

**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-5583-AKH

**CONSENT MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF BY LOCAL
GOVERNMENT *AMICI* IN SUPPORT OF PLAINTIFFS' RENEWED
MOTION FOR SUMMARY JUDGMENT**

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Local Government *Amici* hereby move this Court for leave to file the accompanying updated *amicus curiae* brief in the above-captioned matter in support of Plaintiffs' Renewed Motion for Partial Summary Judgement (Dkt. No. 108-111). All parties have consented to the filing of this updated *amicus curiae* brief.

INTRODUCTION

Local Government *Amici* are a broad coalition of 47 local governments throughout the United States that support Plaintiffs' action challenging Defendants' proposed 2020 Rule on Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37,160 (June 19, 2020) ("2020 Rule"). Local Government *Amici* include cities and counties throughout the United States, including most of the Plaintiff States. All Local Government *Amici* have a special interest in the subject matter of this case because this case will necessarily impact the public health and social-safety net systems Local Government *Amici* administer for the benefit of our communities, including those targeted by the 2020 Rule.

ARGUMENT

Amicus curiae participants play an important role in litigation by aiding the court and offering insights not available to the parties. *See United States v. Gotti*, 755 F. Supp. 1157, 1158-59 (E.D.N.Y. 1991); *see also United States v. El-Gabrownny*, 844 F. Supp. 955, 957 n.1 (S.D.N.Y. 1994). While there is no rule that specifically governs *amicus curiae* participation at the district court level, courts have broad discretion to grant leave to participate as *amicus curiae*. *See Gotti*, 755 F. Supp. at 1158; *see also Jamaica Hosp. Medical Ctr., Inc. v. United Health Group, Inc.*, 584 F. Supp. 2d 489, 497 (E.D.N.Y. 2008). Courts should permit *amici curiae* to file their briefs when the *amici curiae* have an interest in some other matter that may be affected by the decision in the present case, or when the *amici curiae* have "unique information or perspective" that can help the court beyond what the parties have presented. *Citizens Against Casino Gambling in Erie Cny. v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007); *see also Juarez v. Asher*, Case No. C20-0700JLR-MLP, 2020 U.S. Dist. LEXIS 102625, at *3-4 (W.D. Wash. June 11, 2020); *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C-06-1254,

2007 WL 81911, at *3 (N.D. Cal. Jan. 9, 2007). Local Government *Amici* satisfy all these criteria.

The proposed *amicus curiae* brief offers the Court the unique perspective of the “smaller governments closer to the governed” across this nation “that touch on citizens’ daily lives.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012). Local Government *Amici* administer vital public health and social safety net programs for the benefit of their residents, regardless of their ability to pay or their sexual orientation or gender identity. Defendants’ 2020 Rule imposes significant direct costs on the systems and services Local Government *Amici* provide and harms our residents, particularly our LGBTQ and limited English proficiency (LEP) residents. The 2020 Rule directly injures LGBTQ people, who experience pervasive and profound discrimination in healthcare, which harms our cities, counties, and communities as a whole. The 2020 Rule also undoes federal language access requirements that support meaningful healthcare for LEP patients, hurting our LEP residents who already face barriers to accessing timely, appropriate, and culturally competent care. Local Government *Amici* are uniquely situated to describe for the Court these consequences of the 2020 Rule.

Local Government *Amici* seek leave to file an updated *amicus curiae* brief given the lodging of the administrative record, Defendants’ recent filings, and developments in the intervening months since the initial *amicus curiae* briefs were filed on September 17, 2020. For example, in the proposed brief, Local Government *Amici* address arguments questioning the concrete nature of the harms flowing from the 2020 Rule that are raised in Defendants’ motion to dismiss (Dkt. No. 112-113), and that therefore were not fully briefed when Plaintiffs’ initial motion for summary judgment was filed.

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CONCLUSION

For the forgoing reasons, Local Government *Amici* respectfully request permission to file their updated *amicus curiae* brief in support of Plaintiffs' Renewed Motion for Summary Judgment. Local Government *Amici*'s request is unopposed. Alternatively, if the Court denies this motion, Local Government *Amici* respectfully request that the Court consider their previously filed *amicus curiae* brief (Dkt. No. 79).

Dated: December 9, 2020

Respectfully submitted,
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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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No. 1:20-CV-05583-AKH

**[PROPOSED] ORDER GRANTING
MOTION OF LOCAL GOVERNMENT
AMICI TO FILE AN AMICUS CURIAE
BRIEF**

The Court has reviewed the motion of COUNTY OF SANTA CLARA, CITY OF CHICAGO, and 45 LOCAL GOVERNMENTS (“LOCAL GOVERNMENT *AMICI*”) for leave to file the proposed *amicus curiae* brief in support of Plaintiffs’ renewed motion for summary judgment, and the Court hereby **GRANTS** the motion.

Dated: _____

Alvin K. Hellerstein
United States District Judge

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