

No. 23-12155

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AUGUST DEKKER, ET AL.,
Plaintiffs-Appellees,

v.

SECRETARY, FLORIDA AGENCY FOR HEALTH CARE
ADMINISTRATION, ET AL.,
Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
CIVIL ACTION NO. 4:22-CV-00325-RH-MAF

***FLORIDA POLICY INSTITUTE & FLORIDA VOICES FOR HEALTH
AMICI CURIAE BRIEF IN SUPPORT OF PLAINTIFFS-APPELLEES***

Robert M. Kline
McDermott Will & Emery LLP
333 SE 2nd Avenue, Suite 4500
Miami, FL 33131-2184
Tel: 305-347-6537
rkline@mwe.com

Ming H. Chuang
McDermott Will & Emery LLP
2049 Century Park East, Suite 3200
Los Angeles, CA 90067-3206
Tel: 310-788-6056
mchuang@mwe.com

Counsel for Amici Curiae

**AUGUST DEKKER, ET AL. v. SECRETARY, FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION, ET AL.**

**CORPORATE DISCLOSURE STATEMENT AND CERTIFICATE OF
INTERESTED PERSONS**

Amici Curiae Florida Policy Institute (“FPI”) and Florida Voices for Health (“FVH”) are nonprofit organizations and do not issue stock. Pursuant to Federal Rule of Appellate Procedure 26.1, FPI and FVH state that none of them has parent corporations, and no publicly held corporation owns 10% or more of the stock of FPI and FVH.

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, FPI and FVH state that the following persons and entities have an interest in the outcome of the case and this appeal.

1. Academic Pediatric Association, Amicus
2. Alstott, Anne, Amicus
3. Altman, Jennifer, Counsel for Plaintiffs
4. American Academy of Child and Adolescent Psychiatry, Amicus
5. American Academy of Family Physicians, Amicus
6. American Academy of Nursing, Amicus
7. American Academy of Pediatrics, Amicus

**AUGUST DEKKER, ET AL. v. SECRETARY, FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION, ET AL.**

8. American College of Obstetricians and Gynecologists, Amicus
9. American College of Osteopathic Pediatricians, Amicus
10. American College of Physicians, Amicus
11. American Medical Association, Amicus
12. American Pediatric Society, Amicus
13. American Psychiatric Association, Amicus
14. Anderson, Barrett, Counsel for Amicus
15. Association of American Medical Colleges, Amicus
16. Bardos, Andy, Counsel for Amicus
17. Barnes, Brian, Counsel for Amicus
18. Beato, Michael, Counsel for Defendants
19. Biomedical Ethics and Public Health Scholars, Amicus
20. Boergers, Kathleen, Counsel for Amicus
21. Boulware, Susan, Amicus
22. Boyden Gray PLLC, Counsel for Amicus
23. Bowdre, Alexander, Counsel for Amicus
24. Brown, Louis, Jr., Amicus

**AUGUST DEKKER, ET AL. v. SECRETARY, FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION, ET AL.**

25. Burleigh, Clifton, Jr., Amicus
26. Charles, Carl, Counsel for Plaintiffs
27. Chriss, Simone, Counsel for Plaintiffs
28. Chuang, Ming, Counsel for Amicus
29. Clark, Kaila, Counsel for Amicus
30. Commonwealth of Massachusetts, Amicus
31. Coursolle, Abigail, Counsel for Plaintiffs
32. Debriere, Katherine, Counsel for Plaintiffs
33. Dekker, August, Plaintiff
34. District of Columbia, Amicus
35. Do No Harm, Amicus
36. Doe, Jane, Plaintiff
37. Doe, John, Plaintiff
38. Doe, Susan, Plaintiff
39. Dunn, Chelsea, Counsel for Plaintiffs
40. Endocrine Society, Florida Chapter of the American Academy
of Pediatrics, Amicus
41. Figlio, Erik, Counsel for Amicus

**AUGUST DEKKER, ET AL. v. SECRETARY, FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION, ET AL.**

42. Florida Agency for Health Care Administration, Defendant
43. Florida Chapter of the American Academy of Pediatrics,
Amicus
44. Florida Policy Institute, Amicus
45. Florida Voices for Health, Amicus
46. Gonzalez-Pagan, Omar, Counsel for Plaintiffs
47. Halley, Ted, Amicus
48. Hartnett, Kathleen, Counsel for Amicus
49. Helstrom, Zoe, Counsel for Amicus
50. Heyer, Walt, Amicus
51. Hinkle, Robert, U.S. District Court Judge
52. Hussein, Abdul-Latif, Amicus
53. Isasi, William, Counsel for Amicus
54. Jazil, Mohammad, Counsel for Defendants
55. K.F., Plaintiff
56. Kamody, Rebecca, Amicus
57. Kang, Katelyn, Counsel for Amicus
58. Kline, Robert, Counsel for Amicus

**AUGUST DEKKER, ET AL. v. SECRETARY, FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION, ET AL.**

59. Kniffin, Eric, Counsel for Amicus
60. Krasovec, Joseph, Counsel for Amicus
61. Kuper, Laura, Amicus
62. Lannin, Cortlin, Counsel for Amicus
63. Laudue, Jade, Plaintiff
64. Little, Joseph, Counsel for Plaintiffs
65. Marstiller, Simone, Former Defendant
66. Mauler, Daniel, Counsel for Amicus
67. McCotter, R. Trent, Counsel for Amicus
68. McKee, Catherine, Counsel for Plaintiffs
69. McNamara, Meredith, Amicus
70. Meszaros, Marie, Amicus
71. Miller, William, Counsel for Plaintiffs
72. Mondry, Emily, Counsel for Amicus
73. Morrison, Rachel, Amicus
74. National Association of Pediatric Nurse Practitioners, Amicus
75. Norohna, Maya, Amicus

**AUGUST DEKKER, ET AL. v. SECRETARY, FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION, ET AL.**

76. North Central Florida Council of Child and Adolescent Psychiatry, Amicus
77. Olezeski, Christy, Amicus
78. Pediatric Endocrine Society, Amicus
79. Perko, Gary, Counsel for Defendants
80. Pratt, Christine, Amicus
81. Pratt, Joshua, Counsel for Defendants
82. Ramer, John, Counsel for Amicus
83. Reinhardt, Elizabeth, Counsel for Amicus
84. Richards, Jay, Amicus
85. Rivaux, Shani, Counsel for Plaintiffs
86. Rothstein, Brit, Plaintiff
87. Samuels, Valerie, Counsel for Amicus
88. Severino, Roger, Amicus
89. Shaw, Gary, Counsel for Plaintiffs
90. Societies for Pediatric Urology, Amicus
91. Society for Adolescent Health and Medicine, Amicus
92. Society for Pediatric Research, Amicus

**AUGUST DEKKER, ET AL. v. SECRETARY, FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION, ET AL.**

93. Society of Pediatric Nurses, Amicus
94. State of Alabama, Amicus
95. State of Arkansas, Amicus
96. State of California, Amicus
97. State of Delaware, Amicus
98. State of Georgia, Amicus
99. State of Illinois, Amicus
100. State of Indiana, Amicus
101. State of Iowa, Amicus
102. State of Kentucky, Amicus
103. State of Louisiana, Amicus
104. State of Maryland, Amicus
105. State of Mississippi, Amicus
106. State of Missouri, Amicus
107. State of Montana, Amicus
108. State of Nebraska, Amicus
109. State of New York, Amicus

**AUGUST DEKKER, ET AL. v. SECRETARY, FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION, ET AL.**

110. State of North Dakota, Amicus
111. State of Oregon, Amicus
112. State of Rhode Island, Amicus
113. State of South Carolina, Amicus
114. State of Tennessee, Amicus
115. State of Texas, Amicus
116. State of Utah, Amicus
117. State of Virginia, Amicus
118. Szilagyi, Nathalie, Amicus
119. Thompson, David, Counsel for Amicus
120. Veroff, Julie, Counsel for Amicus
121. Veta, D. Jean, Counsel for Amicus
122. Weida, Jason, Defendant
123. World Professional Association for Transgender Health, Amicus

Pursuant to Federal Rule of Appellate Procedure 26.1-2, Amici Curiae FPI
and FVH certify that the CIP contained herein is complete.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT AND CERTIFICATE OF INTERESTED PERSONS	C-1
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF AMICI CURIAE’S IDENTITY, INTEREST, AND AUTHORITY TO FILE	1
ARGUMENT.....	3
I. Introduction.....	3
II. The Floridians Who Need Medicaid	4
III. Florida’s High Cost of Living Puts an Extra Squeeze on Low-Income Floridians	6
IV. The Importance of Medicaid to Floridians	10
V. Gender-Affirming Care Is a Medically Necessary Service under Medicaid	12
CONCLUSION	14
CERTIFICATE OF COMPLIANCE	16
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITIES

Cases

Dekker v. Weida, No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *8
 (N.D. Fla. June 21, 2023)13

Statutes

Florida Administrative Code Annotated Rule 65A-1.703.....5
 Florida Administrative Code Annotated Rule 65A-1.707.....6
 Iowa Administrative Code Annotated Rule 441-75.71(249A)11
 New Mexico Code § 8.295.500.10.....11

Regulations

Annual Update of the HHS Poverty Guidelines, 88 Fed. Reg. 3424
 (Jan. 19, 2023) (notice).....4

Other Authorities

Alex Montero, et al., *Americans’ Challenges with Health Care Costs*,
 Figure 2 (July 14, 2022), <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/>
 (last visited Nov. 27, 2023).....3

Amy K. Glasmeier, *Living Wage Calculator*,
<https://livingwage.mit.edu> (last visited Nov. 27, 2023).....6, 11

Amy K. Glasmeier, *Living Wage Calculator, User’s Guide / Technical
 Notes, 2022-2023 Update*,
<https://livingwage.mit.edu/resources/Living-Wage-Users-Guide-Technical-Documentation-2023-02-01.pdf> (last visited
 Nov. 27, 2023)7

Centers for Medicare & Medicaid Services, *Florida May 2023 Data Letter*, https://www.medicaid.gov/sites/default/files/2023-08/fl-may-2023-unwinding-data-ltr_0.pdf (last visited Nov. 27, 2023)14

Christopher M. Whaley, et al., *Prices Paid to Hospitals by Private Health Plans: Findings from Round 4 of an Employer-Led Transparency Initiative*, https://www.rand.org/pubs/research_reports/RRA1144-1.html (last visited Nov. 27, 2023)8, 9

The Commonwealth Fund, *Florida: A collection of research on health system performance in Florida, Consumer Insurance & Medical Costs*, <https://www.commonwealthfund.org/datacenter/florida> (last visited Nov. 22, 2023)8

Florida Department of Agriculture and Consumer Services, *COVID-19: Unveiling Its Impact on Food Insecurity in Florida*, <https://www.fdacs.gov/content/download/94403/file/COVID-FoodInsecurityImpact-Infographic.pdf> (last visited Nov. 27, 2023)7

Florida Department of Children and Families, *ESS Program Policy Manual, Appendix A-7 Family-Related Medicaid Income Limit Chart*, <https://www.myflfamilies.com/services/public-assistance/additional-resources-and-services/ess-program-manual> (last visited Nov. 27, 2023)5, 6

Michigan Department of Health & Human Services, *Bridges Eligibility Policy Manuals, Healthy Kids*, <https://dhhs.michigan.gov/olmweb/ex/bp/public/bem/131.pdf> (last visited Nov. 27, 2023)11

Missouri Department of Social Services, *Family MO HealthNet (MAGI) Manual, 1830.010.05 Income Maximums/Need*, <https://dssmanuals.mo.gov/family-mo-healthnet-magi/1830-000-00/1830-010-00/1830-010-05/> (last visited Nov. 27, 2023)11

Nevada Department of Health and Human Services Division of
Welfare and Supportive Services, *Medical Assistance Manual, B-100 - Modified Adjusted Gross Income*,
<https://dwss.nv.gov/Medical/Medical-Manual-3-CONT/> (last
visited Nov. 27, 2023)11

U.S. Bureau of Economic Analysis, *Personal Consumption Expenditures
by State, 2021, Table 4. Per Capita Personal Consumption
Expenditures, by State & Region for Select Categories, 2021* (Oct. 6,
2022), available at
[https://www.bea.gov/sites/default/files/2022-
10/pce1022_0_0.pdf](https://www.bea.gov/sites/default/files/2022-10/pce1022_0_0.pdf) (last visited Nov. 27, 2023).....6, 10

U.S. Bureau of Labor Statistics, *Consumer Price Index, Tampa-St.
Petersburg-Clearwater - September 2023*,
[https://www.bls.gov/regions/southeast/news-
release/consumerpriceindex_tampa.htm](https://www.bls.gov/regions/southeast/news-release/consumerpriceindex_tampa.htm) (last visited Nov. 27,
2023)9

STATEMENT OF AMICI CURIAE'S IDENTITY, INTEREST, AND AUTHORITY TO FILE¹

Amici Curiae are FPI and FVH. FPI is an independent, non-partisan, and non-profit organization dedicated to advancing policies and budgets that improve the economic mobility and quality of life for all Floridians. FVH is a coalition of community organizations, businesses, and individuals working to create a health care system that works for every Floridian.

Both FPI and FVH assist the most vulnerable Floridians to access limited, critical resources, including Medicaid coverage. FPI and FVH submit this brief in support of the Plaintiffs-Appellees and their fundamental well-being, so that they continue to receive the medically

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(2), the counsel for Amici Curiae states that it conferred with counsel for the Plaintiffs-Appellees and counsel for the Defendants-Appellants on October 5, 2023 regarding filing this brief. Counsel for all parties indicated that they did not object.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Amici Curiae state that: (i) there is no party or counsel for a party in the pending appeal who authored the *amicus* brief in whole or in part; (ii) there is no party or counsel for a party in the pending appeal who contributed money that was intended to fund preparing or submitting the brief; and (iii) no person or entity contributed money that was intended to fund preparing or submitting the brief.

necessary healthcare that they so desperately need and which they cannot obtain without Medicaid. Indeed, the income of Medicaid beneficiaries, including Plaintiffs-Appellees, is so low that it is exceedingly difficult for those individuals to cover their most fundamental expenses, like modest rent and basic nutrition, let alone pay for medically necessary healthcare.

Accordingly, Amici Curiae hereby hope to facilitate this Court's understanding of low-income Floridians and the struggles that they experience as they try to access medically necessary healthcare through Medicaid in Florida.

ARGUMENT

I. Introduction

Medicaid covers millions of Floridians, most of whom are children, and many of whom are disabled or in foster care. Amici Curiae submit this brief to raise awareness concerning the important role that Medicaid plays to ensure that the lowest income Floridians have access to medically necessary healthcare.

Indeed, but for Medicaid, too many Floridians would be forced to delay, if not forego entirely, medically necessary treatment that they require. Even with insurance, 48% of insured adults under the age of 65 in America said they have postponed getting health care they needed due to cost. *See* Alex Montero, et al., *Americans' Challenges with Health Care Costs*, Figure 2 (July 14, 2022), <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/> (last visited Nov. 27, 2023). Worse yet, 37% of such insured adults reported they have skipped recommended tests or treatment due to cost. *See id.*

Unquestionably, delayed treatment routinely leads to more serious, more expensive conditions. And, in many tragic situations, the inability to access prompt medically necessary care can lead to increased morbidity and

mortality rates (*i.e.*, otherwise preventable death). For example, a person with untreated diabetes may develop complications that require more expensive and invasive treatments, such as amputations or dialysis. As another example, delaying certain care like cancer screenings can result in more advanced cancer diagnoses, which are more difficult and expensive to treat. This fundamental concept that delayed medically necessary care often leads to more expensive and severe outcomes applies with equal force to other conditions, including but not limited to gender dysphoria.

II. The Floridians Who Need Medicaid

As reflected in detail below, Floridians who receive medically necessary care through Medicaid live very modestly. Indeed, without Medicaid coverage, they simply cannot afford to receive medically necessary treatment.

To qualify for state Medicaid under mandatory or optional coverage, individuals and families must meet applicable income requirements. The U.S. Department of Health and Human Services (“HHS”) annually updates the federal poverty guidelines (commonly referred to as the federal poverty level or “FPL”). In 2023, the FPL for a single person is only \$14,580, and the FPL for a family of three is only modestly more at \$24,860. *See Annual*

Update of the HHS Poverty Guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023) (notice).

For children to qualify for full Medicaid coverage in Florida, the income of a family with a child between ages one and eighteen must be less than or equal to 133% of FPL.² See Florida Administrative Code Annotated Rule 65A-1.703(2)(a); see also Florida Department of Children and Families, *ESS Program Policy Manual, Appendix A-7 Family-Related Medicaid Income Limit Chart*, <https://www.myflfamilies.com/services/public-assistance/additional-resources-and-services/ess-program-manual> (last visited Nov. 27, 2023).

Adults are generally ineligible for Medicaid, and they may receive Medicaid coverage only if they meet extraordinarily low-income thresholds and are part of a family with children or qualify by age or disability. The household income limit for parents or caregivers who receive Medicaid coverage through their minor child is only \$590 *per month* for a family of three. See Florida Administrative Code Annotated Rule 65A-1.703(2)(a)(4) &

² The income of a family with a child younger than one year-old must be less than or equal to 200% of FPL. Florida Administrative Code Annotated Rule 65A-1.703(2)(a).

65A-1.707(2); *see also* Florida Department of Children and Families, *ESS Program Policy Manual*.

III. Florida's High Cost of Living Puts an Extra Squeeze on Low-Income Floridians

In juxtaposition with Florida's stringent income limitations for Medicaid eligibility, the cost of living in Florida is rising rapidly. As an indicator that reflects the cost of living, the total personal consumption expenditures ("PCE") for Florida in 2021 was \$50,689 *per person*. *See* U.S. Bureau of Economic Analysis, *Personal Consumption Expenditures by State, 2021, Table 4. Per Capita Personal Consumption Expenditures, by State & Region for Select Categories, 2021* (Oct. 6, 2022), available at https://www.bea.gov/sites/default/files/2022-10/pce1022_0_0.pdf (last visited Nov. 27, 2023). A recent study from the Massachusetts Institute of Technology indicates that a household of three in Florida, with one working adult and one child, must earn a minimum of \$71,281.60 annually to meet the family's basic needs under its "living wage"³ standard. *See* Amy K.

³ The researchers at the Department of Urban Studies and Planning at the Massachusetts Institute of Technology have developed this living wage calculator as an alternative measure of basic needs. The living wage model is a "market-based approach that draws upon geographically specific expenditure data related to a family's likely minimum food, childcare, health

Glasmeyer, *Living Wage Calculator*, <https://livingwage.mit.edu/states/12> (last visited Nov. 27, 2023). Facing a cost of living that is several times higher than the levels of income that qualify them for Medicaid, many Floridians have struggled to cover their living expenses such as housing food, and other essentials. In fact, 3.4 million Floridians recently reported experiencing food insecurity. Florida Department of Agriculture and Consumer Services, *COVID-19: Unveiling Its Impact on Food Insecurity in Florida*, <https://www.fdacs.gov/content/download/94403/file/COVID-FoodInsecurityImpact-Infographic.pdf> (last visited Nov. 27, 2023). Without Medicaid, many working Floridians have no viable means to cover their necessary medical expenses.

Consistent with its high cost of living, Florida ranks among the states with the highest health care cost. For example, Florida workers with

insurance, housing, transportation, and other basic necessities (e.g., clothing, personal care items, etc.) costs. The living wage draws on these cost elements and the rough effects of income and payroll taxes to determine the minimum employment earnings necessary to meet a family's basic needs while also maintaining self-sufficiency." Amy K. Glasmeier, *Living Wage Calculator, User's Guide / Technical Notes, 2022-2023 Update*, <https://livingwage.mit.edu/resources/Living-Wage-Users-Guide-Technical-Documentation-2023-02-01.pdf> (last visited Nov. 19, 2023). Furthermore, the wage calculator assumes that the working adult is working full-time at 2,080 hours annually. *Id.*

employer-sponsored health plans paid an average of \$8,429 for out-of-pocket medical costs (*i.e.*, premium contribution and deductible) in 2021, which was equivalent to 14.5% of the state median income and above the national average. The Commonwealth Fund, *Florida: A collection of research on health system performance in Florida, Consumer Insurance & Medical Costs*, <https://www.commonwealthfund.org/datacenter/florida> (last visited Nov. 22, 2023). The cost of receiving hospital care is also higher in Florida. Namely, private health plans in Florida paid *more than triple* Medicare prices for hospital services rendered to Floridians (*i.e.*, the health plans paid relative prices⁴ that were above 310% of Medicare prices). Christopher M. Whaley, et al., *Prices Paid to Hospitals by Private Health Plans: Findings from Round 4 of an Employer-Led Transparency Initiative*, vii, https://www.rand.org/pubs/research_reports/RRA1144-1.html (last visited Nov. 27, 2023). In comparison, private health plans in other states such as Hawaii, Arkansas,

⁴ Relative price is “the ratio of the actual private insurer-allowed amount divided by the Medicare-allowed amount for the same services provided by the same hospital” whereas Medicare prices refer to the amounts for the services provided by hospitals that Medicare is willing to pay. See Christopher M. Whaley, et al., *Prices Paid to Hospitals by Private Health Plans, Findings from Round 4 of an Employer-Led Transparency Initiative*, vi, https://www.rand.org/pubs/research_reports/RRA1144-1.html (last visited Nov. 22, 2023).

and Washington, for example, paid relative prices for hospital care at below 175% of Medicare prices. *Id.* As reflected by these indicators, Florida's high health care cost is a burden to many of its working residents, including those who have health care coverage from their employers, let alone the low-income working Floridians who must rely on Medicaid.

Furthermore, the September 2023 consumer price index ("CPI") for Florida's Tampa-St. Petersburg-Clearwater areas indicates that the over-all cost of consumer goods and services such as food, housing, and medical expenses increased by 6.7% during the period of September 2022 to September 2023. U.S. Bureau of Labor Statistics, *Consumer Price Index, Tampa-St. Petersburg-Clearwater - September 2023*, https://www.bls.gov/regions/southeast/news-release/consumerpriceindex_tampa.htm (last visited Nov. 27, 2023). These increases are typical of those seen throughout the State of Florida. With the increase in consumer price inflation, the Floridians who qualify and need Medicaid coverage will have even more difficulty keeping pace with the cost of living this year compared with last year.

IV. The Importance of Medicaid to Floridians

Florida's relatively high cost of living compared to many other states makes Medicaid coverage critical to ensure that low-income Floridians can access medically necessary healthcare. Unsurprisingly, those living at or near the poverty level must dedicate essentially all their limited income to cover their most basic expenses (*e.g.*, housing, food, and transportation). Consequently, but for Medicaid coverage, Floridians living at or near the poverty level generally must forego receiving necessary medical care because they cannot afford it.

Unlike Florida, many states ensure that a smaller ratio of their low-income residents are not forced to choose between covering housing and food expenses and receiving necessary medical care. States, including Iowa, Michigan, Missouri, Nevada, and New Mexico, for example, have a lower cost of living⁵ compared to Florida. Nonetheless, those states establish a less

⁵ The PCE for Iowa was \$41,758 per person, for Michigan was \$45,591 per person, for Missouri was \$44,990 per person, for Nevada in 2021 was \$44,831 per person, and for New Mexico in 2021 was \$40,028 per person. See U.S. Bureau of Econ. Analysis, *Personal Consumption Expenditures by State, 2021, Table 4*. The living wage standard for a family of three with one working adult and one child in 2023 for Iowa is \$65,998.40, for Michigan is \$65,582.40, for Missouri is \$67,412.80, for Nevada is \$70,886.40, for New Mexico is

restrictive household income eligibility to ensure that more of their low-income residents may qualify for Medicaid to receive medical care. Specifically, the household income may be up to 167% of FPL in Iowa⁶, 160% of FPL in Michigan⁷, and 148% of FPL in Missouri⁸ for a child between ages one to eighteen to qualify for Medicaid. The household income may be up to 165% of FPL in Nevada⁹ for a child under age six to qualify for Medicaid while the household income may be up to 240% of FPL in New Mexico¹⁰ for a child between six and nineteen to qualify. Families in those states can earn modestly more and still receive medically necessary care from their states.

\$68,057.60. See Amy K. Glasmeier, *Living Wage Calculator*, <https://livingwage.mit.edu/> (last visited Nov. 27, 2023).

⁶ Iowa Administrative Code Annotated Rule 441-75.71(249A).

⁷ Michigan Department of Health & Human Services, *Bridges Eligibility Policy Manuals*, *Healthy Kids*, <https://dhhs.michigan.gov/olmweb/ex/bp/public/bem/131.pdf> (last visited Nov. 27, 2023).

⁸ Missouri Department of Social Services, *Family MO HealthNet (MAGI) Manual*, *1830.010.05 Income Maximums/Need*, <https://dssmanuals.mo.gov/family-mo-healthnet-magi/1830-000-00/1830-010-00/1830-010-05/> (last visited Nov. 27, 2023).

⁹ Nevada Department of Health and Human Services Division of Welfare and Supportive Services, *Medical Assistance Manual, B-100 - Modified Adjusted Gross Income*, <https://dwss.nv.gov/Medical/Medical-Manual-3-CONT/> (last visited Nov. 27, 2023).

¹⁰ New Mexico Code § 8.295.500.10.

With a relatively higher cost of living in Florida, along with its more restrictive income eligibility criteria compared to those states, Florida's Medicaid program is exceedingly important for many Floridians. Medicaid coverage is especially important for the lowest income Floridians because it provides access to a wide range of health care services, including preventive care, primary care, specialist care, hospital care, prescription drugs, and mental health services. Medicaid also covers many long-term care services, such as nursing home care and home health care, which can be very expensive for families to pay for out-of-pocket. And, until very recently, Medicaid in Florida covered medically necessary care for gender dysphoria. When doctors determine that a certain treatment is medically necessary for their Medicaid-eligible patients, Medicaid should cover that treatment. It is not a political issue. It is not a culture war issue. It is an issue of medical necessity. It is, quite literally, about need.

V. Gender-Affirming Care Is a Medically Necessary Service under Medicaid

The District Court determined, after its careful consideration of significant evidence, that access to gender-affirming care can help improve mental health and reduce the risk of suicide among transgender

individuals.¹¹ Indeed, the District Court reviewed the testimony of “well-qualified doctors who have treated thousands of transgender patients with GnRH agonists and cross-sex hormones over their careers and have achieved excellent results” and found “their testimony that denial of this treatment will cause needless suffering for a substantial number of patients and will increase anxiety, depression, and the risk of suicide.”¹² Unquestionably, treatment that reduces the risk of suicide is medically necessary.

Appellants, however, doggedly seek to deprive this vulnerable population of medically necessary treatments that could, quite literally, save their lives. As set forth above, Medicaid beneficiaries in Florida are spread thin financially. They must also navigate byzantine regulations¹³ to receive

¹¹ *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *8 (N.D. Fla. June 21, 2023).

¹² *Id.*

¹³ In Florida, approximately 14% of Medicaid eligibility redeterminations have resulted in coverage termination based on procedural reasons for May 2023. Starting on April 1, 2023, Florida began redetermining the eligibility of its Medicaid beneficiaries due to the expiration of the Medicaid continuous coverage provision, which prohibited states from disenrolling Medicaid beneficiaries during the COVID-19 Public Health Emergency. Due to such high percentage of termination for procedural reasons as reported by Florida to the Centers for Medicare & Medicaid Services (“CMS”), CMS issued a letter dated August 9, 2023 to the Florida Agency for Health Care Administration expressing its concerns about eligible Medicaid beneficiaries

the most basic level of health care while trying to get food on the table every day. Florida should be going out of its way to make life more manageable for its most vulnerable citizens, not do everything in its vast power to make life more difficult for those who have the least.

Accordingly, for those who are eligible for Medicaid, Medicaid coverage for gender dysphoria treatment is crucial for improving health outcomes and reducing health disparities for Medicaid-eligible transgender and gender-nonconforming individuals.

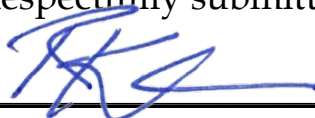
CONCLUSION

For the reasons set forth in this brief, Amici Curiae urge this Court to uphold the district court's ruling and in favor of the Plaintiffs-Appellees.

losing their coverage. Specifically, CMS highlighted that “this high percent raises concerns that eligible individuals, including children, may be losing coverage” and warned that “a high rate of procedural terminations may indicate that beneficiaries may not be receiving notices, are unable to understand them, or are unable to submit their renewal through the required modalities.” Centers for Medicare & Medicaid Services, *Florida May 2023 Data Letter*, https://www.medicaid.gov/sites/default/files/2023-08/fl-may-2023-unwinding-data-ltr_0.pdf (last visited Nov. 27, 2023). It seems that Florida is deliberately going out of its way to make it as difficult as possible for the most vulnerable Floridians to get care that they need.

Dated: December 4, 2023

Respectfully submitted,



Robert M. Kline
McDermott Will & Emery LLP
333 SE 2nd Avenue, Suite 4500
Miami, FL 33131-2184
305-347-6537
rkline@mwe.com

Ming H. Chuang
McDermott Will & Emery LLP
2049 Century Park East, Suite 3200
Los Angeles, CA 90067-3206
Tel: 310-788-6056
mchuang@mwe.com

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g) and Eleventh Circuit Rule 28-1(m), that this brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because, excluding the portions of the brief exempted by Federal Rule of Appellate Procedure Rule 32(f), the brief contains 2,709 words.

I further certify that this brief complies with the typeface requirements and the type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Book Antiqua font.

Dated: December 4, 2023



Robert M. Kline

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2023, I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit, using the CM/ECF system of the Court. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: December 4, 2023



Robert M. Kline