

State College Borough,
Coronavirus Response Hub 21

Cass R. Sunstein,
On the Expressive Function of Law, 144 U. Penn. L. Rev. 2021 (1996) 10

Kristen Underhill,
Perceptions of Protection Under Nondiscrimination Law, 41 Amer. J. L. & Medicine 21 (2020) 10

U.S. Gov't Printing Off.,
Public Papers of the Presidents of the United States: Barack Obama 2009 (2010) 20

Sarah Wamala et al.,
Perceived Discrimination, Socioeconomic Disadvantage and Refraining from Seeking Medical Treatment in Sweden, 61 J. Epidemiology Cmty. Health 409 (2006) 14

Robin M. Weinick et al.,
Many Emergency Department Visits Could Be Managed at Urgent Care Centers and Retail Clinics, 29 Health Affairs 1630 (2010) 18

David R. Williams et al.,
Racial/Ethnic Discrimination and Health: Findings From Community Studies, 93 Am. J. Pub. Health 200 (2003) 13

INTEREST OF *AMICI CURIAE*[1] AND INTRODUCTION

Amici are 47 counties, cities, and towns located throughout the United States, including most of the Plaintiff States. *Amici* range from massive metropolises such as New York City, to rural agricultural communities such as Monterey County. *Amici* are united in our opposition to the U.S. Department of Health and Human Services' (HHS) Affordable Care Act (ACA) Section 1557 nondiscrimination 2020 Rule ("2020 Rule").[2] The 2020 Rule unlawfully withdraws federal nondiscrimination protections from many of our most at-risk residents in intimate and important healthcare contexts, gutting HHS' prior 2016 Rule.[3] It inflicts tremendous harm on *amici*, our communities, and our residents—most of all our LGBTQ residents, limited English proficiency (LEP) speakers, and people seeking pregnancy-related care, who all contend with systemic barriers to good health.

By its terms, the 2020 Rule *invites* discrimination in healthcare against patients who face disproportionate barriers to health and impedes their ability to challenge such discrimination. As the Plaintiff States detail, its numerous provisions operate in discrete and mutually reinforcing ways to harm health and disconnect entire communities from necessary healthcare. In its "arguable centerpiece,"[4] the 2020 Rule erases federal prohibitions on healthcare discrimination

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to this brief's preparation or submission. Counsel for all parties consented to the filing of this brief.

[2] Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37,160 (June 19, 2020) (codified at 42 C.F.R. pts. 438, 440, & 460 and 45 C.F.R. pts. 86, 92, 147, 155, & 156).

[3] Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31,376 (May 18, 2016) (formerly codified at 45 C.F.R. pt. 92) ("2016 Rule").

[4] *Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health & Hum. Servs.*, --- F.Supp.3d ----, 2020 WL 5232076, at *33 (D.D.C. Sept. 2, 2020), *appeal docketed*, No. 20-5331 (D.C. Cir. Nov. 9, 2020).

based on sex stereotyping and gender identity,[5] enabling discrimination against LGBTQ people. It replicates this change in ten unrelated regulations, permitting, among other things, discrimination based on gender identity and sexual stereotyping against most people who rely on Medicaid for their health insurance.[6] The 2020 Rule also excises federal prohibitions on healthcare discrimination based on pregnancy-related conditions.[7] It eliminates nondiscrimination obligations for many health insurers and most federal programs[8]—including the primary, preventative, and public health services administered by HHS components such as the Centers for Medicare and Medicaid Services (CMS), the Centers for Disease Control and Prevention (CDC), and the Substance Abuse and Mental Health Services Administration (SAMHSA), which together serve hundreds of millions of Americans.[9] It imports Title IX's sweeping abortion exemption, authorizing denials of care for abortions, miscarriages, and ectopic pregnancies, even when they are life-saving.[10] It authorizes religiously affiliated providers, health systems, and insurers to deny care and coverage to patients, endangering patients in emergencies and patients who lack choice in healthcare providers, and potentially implicating

[5] 85 Fed. Reg. at 37,161-62.

[6] *See id.* at 37,243, 37,247-48; Kaiser Fam. Found., *Total Medicaid MCO Enrollment* (2018), *archived at* https://perma.cc/GM8Y-VWXX (69% of Medicaid beneficiaries rely on Medicaid MCOs, and few have the means to finance their healthcare on their own).

[7] 85 Fed. Reg. at 37,161-62.

[8] *Id.* at 37,162, 37,244-45 (45 C.F.R. § 92.3).

[9] *See* Ctrs. for Medicare & Medicaid Servs., CMS Fast Facts, *CMS Program Data – Populations* (2020), *archived at* https://perma.cc/5GFN-ZGD6 (Medicare, Medicaid, and the Children's Health Insurance Program alone serve over 146 million people).

[10] The 2020 Rule imports Title IX's so-called abortion neutrality exception, which states that Title IX shall not "be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion." 20 U.S.C. § 1688; *see* 85 Fed. Reg. at 37,245 (45 C.F.R. § 92.6).

access to critical healthcare services such as birth control, certain fertility treatments, and care for HIV and hepatitis.[11] It undoes federal language access requirements that support meaningful healthcare for LEP patients—relaxing the standards governing the provision of language assistance services and dispensing with the notices that inform LEP patients of their rights to nondiscrimination and the availability of no-cost interpretation for their healthcare.[12] And the 2020 Rule enables health insurers to categorically deny coverage for medically necessary gender-affirming healthcare, even when identical services are covered for other patients.[13]

Individually and collectively, the 2020 Rule's provisions impair access to healthcare for *amici*'s residents—contrary to the purpose, structure, and plain language of Section 1557 of the ACA[14] and the ACA itself.[15] Through the ACA's insurance expansions and its patient protections, such as Section 1557, the ACA successfully expanded health insurance coverage and benefits to millions more Americans who can now access primary and preventative healthcare to achieve better outcomes sooner, in more appropriate settings, and at lesser governmental and overall expense. The 2020 Rule threatens these core gains. It erases many of the 2016 Rule's concrete codifications of Section 1557's promise of nondiscrimination. In its place, the 2020 Rule invites discrimination against people in need of life-affirming and lifesaving healthcare—despite the robust record documenting the lasting harms from discrimination for individuals and communities, and despite the utter absence of a factual or legal basis for the change. Its

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[11] 85 Fed. Reg. at 37,245 (45 C.F.R. § 92.6(b)).

[12] *Id.* at 37,162, 37,245-46 (45 C.F.R. § 92.101).

[13] The 2020 Rule eliminates the 2016 Rule's express prohibition on such categorical coverage denials. *See* 81 Fed. Reg. at 31,471-72 (former 45 C.F.R. § 92.207(3)-(4)).

[14] 42 U.S.C. § 18116 ("Section 1557").

[15] Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119.

repudiation of nondiscrimination protections inherently stigmatizes and harms, leading to delayed and forgone healthcare, significant programmatic and administrative costs, and direct harms to our residents, communities, and local governments. The 2020 Rule as a whole erodes *amici*'s ability to foster inclusive communities in which everyone has the right to respect and the opportunity to lead a healthy, independent life.[16] By utterly ignoring these harms, HHS violates the basic requirements of administrative rulemaking. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1915 (2020). The 2020 Rule should be vacated in its entirety.

ARGUMENT

I. The 2016 Rule Helped Local Governments and Communities by Reducing Health Disparities

As local governments, *amici* are responsible, often by legal mandates and always by practical realities, for protecting the health and safety of our communities. We assist children and the elderly, operate law enforcement agencies and jail facilities, provide emergency medical transportation and safety-net healthcare services, and perform critical public health work, including operating the front lines of our nation's COVID-19 pandemic response. *Amici* administer the "smaller governments closer to the governed" that "touch on citizens' daily lives." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012) (*NFIB*). We are often the only entities with the ability to perform these vital public functions that are necessary for our residents to enjoy healthy, productive lives.

[16] As of this writing, the majority of the 2020 Rule is currently in effect; only its definition of "on the basis of sex" and its incorporation of Title IX's religious exemption have been enjoined. *See Walker v. Azar*, --- F. Supp. 3d ----, 2020 WL 4749859, at *1, 10 (E.D.N.Y. Aug. 17, 2020), *appeal docketed*, No. 20-3827 (2d Cir. Nov. 10, 2020); *Whitman-Walker Clinic.*, 2020 WL 5232076, at *45.

State and local governments are obligated to provide many healthcare services to our residents regardless of their ability to pay.[17] We do not, and cannot, condition emergency transportation in our ambulances, examination and treatment in our public health clinics or emergency departments, emergent care in our safety-net hospitals, or use of our suicide hotlines or mental health crisis services on ability to pay the bill. *See, e.g.*, *NFIB*, 567 U.S. at 593 (opinion of Ginsburg, J.) (citing sources). Thus, when our residents are less healthy or more reliant on emergency or safety-net services, *amici* incur greater direct costs.

HHS designed the 2016 Rule to "help reduce health disparities."[18] It recognized that "[d]iscrimination in the health care context can often … exacerbate existing health disparities" in ways that undermine "the central aims of the ACA."[19] It expected the 2016 Rule to reduce disparities in health in numerous ways that benefit state and local governments and the communities we serve, especially the most underserved. HHS forecast that the 2016 Rule would "contribute to a reduction in the number of individuals who are uninsured,"[20] and an increase in the comprehensiveness of health insurance coverage.[21] It expected that the 2016 Rule would yield "additional benefits that are intangible and unquantifiable that derive from providing equal

[17] *See, e.g.*, Nat'l Ass'n of Cty's, *Counties' Role in Health Care Delivery and Financing* 3, 5-15 (2007), *archived at* https://perma.cc/Z6SX5JD5; Eileen Salinsky, Nat'l Health Policy Forum, *Governmental Public Health: An Overview of State and Local Public Health Agencies* 9-10 (Aug. 18, 2010), *archived at* https://perma.cc/E48M-ADZH.

[18] Nondiscrimination in Health Programs and Activities (Notice of Proposed Rulemaking), 80 Fed. Reg. 54,172, 54,209 (Sept. 8, 2015); *see also* 80 Fed. Reg. at 54,194 (describing how "[o]ne of the central aims of the ACA" depends on redressing discrimination "in the health care context [that] can" … exacerbate existing health disparities").

[19] 80 Fed. Reg. at 54,194.

[20] 80 Fed. Reg. at 54,209; 81 Fed. Reg. at 31,460 (repeating this prediction).

[21] 80 Fed. Reg. at 54,209 (describing how the 2016 Rule would yield "more people receiving adequate health care, regardless of" immutable characteristics).

access to health care for all."[22] These "more general benefits" included profound yet basic things like "individuals feeling secure in obtaining coverage and accessing health services."[23] HHS also projected that the 2016 Rule would directly reduce the costs of uncompensated healthcare paid for by governments. It repeatedly predicted that "issuance of the Section 1557 regulation" would "contribute to a decrease in payments by the Federal government for uncompensated care,"[24] yielding concomitant decreases in payments by state and local governments that cover approximately 36% of government-funded uncompensated care costs.[25]

The 2016 Rule's emphasis on reducing health disparities—and the healthcare discrimination that helps create, perpetuate, and magnify them—reflects the ACA's own goals. The topic of health disparities is covered nearly fifty times in the ACA—as a purpose, a mandate for programs and research, a data need, a metric, a subject for public education, and more. The Secretary of HHS must "identify national priorities" that "will…reduce health disparities"[26] The Centers for Disease Control and Prevention must award grants to organizations "in order to … address health disparities."[27] The Preventative Services Task Force must develop "interventions related to … health disparities among sub-populations and age groups."[28] The Secretary of HHS must develop a national education campaign that "describes the importance of utilizing

[22] 81 Fed. Reg. at 31,461.

[23] 80 Fed. Reg. at 54,209.

[24] 80 Fed. Reg. at 54,209; *see* 81 Fed. Reg. at 31,460 (reiterating the same prediction).

[25] Comment of 22 States, HHS-OCR-2019-0007-142194 at 17 (Aug. 13, 2019); *see also* John Holahan et al., Kaiser Fam. Found., *The Cost and Coverage Implications of the ACA Medicaid Expansion: National and State-by-State Analysis* (2012), *archived at* https://perma.cc/GEP9-SXUU.

[26] ACA, § 3011, 124 Stat. 119, 378 (codified at 42 U.S.C. § 280j).

[27] *Id.*, § 4201, 124 Stat. 119, 564 (codified at 42 U.S.C. § 300u-13).

[28] *Id.*, § 4003, 124 Stat. 119, 543 (codified at 42 U.S.C. § 280g-10).

preventative services to … reduce health disparities."[29] Eligible health insurance plans with "[p]rograms that address, identify, and ameliorate health care disparities" receive performance-based bonus payments.[30] New "demographic data … regarding health disparities" must be collected,[31] and certain programs must be evaluated for "the potential … to …eliminate health disparities."[32] And many more.[33] The very structure and aims of the ACA confirm this consistent emphasis and goal.[34]

In Congress, too, the ACA was championed as reducing heath disparities and the discrimination in healthcare that contributes to such disparities. On the House floor, the ACA was dubbed "the Civil Rights Act of the 21st century,"[35] and heralded for its "contribut[ions] to

[29] *Id.*, § 4004, 124 Stat. 119, 544 (codified at 42 U.S.C. § 300u-12).

[30] *Id.*, § 3201, 124 Stat. 119, 448 (codified at 42 U.S.C. § 1395w-23).

[31] *Id.*, § 4302, 124 Stat. 119, 578-79 (codified at 42 U.S.C. § 300kk).

[32] *Id.*, § 2951, 124 Stat. 119, 340 (codified at 42 U.S.C. § 711).

[33] *See also, e.g.*, *id.*, § 5307, 124 Stat. 119, 628, 629 (codified at 42 U.S.C. §§ 293e, 296e-1) (amending the "Purpose" of entire U.S. Code title to address "reducing health disparities"); *id.*, § 5001, 124 Stat. 119, 588 (codified at 42 U.S.C. § 294q) (amending the "Purpose" of entire U.S. Code title to improve "health care services for all individuals, particularly … health disparity … populations"); *id.*, § 10334, 124 Stat. 119, 971 (codified at 42 U.S.C. § 300u-6) (restructuring entire offices "for the purpose of improving minority health and the quality of health care minorities receive, and eliminating racial and ethnic disparities"); *id.*, § 3501, 124 Stat. 119, 511 (codified at 42 U.S.C. § 299b-34) (mandating that the Center for Quality Improvement must "award … technical assistance grants or contracts to … providers of services and suppliers for which there are disparities in care among subgroups of patients").

[34] *See, e.g.*, HHS, *HHS Action Plan to Reduce Racial and Ethnic Health Disparities* App. A (2011), *archived at* https://perma.cc/Q6MQ-7FLG (listing the many sweeping ACA programs that directly address health disparities, including expanded health insurance coverage and access to care, targeted data collection, and billions in grants to fund community health centers that care for underserved patients, healthcare provider training for people participating in the program commonly known as food stamps, healthcare positions in underserved areas, and promotions for community health workers); Nat'l Academies Sci., Eng'g, & Medicine, *Achieving Health Equity via the Affordable Care Act* (2015) (detailing how the five express overarching goals of the ACA all have the effect of reducing health disparities).

[35] 145 Cong. Rec. H1886 (Mar. 21, 2010) (statement of Rep. James Clyburn).

reducing health disparities,"[36] as a bill that would help "bring an end to discrimination in health care."[37] In the Senate, the ACA was recognized as especially "important …because there are huge disparities in our health care delivery systems in America,"[38] and because the ACA would provide "[a]ccess to care" to communities with "much less."[39]

As Congress and HHS intended, the ACA, particularly Section 1557 and the 2016 Rule implementing it, helped reduce entrenched disparities in healthcare—greatly assisting state and local governments and the communities we serve. Millions more Americans became insured,[40] including over 880,000 LGBTQ people[41] and people with LEP who previously accounted for more than one in five of all uninsured people.[42] Categorical exclusions on healthcare coverage, such as those for gender-affirming care, were banned, and health insurance became more comprehensive.[43] State and local governments' uncompensated healthcare costs shrunk, yielding billions in annual savings.[44] Our residents gained the invaluable assurance that no matter where

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[36] 145 Cong. Rec. H1879 (Mar. 21, 2010) (statement of Rep. Shelia Jackson Lee).

[37] 145 Cong. Rec. H3447 (Mar. 17, 2010) (statement of Rep. Steven Kagen); *see also, e.g.*, 156 Cong. Rec. H1582 (Mar. 17, 2010) (statement of Rep. Schakowsky) ("This bill ends gender discrimination.").

[38] 145 Cong. Rec. S13799 (Dec. 23, 2009) (statement of Sen. Edward Kaufman).

[39] 145 Cong. Rec. S13624 (Dec. 20, 2009) (statement of Sen. Mark Begich).

[40] Larisa Antonisse et al., Kaiser Fam. Found., *The Effects of Medicaid Expansion Under the ACA: Updated Findings from a Literature Review* 8-11 (Mar. 28, 2018), *archived at* https://perma.cc/GU93-U9DE.

[41] Kaiser Fam. Found., *Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the U.S.* 15-16 (2018), *archived at* https://perma.cc/N2P4-964J.

[42] Gilbert Gonzales, State Health Access Data Assistance Center, *State Estimates of Limited English Proficiency (LEP) by Health Insurance Status* (2014), *archived at* https://perma.cc/V94F-JSMT ("People with LEP comprised one out of five (21.7%) uninsured persons in 2012.").

[43] 81 Fed. Reg. at 31,471-72; *see* 42 U.S.C. § 18022(b)(1) (mandating that most health insurance plans provide patients with coverage for ten essential health benefits, including prescription medicines, hospital stays, and mental health and substance use services).

[44] *See, e.g.*, Jessica Schubel & Matt Broaddus, Ctr. on Budget & Pol'y Priorities, *Uncompensated Care Costs Fell in Nearly Ever State as ACA's Major Coverage Provisions Took Effect* (May 23, 2018),

in our nation they lived or travelled, healthcare providers would be legally obligated to treat them competently and with respect.

II. The 2020 Rule Deepens Health Disparities that the ACA Was Designed to Redress

The 2020 Rule threatens the gains from the ACA and the 2016 Rule. It is intended and expected to reduce access to needed insurance coverage and benefits, promote refusals of needed services, enable discriminatory and substandard care, and, ultimately, disconnect entire communities from the primary and preventative healthcare services that lead to better health outcomes at lesser expense. "It is implausible that Congress meant the Act to operate in this manner," *King v. Burwell*, 135 S. Ct. 2480, 2493 (2015), deepening the very health disparities that it was designed to reduce.

A. The 2020 Rule Stigmatizes Our Residents and Harms Their Health

The 2020 Rule's retraction of express federal nondiscrimination protections *itself* stigmatizes and harms. It deletes hundreds of thousands of our most vulnerable residents from explicit federal nondiscrimination protections in critical healthcare contexts, "neglect[ing] the promise that all persons are entitled to the benefit of the law's terms." *Bostock v. Clayton Cnt'y*, 140 S. Ct. 1731, 1751 (2020). The 2020 Rule enshrines exclusion into the regulations that codify Section 1557's sweeping federal nondiscrimination provisions. Its elimination of explicit federal healthcare protections based on gender identity, sexual orientation, and pregnancy-related conditions is *inherently* stinging and stigmatizing, even before any third party accepts its invitation to discriminate.

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archived at https://perma.cc/YPL6-MN2Q; Larisa Antonisse et al., Kaiser Fam. Found., *The Effects of Medicaid Expansion Under the ACA: Updated Findings from a Literature Review* 8-11 (Mar. 28, 2018), *archived at* https://perma.cc/GU93-U9DE.

The 2020 Rule is injurious because of what it means long before it is injurious for what it permits or proscribes. It communicates our society's unwillingness to protect certain people and certain classes of healthcare and carves them out from federal laws. Through the 2020 Rule, HHS "deem[s] a class of persons a stranger to its laws," *Romer v. Evans*, 517 U.S. 620, 635 (1996), with language that is rife with hate and antipathy toward transgender people.[45] In this way, the 2020 Rule functions as an expressive law: its significance derives from the statement it makes, in addition to the behavior it directly controls.[46] Its statement to LGBTQ people is unmistakably that LGBTQ people are lesser, unprotected, even unrecognized—its plain meaning accentuated by Defendants' open animus toward LGBTQ people and Defendants' campaigns to rollback protections for LGBTQ people across HHS programs and policies and to erase federal recognition for 1.4 million transgender Americans.[47]

Already, the 2020 Rule has caused concrete harms. In the months since the 2020 Rule was finalized, LGBTQ patients' fear, anxiety, and distress have escalated, and so too have demands for safety-net services. In just the week between issuance and publication of the 2020

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[45] *See* 81 Fed. Reg. at 37,189, 37,180, 37,191 (misgendering multiple transgender individuals, declaring falsely that "pronouns are not stereotypes," and encouraging providers to misgender their patients).

[46] *See generally* Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. Penn. L. Rev. 2021, 2024 (1996) (exploring "the expressive function of law—the function of law in 'making statements' as opposed to controlling behavior directly," a function that nondiscrimination laws often include); Alex C. Geisinger & Michael A. Stein, *Expressive Law and the Americans with Disabilities Act*, 114 Mich. L. Rev. 1061, 1062 (2016) (describing an expressive "law's ability to change the social meaning of particular behaviors"); Kristen Underhill, *Perceptions of Protection Under Nondiscrimination Law*, 41 Amer. J. L. & Medicine 21, 23 (2020) ("expressive law … has typically considered how laws communicate information to people").

[47] *See* Compl. ¶¶ 145-172 (documenting the anti-LGBTQ animus motivating Defendants' issuance of the 2020 Rule and underlying the 2020 Rule); Erica L. Green *et al.*, '*Transgender' Could Be Defined Out of Existence Under Trump Administration*, N.Y. Times (Oct. 21, 2018), *archived at* https://perma.cc/39EV-7SRQ (reporting on HHS's campaign to redefine sex to as "a person's status as male or female based on immutable biological traits identifiable by and before birth," which would erase federal recognition of 1.4 million transgender Americans).

Rule, calls from transgender people to the crisis hotline Trans Lifeline more than tripled, with 10% of callers explicitly mentioning the 2020 Rule.[48] Significant numbers of LGBTQ youth sought help from a suicide prevention and crisis hotline about the 2020 Rule.[49] The County of Santa Clara's Gender Health Center saw nearly three times as many transgender and gender nonbinary patients in acute mental health crisis in the three months after the 2020 Rule was published as it did before.[50] As one journalist put it, speaking for himself and many others, "[i]f the [2020 Rule] was intended to scare trans people, it worked."[51]

The already tangible harms from the 2020 Rule are unsurprising given robust research finding that patients' "expectations of legal protection foster greater trust in health care providers."[52] Numerous cross-sectional studies find that LGBTQ people who live in jurisdictions with LGBTQ nondiscrimination laws are more likely to self-disclose to healthcare providers, use needed preventative HIV medications, report greater satisfaction with their healthcare quality, enjoy better mental health, suffer from fewer psychiatric disorders, and incur

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[48] Decl. of Elena Rose Vera in Support of Plaintiffs' Renewed Motion for Summary Judgment on Administrative Procedure Act Claims, Dkt. 109, Ex. 38. ¶¶ 2, 5-7 (recounting how calls to the crisis hotline swelled from a daily average of 155 to 534 after the 2020 Rule's issuance).

[49] Decl. of Carrie Davis in Support of Plaintiffs' Renewed Motion for Summary Judgment on Administrative Procedure Act Claims, Dkt. 109, Ex. 39 ¶¶ 10-12.

[50] *See* Santa Clara Valley Medical Center Hospital & Clinics: *Gender Health Center*, *archived at* https://perma.cc/9JLN-G39M; e-mail from Dr. Jules Chyten-Brennan to Lorraine Van Kirk (Dec. 9, 2020 3:03 PM) (on file with author).

[51] Carter Sickels, *Being Trans Shouldn't Exclude Me From Health Laws*, Atlantic (June 20, 2020), *archived at* https://perma.cc/7766-D49G*; see generally*, Katelyn Burns, *This is the Cruelest Thing the Trump Administration has Done to Trans People Yet*, Washington Post (May 29, 2019), *archived at* https://perma.cc/L323-L7J4 (describing the "terrifying" prospect of the 2020 Rule); Dawn Ennis, *This Man Is Eliminating Protections Against Healthcare Discrimination For More Than 1 Million Americans*, Forbes (June 14, 2020), *archived at* https://perma.cc/YH9H-KZNP (reporting on the collective "horror" at the 2020 Rule in transgender communities).

[52] Underhill, *supra* note 46, at 45.

lower overall medical costs, among other salutary benefits.[53] For instance, in one study of over 3,000 men seeking male partners, men who believed that their state had a LGB healthcare nondiscrimination law had lower levels of medical mistrust and a greater likelihood of having a primary care provider, coming out to that provider, and taking a recent HIV test as recommended by the CDC[54]—behaviors and beliefs that each promote use of highly effective primary and preventative care. Nondiscrimination laws, it seems, make a point and a palpable difference.

The Supreme Court has long understood the power of such laws. It has recognized repeatedly that laws embodying a "commitment to eliminating discrimination… serve[] compelling state interests of the highest order" in part because of the dignitary rights such laws support and protect. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624-25 (1984); *see Masterpiece*

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[53] *See, e.g.*, Ellen D. B. Riggle et al., *Does It Matter Where You Live? Nondiscrimination Laws and the Experiences of LGB Residents*, 7 Sexuality Res. & Soc. Pol'y 168, 169, 173 (2010) (over 2,500 person study, finding that LGB people who live in states with LGB nondiscrimination protections experience less stress associated with experiences of discrimination than LGB people who live in states without such protections); Aleta M. Baldwin et al., *Sexual Minority Women's Satisfaction with Health Care Providers and State-level Structural Support: Investigating the Impact of Lesbian, Gay, Bisexual, and Transgender Nondiscrimination Legislation*, 27 Women's Health Issues 271 (2017) (finding sexual minority women "in structurally supportive states (i.e., those with nondiscrimination legislation) were more likely to disclose their sexual identity to their providers and to report higher satisfaction with their providers"); Catherine E. Oldenburg et al., State-*Level Structural Sexual Stigma and HIV Prevention in a National Online Sample of HIV-Uninfected MSM in the United States*, 29 AIDS 837, 843 (2015) (linking high levels of structural anti-LGBTQ stigma, including the absence of LGBTQ nondiscrimination laws, with lower likelihoods that men who have sex with men will take preventative HIV medications, use safe sex practices, or discuss with their health provider having sex with men or HIV-prevention strategies); Underhill, *supra* note 46, at 33-34 (summarizing and collecting other similar studies); *see also* Mark L. Hatzenbuehler et al., *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 Am. J. Pub. Health 452 (2010) (rates of psychiatric disorders significantly increased amongst LGB adults in states that banned same-sex marriage: mood disorders increased by over 36%, generalized anxiety disorder increased astronomically by over 248.2%, alcohol use disorder increased by 41.9%, and psychiatric comorbidities increased by 36.3%—even while rates of these psychiatric disorders did not increase significantly among LGB people living in states without these bans or in heterosexuals living in states with these bans).

[54] Underhill, *supra* note 46, at 49 (finding that men who have sex with men living in states with healthcare nondiscrimination laws were more likely to have talked with a healthcare provider recently about preventative HIV/AIDS medication).

Cakeshop, Ltd. v. Colo. Civil Rights Comm'n, 138 S. Ct. 1719, 1732 (2018). Nondiscrimination laws may have as their "fundamental object … to vindicate the deprivation of personal dignity." *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250 (1964). By contrast, discriminatory laws may inflict "[d]ignitary wounds that cannot always be healed," even when the discriminatory laws are unenforced. *Obergefell v. Hodges*, 576 U.S. 644, 678 (2015).

Nondiscrimination laws and regulations such as Section 1557 and the 2016 Rule embody a commitment to nondiscrimination; they make it clear that everyone deserves competent and respectful healthcare. The 2020 Rule, however, erases powerful protections from the 2016 Rule, enacts a purposefully discriminatory regulation that is itself a source of exclusion and harm, and invites third-party healthcare providers to reject, demean, and discriminate against people in need of life-affirming and lifesaving healthcare.

The discrimination that the 2020 Rule enacts and invites harms to health in ways that endure beyond a specific encounter or episode. The lasting negative effects of discrimination on health are well-researched, abundant, and severe: discrimination "has a significant negative effect on both mental and physical health, . . . produces significantly heightened stress responses, and is related to participation in unhealthy and nonparticipation in healthy behaviors."[55] Discrimination is linked by substantial evidence to a range of negative mental health outcomes, including depression, psychological distress, anxiety, and diminished well-being.[56] Physically, discrimination causes "exaggerated cardiovascular responses to stress," as exhibited by changes

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[55] Elizabeth A. Pascoe & Laura Smart Richman, *Perceived Discrimination and Health: A Meta-Analytic Review*, 135 Psych. Bull. 513, 513 (2009).

[56] *Id.* (citing Yin Paradies, *A Systematic Review of Empirical Research on Self-reported Racism and Health*, 35 Int'l J. Epidemiology 888–901 (2006); David R. Williams et al., *Racial/Ethnic Discrimination and Health: Findings From Community Studies*, 93 Am. J. Pub. Health 200–08 (2003)).

in blood pressure and cortisol levels and other negative physical effects, all of which "may erode an individual's protective resources and increase vulnerability to physical illness."[57] It increases the risk of certain diseases, such as depression, obesity, schizophrenia, heart disease, metabolic syndrome, rheumatoid arthritis, fibromyalgia, and allergic conditions.[58] Discrimination also "leave[s] individuals with less energy or resources for making healthy behavior choices," which leads to "health behaviors that have clear links to disease outcomes," as well as "nonparticipation in behaviors that promote good health," such as seeking preventative healthcare.[59] Indeed, people who experience frequent discrimination are three to nine times less likely to seek healthcare.[60] When patients who face or fear facing discrimination from their healthcare providers do seek medical care, the care they receive is less effective. They are less likely to disclose important clinical information,[61] less likely to comply with their providers' recommendations, and more likely to report receiving poor quality care.[62] Concealing one's LGBTQ status from a healthcare provider, in particular, is associated with worse mental health

[57] *Id.* at 513-14.

[58] *Id.* at 544.

[59] *Id.* at 514 (describing how discrimination leads individuals to make decisions that lead to negative health outcomes, such as smoking, alcohol and substance abuse, and unprotected sex, and to avoid protective behaviors, such as cancer screenings and diabetes self-management).

[60] Sarah Wamala et al., *Perceived Discrimination, Socioeconomic Disadvantage and Refraining from Seeking Medical Treatment in Sweden*, 61 J. Epidemiology Cmty. Health 409, 409 (2006), *archived at* https://perma.cc/9R2P-VPK6.

[61] Valarie K. Blake, *Remedying Stigm-Driven Health Disparities in Sexual Minorities*, 17 Hous. J. Health L. & Pol'y 181, 211 (2017).

[62] Maureen R. Benjamins & Steven Whitman, *Relationships Between Discrimination in Health Care and Health Care Outcomes Among Four Race/Ethnic Groups*, 37 J. Behav. Med. 403 (2014).

outcomes, greater risk of cancer, greater risk of infectious disease, and more rapid onset and progression of HIV symptoms.[63]

HHS is well-aware of the profound and prolonged harms of discrimination in healthcare, including for LGBTQ people in particular. The subject is central to both the ACA and Section 1557.[64] The 2016 Rule devotes dozens of pages to the subject.[65] A decade ago, HHS had already found that "LGBT individuals face health disparities linked to societal stigma [and] discrimination,"[66] which in turn increase the need for timely, high-quality healthcare. Today, HHS recognizes nondiscrimination as a key metric for disease prevention and public health promotion.[67] It offers guidance to providers on "how to provide affirming services for transgender patients," and acknowledges that "transgender people, especially transgender women of color, may delay seeking medical care because of fear or actual experience of negative treatment by health care staff."[68]

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[63] Valarie K. Blake, *Remedying Stigma-Driven Health Disparities in Sexual Minorities*, 17 Hous. J. Health L. & Pol'y 181, 211 (2017) (citing Larissa A. McGarrity & David M. Huebner, *Is Being Out About Sexual Orientation Uniformly Healthy?: The Moderating Role of Socioeconomic Status in a Prospective Study of Gay and Bisexual Men*, 47 Annals Behav. Med. 28, 28–29 (2014)).

[64] *See infra* Pt. II.A.

[65] *See, e.g.*, 81 Fed. Reg. at 31,387-90, 31,429-37, 31,459-62; *see also* 80 Fed. Reg. 54,171, 54,181-92, 54,208-09.

[66] Dep't of Health & Hum. Servs., Office of Disease Prevention and Health Promotion, *Lesbian, Gay, Bisexual, and Transgender Health*, *Healthy People 2010*, *archived at* https://perma.cc/52WS-PVMB.

[67] Dep't of Health & Hum. Servs., Office of Disease Prevention & Health Promotion, *Discrimination*, *Healthy People 2020*, *archived at* https://perma.cc/C3GG-3VKD (HHS decade-long Healthy People 2020 public health campaign); *see also* Dep't of Health & Hum. Servs., Office of Disease Prevention and Health Promotion, *Access to Health Services*, *Healthy People 2020*, *archived at* https://perma.cc/8HB4-WLZV.

[68] Dep't of Health & Hum. Servs., Ctrs. for Disease Control & Prevention, *Patient-Centered Care for Transgender People: Recommended Practices for Health Care Settings* (Apr. 1, 2020), *archived at* https://perma.cc/2BJ3-EWKD.

The harms from discrimination ripple out into our communities as a whole. When our LGBTQ residents, LEP speakers, and people seeking reproductive healthcare are subjected to discrimination, the welfare of their children is also jeopardized. Discrimination against a parent or caregiver is associated with poor health outcomes for children, including potentially lasting physical, mental, socioemotional, and developmental harms.[69] The cascading costs of discrimination are especially expensive for local governments, which bear primary responsibility for managing public emergency and safety-net healthcare benefits, economic supports, child welfare systems, and emergency and transitional housing.

B. The 2020 Rule Undermines the ACA's Primary and Preventative Care Transformation

By changing health insurance markets and enacting an array of patient-protective provisions,[70] the ACA successfully expanded comprehensive health insurance coverage to millions more Americans who can now access the primary and preventative healthcare that achieves better outcomes sooner, in more appropriate settings, and at lesser governmental and overall expense. With the support of the ACA, many of *amici*'s health systems piloted dramatic

[69] Eileen Condon et al., *Associations Between Maternal Experiences of Discrimination and Biomarkers of Toxic Stress in School-Aged Children*, 23 Maternal & Child Health J. 1147-51 (2019); *see also* Nia J. Heard-Garris et al., *Transmitting Trauma: A Systematic Review of Vicarious Racism and Child Health*, 199 Soc. Sci. & Med. 230-40 (2018), *archived at* https://perma.cc/T6PY-DGDJ) (longitudinal meta-analysis finding vicarious discrimination against caregivers associated with physical, mental, socioemotional, and developmental harms for children).

[70] *See, e.g.*, 42 U.S.C. §§ 300gg-1, 300gg-3, 300gg-4(a) (preventing health insurance denials because of people's pre-existing conditions); 300gg, 300gg-4(b) (barring higher premium charges based on health status); 300gg-11 (prohibiting lifetime or annual limits on the value of essential health benefits); 300gg-12 (banning rescission, a previously common practice where insurance companies rescinded coverage when the insured suffered a catastrophic illness); 300gg-19 (guaranteeing beneficiaries the right to appeal adverse coverage decisions); 18022(c) (imposing annual out-of-pocket maximums for covered benefits).

primary and preventative care system improvements that significantly improve health and lower costs.[71]

To succeed, however, the ACA's primary and preventative care transformation requires patient engagement—which, in turn, requires capable, culturally competent care. In *amici*'s experience, and in the research, access to LGBTQ-friendly care and capable language interpretation facilitates participation in much needed primary and preventative care.[72] Its absence does the opposite—contributing to avoidance of needed healthcare, even in acute emergencies.[73] Yet in innumerable ways, the 2020 Rule makes it less likely that patients will expect or receive culturally and linguistically competent healthcare.

As safety-net providers and payors of last resort, *amici* bear massive, but avoidable, direct costs from the less effective, less timely, and more expensive care their residents need

[71] For example, due to the ACA, the County of Santa Clara was able to pilot a chronic conditions care management program that decreased participants' emergency department visits by more than fourfold. Cal. Ass'n of Pub. Hosps. & Health Sys., *Impact of Medi-Cal Expansion: Santa Clara Valley Health & Hospital System* at 1 (2017), *archived at* https://perma.cc/XN93-EKAP. Due to the ACA, Monterey County was able to cut by more than fifteen times patients' rates of uncontrolled diabetes, while San Francisco City and County nearly halved the readmission rate for its patients at high risk of heart failure. Cal. Ass'n of Pub. Hosps., *Impact of Medi-Cal Expansion: Natividad Medical Center* (2017), https://perma.cc/ADU7-6G5P; Cal. Ass'n of Pub. Hosps., *Impact of Medi-Cal Expansion: San Francisco Health Network* (2017), https://perma.cc/5E5N-CVLT. Major gains like this were made possible because of the ACA. *See generally* Jessica Schubel & Matt Broaddus, Ctr. on Budget and Policy Priorities, *Uncompensated Care Costs Fell in Nearly Every State as ACA's Major Coverage Provisions Took Effect* (May 23, 2018), *archived at* https://perma.cc/YPL6-MN2Q.

[72] *See infra* Pt. II.A. For example, the dearth of gender-affirming care presents a major barrier to care for the 26,000 people with HIV/AIDS in Houston/Harris County. *See* Houston Health Dep't, *Houston Community Health Improvement Plan 2018–2021* at 34-35 (2020), *archived at* https://perma.cc/6NE6-UJX2.

[73] *See, e.g.*, Elizabeth A. Samuels et al., "*Sometimes You Feel Like the Freak Show": A Qualitative Assessment of Emergency Care Experiences Among Transgender and Gender-Nonconforming Patients*, 71 Annals of Emergency Medicine 170, 174, 179 (2018) (more than 70% of transgender focus group respondents reported avoiding visiting the emergency department for necessary acute care due to fear of discrimination and negative prior experiences, going "only when absolutely necessary").

when they delay or forgo healthcare because capable, culturally competent healthcare is not broadly available. When our residents cannot or do not access primary and preventative care, prescription drugs, or early diagnosis and treatment, they become sicker and more costly to treat, and also more likely to access healthcare through avoidably costly means, such as by ambulance calls or emergency department visits.[74] This delayed and deferred care is enormously expensive, as well as less effective. Emergency department visits cost 10 to 20 times more than primary care visits on average,[75] and nonemergency visits to emergency departments are estimated to waste $4.4 billion nationally each year.[76] It costs thousands of dollars more to treat an uninsured person who contracts HIV/AIDS than it does to provide a high risk person with preventative one-pill-a-day pre-exposure prophylaxis (PrEP) medication.[77] It costs eight times more to provide government-funded Medicaid expenditures than it does to provide publicly-funded family

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[74] "Because those without insurance generally lack access to preventative care, they do not receive treatment for conditions—like hypertension and diabetes—that can be successfully and affordably treated if diagnosed early on. When sickness finally drives the uninsured to seek care, once treatable conditions have escalated into grave health problems, requiring more costly and extensive intervention." *NFIB*, 567 U.S. at 594 (internal citations omitted) (opinion of Ginsburg, J.); *see also* The Nat'l Academies' Inst. of Med., *Care Without Coverage: Too Little, Too Late* (2002), *archived at* https://perma.cc/T542-Q8YP; Benjamin T. Squire et al., *At-Risk Populations and the Critically Ill Rely Disproportionately on Ambulance Transport to Emergency Departments*, 56 Annals Emergency Med. 341, 346 (2010).

[75] *Compare* Johns Hopkins Bloomberg School of Public Health, *Primary Care Visits Available to Most Uninsured But at a High Price* (May 5, 2015), *archived at* https://perma.cc/5324-AA87 (primary care visits cost between $100 and $200 on average), *with* Health Care Cost Institute, *2016 Health Care Cost and Utilization Report* 9 (2018), *archived at* https://perma.cc/YNF9-87UK (an average emergency department visit costs around $2,000 and can be far more expensive).

[76] Robin M. Weinick et al., *Many Emergency Department Visits Could Be Managed at Urgent Care Centers and Retail Clinics*, 29 Health Affairs 1630 (2010), *archived at* https://perma.cc/36VV-PFYK.

[77] Avert, *Pre-exposure Prophylaxis for HIV Prevention* (Feb. 25, 2020), *archived at* https://perma.cc/8AGU-ALQF ("PrEP drug costs are lower than HIV treatment costs, both per-dose and for the duration of use. Moreover, PrEP is prescribed to be taken consistently, but only when someone is at heightened risk of HIV, whereas, should someone acquire HIV, they will need to be on antiretroviral treatment (ART) for their entire life in order to stay healthy.").

planning services.[78] Without early intervention and treatment, costs balloon for conditions from tuberculosis[79] to prenatal syphilis[80] to COVID-19.[81] Delayed or forgone care also means our residents are more likely to develop chronic diseases—the persistent, prevalent, but preventable conditions such as hypertension, asthma, diabetes, certain heart diseases, and obesity—all of which are among the most common and costly of America's health problems and increase the risk of severe illness from COVID-19.[82]

Local and state governments must absorb many of these costs. Because we provide safety-net services regardless of a patient's ability to pay, our costs swell when our uninsured and underinsured residents delay or forgo care.[83] The ACA was enacted in part to address the astronomical "cost of providing uncompensated care. . . $43,000,000,000 in 2008" alone, and the

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[78] Jennifer J. Frost et al., *Return on Investment: A Fuller Assessment of the Benefits and Cost Savings of the US Publicly Funded Family Planning Program*, 92 Milbank Q. 667, 690-96 (2014) (finding these savings in 2010 dollars due to the pregnancy, delivery, and early childhood care costs that would otherwise be necessary).

[79] *See* Alyssa R. Hersh et al., *Repeat Screening for Syphilis in the Third Trimester of Pregnancy: A Cost-Effectiveness Analysis*, 132 Obstetrics & Gynecology 699 (Sept. 2018) (even late maternal syphilis screenings in the third trimester save an estimated $52 million each year and reduce adverse health outcomes for mothers and their babies; prevention and first trimester screenings produce better outcomes and save far more).

[80] See Ctrs. for Disease Control & Prevention, TB in the United States: A Snapshot (Sept. 2018), archived at https://perma.cc/3YSC-46Z7 (treating latent tuberculosis (LTBI) costs around $400-$600 per person, but requires individuals to obtain primary care screening, whereas waiting treating a patient later after the LTBI has progressed into tuberculosis costs from $19,000 to $526,000); see also K.G. Castro et al., Estimating Tuberculosis Cases and Their Economic Costs Averted in the United States Over the Past Two Decades, 20 Int'l J. Tuberculosis Lung Disorder 926, 928 (2016), https://perma.cc/SK4D-WKG7 (societal costs add an estimated $44,000 per drug-susceptible tuberculosis case and $282,000 per multidrug-resistant tuberculosis case).

[81] *See, e.g.*, Andrew Atkeson, Nat'l Bureau of Econ. Res., *Economic Benefits of COVID-19 Screening Tests* (Oct. 2020), archived at https://perma.cc/YNF3-DKGM.

[82] Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019: People Who Are at Higher Risk* (Apr. 15, 2020), *archived at* https://perma.cc/UR8W-LNYU.

[83] *See* Craig Garthwaite et al., *Hospitals as Insurers of Last Resort*, 10 Am. Econ. J. Applied Econ. 1 (2018)

"straining budgets across government" that these costs created.[84] The ACA itself also mandates that government hospitals maintain financial assistance policies for medically necessary care provided to poor patients.[85] Jurisdictions from California to Texas to Florida substantially expand on this financial assistance mandate, requiring that local governments fund free or discounted medically necessary care for their indigent residents who lack health insurance coverage.[86] Thus, the County of Santa Clara, New York City, San Francisco, and other *amici* must provide healthcare, including gender-affirming care, to their eligible residents who lose or lack coverage for needed care.[87] The 2020 Rule greatly increases these costs by making patients less likely to use more effective, less expensive primary and preventative care.

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[84] 42 U.S.C. § 18091(2)(F); U.S. Gov't Printing Off., *Public Papers of the Presidents of the United States: Barack Obama 2009*, at 127 (2010), https://perma.cc/YRM7-B5BB.

[85] 26 U.S.C. § 501(r).

[86] *See, e.g.*, Cal. Health & Safety Code § 127400 *et seq.* (requiring that healthcare providers offer free or discounted care to patients whose family incomes are below 350% of the Federal Poverty Level whenever the patient lacks insurance for a given medically necessary service); Cal. Welf. & Inst. Code § 17000 (mandating that counties to provide health services to their indigent residents); Fla. Stat. § 154.011 (requiring that Florida counties provide primary care services to their residents with incomes below 100% of the federal poverty level); Tex. Health & Safety Code Ann. § 61.022 (mandating that Texas counties provide medical services to their indigent residents who lack other sources of care); Texas Constit. art. 9, § 4 (providing that Texas "county-wide Hospital Districts … shall assume full responsibility for providing medical and hospital care to needy inhabitants of the county").

[87] *See, e.g.*, Cnty. of Santa Clara Health Sys., *Healthcare Access Program*, CSCHS #715.0 (adopted Apr. 21, 2020) (describing the County of Santa Clara's Healthcare Access Program, which covers 100% of the costs of medically necessary services for residents with incomes below 400% of the Federal Poverty Level who lack insurance for needed services); NYC Health + Hospitals, *About NYC Care*, *archived at* https://perma.cc/Z93H-JYFS (offering low-cost and no-cost services to New York City residents who do not qualify for any health insurance plan available in New York State and who cannot afford health insurance based on government guidelines); NYC Health + Hospitals, *Partners in LGBTQ Healthcare*, *archived at* https://perma.cc/XAM6-MFDB (describing the many supportive services offered by the NYC Health + Hospitals for LGBTQ patients, including gender-affirming care); San Francisco Dep't of Pub. Health, *Gender Health SF*, *archived at* https://perma.cc/R8NH-Z7UA (describing San Francisco's Gender Affirming Surgery Access Program).

C. The 2020 Rule Imposes Major Administrative and Programmatic Costs on Local Governments

Many *amici* invest heavily to help counteract the weight of healthcare discrimination against their residents, especially their LGBTQ residents. The City of Chicago funds community-based organizations that specialize in providing care for LGBTQ people who face discrimination based on multiple intersectional characteristics and operates an Office of Lesbian, Gay, Bisexual, and Transgender Health to combat health disparities confronting its LBGTQ residents.[88] The City of Oakland contracts for safe spaces for its LGBTQ children and youth due to their critical need for connections to welcoming and supportive providers.[89] The County of Los Angeles conducts provider education on how to competently care for transgender and gender nonconforming patients and also runs an LGBTQ committee for each of its medical centers.[90] These policies make a palpable difference: LGBTQ patients consistently report that accessing care at a County medical center has changed their lives for the better. The City of West Hollywood spearheads an HIV Zero Initiative to reduce the spread of, and harms from, HIV/AIDS, focusing on its LGBTQ community because nearly all new HIV infections in the City are among gay and bisexual men.[91] The City and County of San Francisco runs an Office of Transgender Initiatives to advance equity for transgender and gender nonconforming people.[92]

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[88] *See* City of Chicago, Dep't Public Health, *LGBT Health*, *archived at* https://perma.cc/UNA2-6AL3.

[89] *See* City of Oakland, *Sustainable Oakland*, *Oakland Fund for Children and Youth (OFCY) Is Growing*, *archived at* https://perma.cc/2WD4-L5FL.

[90] *See,* LAC+USC Medical Center, *LGBTQ+ Resource Guide*, *archived at* https://perma.cc/VHP6-27CD; Los Angeles Cnty. Health Servs., *Friendly and Knowledgeable Providers*, *archived at* https://perma.cc/SR68-8GFR.

[91] *See* City of West Hollywood, *HIV Zero Strategic Plan* (Apr. 2019), *archived at* https://perma.cc/EMR2-QSPQ.

[92] City & Cnty. of San Francisco, *Transgender Healthcare*, *archived at* https://perma.cc/JB7T-259D; City & Cnty. of San Francisco, *Office of Transgender Initiatives*, *archived at* https://perma.cc/Y6YZ-RE9G.

Amici's investments in engagement and outreach are designed as cost-savings responses to address deep disparities.

Even in jurisdictions with deep commitments to inclusivity, discrimination against LGBTQ people in healthcare persists. The County of Santa Clara, for example, has long been a leader in supporting LGBTQ rights—becoming the first county in the nation to establish an office dedicated to serving the LGBTQ community.[93] The County's Office of LGBTQ Affairs has delivered trainings on how to provide LGBTQ-competent care to thousands of local healthcare providers, and San José, the largest city in the County, earns a 100% score on the Human Rights Campaign's municipal equality index.[94] Yet nondiscrimination in healthcare in Santa Clara County remains an urgent focus. The County routinely receives complaints about local providers who deliberately call patients by the wrong names and the wrong pronouns, mock patients, interrogate patients about their genitals, house patients in residential treatment settings in ways that threaten their safety, and block access to gender-affirming care. Until recently, many primary care providers in the County who serve high numbers of at-risk LGBTQ patients believed they had no LGBTQ patients, and thus failed to offer their patients critical screenings and medications that can prevent costly lifelong conditions such as HIV/AIDS.

Many more *amici* invest in services to redress healthcare discrimination against their LGBTQ residents. Borough of State College promotes COVID-19 resources that document health disparities facing LGBTQ people. Borough of State College, *Coronavirus Response Hub*, *archived at* https://perma.cc/R3LQ-MHNB. Howard County coordinates outreach, community engagement work, and complaint investigations to serve its LGBTQ residents. *See* Howard County, *Howard County Joins Amicus Brief Protecting LGBTQ+ Community from Healthcare Discrimination* (Aug. 12, 2020), *archived at* https://perma.cc/S8FP-G27H; Howard County Office of Human Rights, *How to File a Complaint, Case Processing & Services*, *archived at* https://perma.cc/T4XZ-PBAF.

[93] *See* Cnty. of Santa Clara, *About the Office of LGBTQ Affairs*, *archived at* https://perma.cc/K2HX-3GZ2.

[94] Human Rights Campaign, *San José, California 2019 Municipal Equality Index Scorecard*, *archived at* https://perma.cc/4PL6-L2EQ.

When private healthcare providers discriminate or fail to provide culturally competent care, as the 2020 Rule invites them to do, local and state governments that run safety-net health systems incur greater direct costs. Use of *amici*'s nonjudgmental and highly-subsidized sexually transmitted disease (STD) clinics increases—even for patients who have health insurance and primary care providers.[95] Outreach campaigns to combat rampant stigma become necessary—such as Houston's multi-million dollar HIV prevention *I am Life*™ marketing campaign addressing young LGBTQ people of color, who are hardest hit by Houston's HIV/AIDS epidemic.[96] In LGBTQ-friendly local government clinics, patient wait times lengthen and staff's obligations balloon, as occurred in the County of Santa Clara's Gender Health Center in the three months after the 2020 Rule was published. Although the Center is not set up to offer specialty mental health services, its medical director now describes it as a *de facto* provider of this higher level of care. The greater patient volume and care needs strain staff, increase patient wait times, and divert resources from other critical functions.

The 2020 Rule also imposes major costs on *amici* and our residents due to its rollback of the language access regulations that help LEP patients secure meaningful healthcare. By

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[95] Like most local public health departments, the County of Santa Clara Public Health Department runs a sexually transmitted disease (STD) clinic that offers confidential and culturally competent anonymous STD and HIV/AIDS testing and treatment. *See* Salinsky, *supra* note 17 at 15 (57% of local public health departments provide treatment for sexually transmitted diseases). Hundreds of LGBTQ patients—many of whom are insured and have their own primary care providers—nonetheless rely on the County STD clinic's confidential services, likely reflecting fear of discrimination and stigma from their own healthcare providers. *See* Karen W. Hoover et al., *Continuing Need for Sexually Transmitted Disease Clinics After the Affordable Care* Act, 105 Amer. J. Public Health S690, S694 (2015), *archived at* https://perma.cc/BJ54-38MZ (many insured patients use STD clinics' highly confidential services due to ongoing stigma). The confidential services cost the County hundreds of thousands of dollars in subsidy each year.

[96] Houston Health Dep't, *Houston Health Department Launches I am Life™ Campaign to Educate Audiences about Preventing HIV Through PrEP, Treatment as Prevention (TasP) to End HIV Transmission* (May 2, 2019), *archived at* https://perma.cc/7PMX-7K9L.

relaxing the standards governing oral interpretation and written translation services provided by covered entities and eliminating notices alerting patients of no-cost language access services, the 2020 Rule jeopardizes the health of LEP patients.[97]

The 2020 Rule's repeals are all the more dangerous now, when failing to identify even one person infected with COVID-19 can have a devasting societal impact, and when xenophobia and anti-immigrant and anti-LGBTQ sentiments already deter many patients from seeking care. Repeal of the 2016 Rule's many protective provisions, which provide a lifeline to healthcare for millions of Americans, only heightens the urgent public health crisis facing our cities, counties, and communities.

D. The 2020 Rule Undermines the Trust Necessary for Healthy Communities

The primary and preventative healthcare access transformation that the ACA enabled depends on trust—the trust that it takes to seek care, early and proactively; the trust that it takes to undergo intimate examination and treatment and truthfully self-report; and the trust to listen and comply with a doctor's instructions. Discrimination in healthcare shatters that trust. So much more must be done before even our most inclusive health systems offer truly welcoming supportive care that earns the trust of all our patients. The 2020 Rule, however, eliminates even the hope that nondiscriminatory care is a shared goal. It directly harms our residents, communities, and local governments and frays the fragile trust that *amici* invest so much to

[97] The 2020 Rule itself acknowledges that it could diminish "access to, and utilization of, health care for non-English speakers." 85 Fed. Reg. at 37,232. Yet it rejects this risk based on anonymous anecdotes, 85 Fed. Reg. at 37,233, and it ignores and downplays evidence presented by commenters that language barriers impede access to health insurance, decrease healthcare utilization, compromise the quality of care, and increase the risk of adverse outcomes for LEP people, among other things. *See, e.g.*, Comment of City of New York, HHS-OCR-2019-0007-150529 at 11 (Aug. 13, 2019); Comment of City of Oakland, HHS-OCR-2019-0007-151126 (Aug. 13, 2019).

create. These harms are all the more urgent and irreparable in the midst of a pandemic in which our collective health so clearly depends on that of our neighbors.

CONCLUSION

Amici urge the Court to vacate the 2020 Rule in its entirety.

Dated: December 9, 2020

Respectfully submitted,
JAMES R. WILLIAMS
COUNTY COUNSEL

By: */s/ Lorraine Van Kirk*

Greta Hansen, Chief Assistant County Counsel
Douglas Press, Assistant County Counsel
Laura Trice, Lead Deputy County Counsel
Lorraine Van Kirk, Deputy County Counsel*
Mary E. Hanna-Weir, Deputy County Counsel
Jeremy A. Avila, Deputy County Counsel
70 West Hedding Street, East Wing, Ninth Floor
San José, California 95110-1770

Attorneys for the County of Santa Clara, California

Mark A. Flessner, Corporation Counsel
Stephen J. Kane, Deputy Corporation Counsel
Rebecca Hirsch, Assistant Corporation Counsel
121 North LaSalle Street, Room 600
Chicago, IL 60602

Attorneys for the City of Chicago, Illinois

*Appearing *pro hac vice*

[Counsel for additional *amici curiae* on next page]

Additional Counsel for Amici Curiae

Esteban A. Aguilar, Jr.
City Attorney
One Civic Plaza NW, 4th Floor, Room 4072
Albuquerque, NM 87102
Attorney for the City of Albuquerque, New Mexico

Joanna C. Anderson
City Attorney
301 King Street, Suite 1300
Alexandria, VA 22314
Attorney for the City of Alexandria, Virginia

Anne L. Morgan
City Attorney
P.O. Box 1546
Austin, TX 78701
Attorney for the City of Austin, Texas

Thomas A. Carr
City Attorney
1777 Broadway Street
Boulder, CO 80302
Attorney for the City of Boulder, Colorado

Farimah F. Brown
City Attorney
2180 Milvia Street, 4th Floor
Berkeley, CA 94704
Attorney for the City of Berkeley, California

Nancy E. Glowa, Esq.
City Solicitor
795 Massachusetts Avenue
Cambridge, MA 02139
Attorney for the City of Cambridge, Massachusetts

Nick Herman
Counsel
The Brough Law Firm
1526 East Franklin Street, Suite 200
P.O. Box 2388
Chapel Hill, NC 27514
Attorney for the Town of Carrboro, North Carolina

Matthew Jerzyk
City Solicitor
580 Broad Street
Central Falls, RI 02863
Attorney for Mayor James Diossa and the City of Central Falls, Rhode Island

Zach Klein
City Attorney
77 North Front Street, 4th Floor
Columbus, OH 43215
Attorney for the City of Columbus, Ohio

Jessica M. Scheller
Chief; Advice, Business & Complex Litigation Division
500 Richard J. Daley Center
Chicago, IL 60602
Counsel for Cook County, Illinois

Christopher J. Caso
Dallas City Attorney
1500 Marilla Street, Suite 7DN
Dallas, Texas 75201
Attorney for the City of Dallas, Texas

Barbara J. Doseck
City Attorney
101 West Third Street
P.O. Box 22
Dayton, OH 45401
Attorney for the City of Dayton, Ohio

Rebecca St. George
City Attorney
411 West 1st Street, Room 440
Duluth, MN 55802
Attorney for the City of Duluth, Minnesota

Michael S. Lawson
City Attorney
777 B Street
Hayward, CA 94541
Attorney for the City of Hayward, California

Gary W. Kuc
County Solicitor
3450 Court House Drive
Ellicott City, MD 21043
Attorney for Howard County, Maryland

Crystal Barnes
Acting City Solicitor
20 Korean Veterans Plaza, Room 204
Holyoke, MA 01040
Attorney for the City of Holyoke, Massachusetts

Ronald C. Lewis
City Attorney
900 Bagby Street, 4th Floor
Houston, Texas 77002
Attorney for the City of Houston, Texas

Eleanor M. Dilkes
City Attorney
410 East Washington Street
Iowa City, IA 52240
Attorney for Iowa City, Iowa

Howard Phillip Schneiderman
Senior Deputy Prosecuting Attorney
516 Third Avenue, W400
Seattle, WA 98104
Attorney for King County, Washington

Michael N. Feuer
City Attorney
Office of the Los Angeles City Attorney
200 North Main Street, 8th Floor
Los Angeles, CA 90012
Attorney for the City of Los Angeles, California

Mary C. Wickham
County Counsel
Scott Kuhn, Assistant County Counsel
César del Peral, Senior Deputy County Counsel
Katherine G. McKeon, Deputy County Counsel
Hannah Flores, Associate County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012
Attorneys for the County of Los Angeles, California

Christopher J. Forte
Assistant General Counsel
Office of the General Counsel
245 deKoven Drive
Middletown, CT 06457
Attorney for the City of Middletown, Connecticut

Leslie J. Girard
County Counsel
William Litt, Deputy County Counsel
Susan K. Blitch, Assistant County Counsel
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
Attorneys for the County of Monterey, California

James E. Johnson
Corporation Counsel
100 Church Street
New York, NY 10007
Attorney for the City of New York, New York

Barbara J. Parker
City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attorney for the City of Oakland, California

Jeffrey S. Ballinger
City Attorney
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262
Attorney for City of Palm Springs, California

Tracy Reeve
City Attorney
1221 SW Fourth Avenue, Room 430
Portland, OR 97204
Attorney for the City of Portland, Oregon

Jeffrey Dana
City Solicitor
444 Westminster Street, Suite 220
Providence, RI 02903
Attorney for City of Providence, Rhode Island

Nicholas O. Meyer
Legal Director
425 East State Street, 7th Floor
Rockford, IL 61104
Attorney for Mayor Thomas P. McNamara, Rockford, Illinois

Dennis J. Herrera
City Attorney
City Hall Room 234
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attorney for the City and County of San Francisco

Anthony P. Condotti
Atchison, Barisone & Condotti, APC
P.O. Box 481
Santa Cruz, CA 95061
Attorney for the City of Santa Cruz, California

Jason M. Heath
County Counsel
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Attorney for the County of Santa Cruz, California

Erin K. McSherry
City Attorney
200 Lincoln Avenue
Santa Fe, NM 87504
Attorney for the City of Santa Fe, New Mexico

George S. Cardona
Interim City Attorney
1685 Main Street, Third Floor
Santa Monica, CA 90401
Attorney for the City of Santa Monica, California

Peter S. Holmes
City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Attorney for City of Seattle, Washington

John Marshall Jones
Chief Litigation Attorney
160 North Main Street, Suite 950
Memphis, TN 38103
Attorney for Shelby County, Tennessee

Francis X. Wright, Jr.
City Solicitor
93 Highland Avenue
Somerville, MA 02143
Attorney for the City of Somerville, Massachusetts

Lyndsey M. Olson
City Attorney
400 City Hall and Court House
15 West Kellogg Boulevard
Saint Paul, MN 55102
Attorney for the City of Saint Paul, Minnesota

Terry J. Williams
Solicitor
243 South Allen Street
Borough of State College, PA 16801
Attorney for the Borough of State College, Pennsylvania

William Fosbre
City Attorney
747 Market Street
Tacoma, WA 98402
Attorney for the City of Tacoma, Washington

Judi Baumann
City Attorney
21 East Sixth Street, Suite 201
Tempe, AZ 85281
Attorney for the City of Tempe, Arizona

Michael Jenkins
City Attorney
Best Best & Krieger LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266
Attorney for the City of West Hollywood, California

Kimberly Rothenburg, Esq.
City Attorney
401 Clematis Street, 5th Floor
West Palm Beach, FL 33401
Attorney for Mayor Keith A. James and the City of West Palm Beach, Florida

Robert M. Goff, Jr.
City Solicitor
800 North French Street
Wilmington, DE 19801
Attorney for the City of Wilmington, Delaware

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2020, the foregoing document was filed with the Clerk of the Court, using the CM/ECF system, causing it to be served on all counsel who have entered an appearance.

Dated: December 9, 2020

*/s/ Kimberly Ide*___________________
Kimberly Ide

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