

; STATE OF  
GEORGIA; STATE OF INDIANA ; STATE OF KANSAS; COMMONWEALTH OF KENTUCKY;  
STATE OF LOUISIANA; STATE OF NEBRASKA; STATE OF OHIO; STATE OF OKLAHOMA ;  
STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; COMMONWEALTH OF  
VIRGINIA; STATE OF WEST VIRGINIA, Plaintiffs-Appellees

v.

XAVIER BECERRA, Secretary U.S. Department of Health and Human Services  
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, MELANIE FONTES  
RAINER, in her official capacity as the Director of the Office for Civil Rights  
CENTERS FOR MEDICARE AND MEDICAID SERVICES, CHIQUITA BROOKS-LASURE, in  
her official capacity as Administrator of the Centers for Medicare and Medicaid  
Services Defendants-Appellants.

On Appeal from the United States District Court  
for the Southern District of Mississippi

AMIC USCURIAE BRIEF IN SUPPORT OF APPELLANTS FOR  
AMERICAN CANCER SOCIETY, AMERICAN CANCER SOCIETY  
CANCER ACTION NETWORK, THE AIDS INSTITUTE , AMERICAN  
ACADEMY OF FAMILY PHYSICIANS, AMERICAN ACADEMY OF  
PEDIATRICS, AMERICAN COLLEGE OF CHEST PHYSICIANS,  
AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,  
AMERICAN COLLEGE OF PHYSICIANS, AMERICAN GERIATRICS

AMERICAN NURSES ASSOCIATION, AMERICAN PSYCHIATRIC  
ASSOCIATION HEALTH PROFESSIONALS ADVANCING

LGBTQ+ EQUALITY , HEMOPHILIA FEDERATION OF AMERICA,  
INFECTIOUS DISEASES SOCIETY OF AMERICA, THE LEUKEMIA &  
LYMPHOMA SOCIETY, MUSCULAR DYSTROPHY ASSOCIATION,  
NATIONAL LGBTQI+ CANCER NETWORK, NATIONAL MULTIPLE  
SCLEROSIS SOCIETY, NATIONAL ORGANIZATION FOR RARE  
DISORDERS, NATIONAL PATIENT ADVOCATE FOUNDATION

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NOVEMBER 26, 2024

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## SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

The undersigned counsel of record certifies under Fifth Circuit Rule 29.1 that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

### Amici Curiae:

The AIDS Institute  
American Academy of Family Physicians  
American Academy of Pediatrics  
American Cancer Society  
American Cancer Society Cancer Action Network  
American College of Chest Physicians  
American College of Obstetricians and Gynecologists  
American College of Physicians  
American Geriatrics Society  
Association  
American Nurses Association  
American Psychiatric Association  
American Society of Clinical Oncology  
CancerCare  
  
Epilepsy Foundation  
GLMA: Health Professionals Advancing LGBTQ+ Equality  
Hemophilia Federation of America  
Infectious Diseases Society of America  
The Leukemia & Lymphoma Society  
Muscular Dystrophy Association  
National LGBTQI+ Cancer Network

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Respectfully submitted,

Dated: November 26, 2024

/s/ Deanne E. Maynard

Deanne E. Maynard

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IDENTITY AND INTEREST OF AMICI CURIAE <sup>1</sup>

Amici represent mil(l)4.003

## INTRODUCTION AND SUMMARY OF ARGUMENT

Discrimination on the basis of sex, gender identity, transgender status, sexual orientation and similar characteristics has no place in our health care system. Such discrimination can be particularly harmful for people suffering from chronic conditions and disabilities who often rely on the health care system for access to lifesaving treatments. Indeed, despite progress in treating chronic diseases like cancer or multiple sclerosis, not all groups are benefitting from that progress. Discrimination of all kinds continues to contribute to disparate outcomes from chronic diseases and disabilities. Eliminating discrimination and resulting barriers to care is critical for achieving better health outcomes for the millions of patients and consumers Amici represent.

Congress agrees. Congress adopted section 1557 to protect individuals from discrimination and to avoid the costs that follow when such discrimination happens. As *Bostock v. Clayton County* makes clear, those protections extend to LGBTQ people

140 S. Ct. 1731, 1741 (2020). *h* contravenes that precedent and undermines section 1557 by rolling back protections Congress intended for all LGBTQ people. Amici thus agree with the federal government that

guarantees should be restored

## ARGUMENT

### A. LGBTQ People With Chronic Diseases And Disabilities Face Distinct Challenges Accessing Health Care

Nearly everyone will require health care at some point in their lives.

Fed. of Indep. Bus. v. Sebelius, 567 U.S. 519, 547 (2012). That fact is apparent from

looking at even just a subset of the diseases on which Amici focus:

- More than 2 million new cancer cases are expected to be diagnosed in the United States in 2022 while more than 1.8

- Another 3.5 million Americans have arthritis; 36 million have some form of chronic lung disease; and 2 million suffer from autoimmune diseases, including nearly one million with multiple sclerosis (MS).  
Ctrs. for Disease Control & Prevention, Improving the Quality of Life for People With Arthritis, Ctrs. for Disease Control & Prevention, 2017  
National Health Interview Survey (2018) (analysis by ALA

Transgender, Queer (LGBTQ) People and Cancer Fact Sheet (2024).<sup>10</sup> Indeed, the





Multiple studies have also found that lesbian and gay individuals face discrimination in health care, including finding that nearly half (46%) of heterosexual first-year medical students in one report expressed at least some explicit bias against these individuals. Sara E. Burke *Can Contact and Empathy Mitigate Bias Against Gay and Lesbian People Among Heterosexual First Year Medical Students?* Acad Med. (May 2015)<sup>30</sup>. In one survey, 8% of LGBTQ respondents who had visited a health care provider in the past year said that a doctor or health care provider had refused to see them because of their actual or perceived sexual orientation. Shabab A. Mirza & Caitlin Rooney *Discrimination Prevents LGBTQ People from Accessing Health Care*. for Am. Progress (Jan. 18, 2018)<sup>31</sup>. Nine percent said that a doctor or health care provider used harsh or abusive language while treating them. Other studies report similar results, including that 12% of LGBTQ people reported that some health care professionals bla

patients and survivors surveyed are concerned they may face discrimination in a health care setting, and one-fifth are very concerned.<sup>22</sup>

And the reported discrimination was even higher among transgender people: 29% reported that a doctor or health care provider had refused to see them because of their actual or perceived gender identity; 23% had been intentionally referred to by the wrong name or using a pronoun that does not reflect their gender identity; 21% said a doctor or provider had used harsh or abusive language. Mirza & Rooney supra. Discrimination by health care professionals, or lack of awareness of or experience with LGBTQ patient care, can negatively impact health care outcomes for these patients.

There is good reason to expect that LGBTQ people with chronic diseases and disabilities are even more likely to experience discrimination than those reported for LGBTQ people generally. Those with a chronic disease or disability often must interact with more health care providers on a more frequent basis. A 2016 study found that 55.5% of all doctor visits in the United States related to one or more chronic conditions. Rui P. Okeyode, Ctrs. for Disease Control & Prevention, National Ambulatory Medical Care Survey: 2016 National Summary

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<sup>22</sup> <https://www.fightcancer.org/policyresources/survivorviews-discriminationamonglgbtq-cancerpatients>

Table 18 (2016)<sup>23</sup> For example, even long after diagnosis and initial treatment, individuals with a previous cancer diagnosis are more likely to require hospitalizations, ER visits, ambulatory surgeries, and provider visits than those without. They thus spend on average more than twice as long receiving health care in a year compared to individuals without a previous cancer diagnosis. K. Robin Yabroff et al., Annual Patient Time Costs Associated with Medical Care Among Cancer Survivors in the United States, 52:7 MED CAR. 594, 597-99 (2014)<sup>24</sup>

Similarly, individuals living with HIV must receive lifelong treatment from medical providers to suppress the virus, treatment that helps maintain a healthy immune

#### Health & Human Servs. Evidence of HIV

treatment and viral suppression in preventing the sexual transmission of HIV (2022).<sup>25</sup> For an LGBTQ person with one of these chronic conditions, frequent

health care visits come with a risk of suffering discrimination from health care providers Mirza & Ro

B.

identity. *Id.* Because of fears of discrimination from medical personnel, 8% of LGBTQ people in another survey avoided or postponed medical care. *Mirza & Rooney supra* That number increased to 14% for those who had experienced discrimination due to their sexual orientation or gender identity in the past year. In general, LGBTQ adults are more likely than others not to seek health

FDA-approved disease-modifying therapy is the best way to manage the MS disease course, prevent accumulation of disability, and protect the brain from damage due to MS. See Daniel M. Hartung et al., Trends In Coverage for Disease Modifying Therapies in Multiple Sclerosis in Medicare Part D 38 HEALTH AFFAIRS 303 (2019).<sup>27</sup> MS patients face a reduction in survival of between 8 to 12 years if they do not receive proper treatment.<sup>28</sup>

- Timely treatment for epilepsy is also critical to reduce the risk of accident, injury, or sudden unexpected death. C.E. Belgley & T.L. Durgin, The direct costs of epilepsy in the United States: A systemic review of estimates 56 EPILEPSIA 1376-87 (2015).<sup>28</sup>

- Early detection and treatment of HIV is not only essential for people 80% of new HIV infections are the result of someone unaware of their status or not receiving treatment. Zihao Li et al., Vital Signs: HIV Transmission Along the Continuum of Care United States, 2016-18 Morbidity & Mortality Weekly Report 267 (2019).<sup>29</sup>

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C. Preventing Discrimination Is Integral To Improving Health Outcomes, Providing Better Preventive Care, And Increasing Patient Satisfaction With Care

Discrimination in health care also harms LGBTQ people because it deters them from disclosing their sexual orientation or gender identity to health care providers, leading to worse health outcomes for those with chronic diseases and disabilities. Multiple studies report that the threat of discrimination pressures LGBTQ people to hide their identity. Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* 63 (2011); UC Davis Comprehensive Cancer Center, *LGBT Task Force Finds Disparities in Cancer Screening and Care* (2012)<sup>31</sup>; Liz Hamel et al.,



and Intersex Individuals and the Cancer Continuum 101 CANCER 1160, 1161-1162  
(2015).<sup>34</sup> These risks and concerns are well documented.<sup>35</sup> Practitioners have

LGBTQ individuals also have several risk factors for chronic illness, making preventive care and frequent screenings essential. For example, lesbian women have multiple higher risk factors for breast cancer than heterosexual women, such as higher smoking and obesity rates, greater alcohol use, and never having completed a pregnancy; compared to heterosexual men, gaymen have a higher prevalence of human papillomavirus, which is associated with several types of cancer; and a transgender person requires screening for different conditions than an individual who is not transgender.<sup>38</sup> Frequent HIV screening for gay men or transgender persons similarly helps catch and treat HIV early and helps prevent further spread of the disease. HIV Surveillance Report 2014, at 7-8. Yet instead of increased screening by health care providers for these various risks, one survey found that LGBTQ respondents were less likely to receive proper screening: only 32% of female respondents had received recommended mammograms and nearly half of male respondents said their providers did not talk to them about their risks of cancer or how to reduce them. UC Davis, *supra*. And more than half of gay and bisexual men reported that a doctor has never recommended they get tested for HIV, even though

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<sup>38</sup> See Cancer.org, HPV and Cancer, <https://www.cancer.org/healthy/cancer-causes/infectious-agents/hpv/hpv-and-cancer-info.html>; Homma, *supra*, at 18; Howard H. Bailey et al., ASCO Statement: Human Papillomavirus Vaccination for Cancer Prevention, 34 J. OF CLINICAL ONCOLOGY 15 (2016), <https://ascopubs.org/doi/10.1200/JCO.2016.67.2014>.

they account for the overwhelming majority (70%) of new cases. Liz Hamel et al., supra at 16; Ctrs. for Disease Control & Prevention, Diagnoses of HIV Infection supra LGBTQ people also experience higher rates of mental health disorders, rates that are at least partly attributable to the excess stress they experience because of discrimination. Wendy B. Bostwick et al., Discrimination and Mental Health Among Lesbian, Gay and Bisexual Adults in the United States, AM. J. ORTHOPSYCHIATRY 35-45 (2014).<sup>39</sup>

patient satisfaction. Patient satisfaction is an important metric for health care providers that depends on many factors, including effective and clear communication between health care providers and patients, a safe environment of mutual respect that lets patients disclose information, and support by providers that empowers patients to participate in their own treatment, such as by choosing among different treatment options. Jennifer Jabs & Charlie S. Kemer, Sexual Minority

34:1-2 J. PSYCHOSOC ONCOL. 28, 2830

(2016).<sup>40</sup> Patient satisfaction positively correlates with better health outcomes patients who report better satisfaction with their overall experience are more likely

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<sup>39</sup> <https://doi.apa.org/doiLanding?doi=10.1037%2Fh0098851>.

<sup>40</sup> <https://doi.org/10.1080/07347332.2015.1118717>.



people with chronic conditions and disabilities. Provider groups welcome and recommend strong non-discrimination standards, promote culturally responsive training for clinicians as critical to closing gaps in outcomes and patient satisfaction for LGBTQ patients. Kamers, supra. The alternative of telling LGBTQ patients to avoid the harm by finding another provider is not an adequate answer. Many chronic conditions and disabilities require specialized care, and in some regions of the country there may be only one or two providers with the necessary expertise. Both

LGBTQIA+ health in rural America, National Rural Health Policy

Brief (Feb 2022)<sup>43</sup>

percent of LGBTQ people said

community health center or clinic. Mirza & Rooney, supra. Even if an alternative provider exists, finding one can delay critical treatment for chronic conditions or disabilities or deter LGBTQ people from receiving or completing the treatment they need. Supra at pp.13-19.

Given the discrimination that many LGBTQ people face in health care settings, it is critical that the protections Congress adopted in Section 1557 stay in place.

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<sup>43</sup> [https://www.ruralhealth.us/getmedia/6589d461-5f9-494eb0e8749f8b60ff68/2022NRHA-LGBTQ-Policy-PaperFinal\(1\).pdf](https://www.ruralhealth.us/getmedia/6589d461-5f9-494eb0e8749f8b60ff68/2022NRHA-LGBTQ-Policy-PaperFinal(1).pdf)

CONCLUSION

For these reasons, the Court should vacate the preliminary  
injunction and stay order

Dated: November 26, 2024

Respectfully submitted,

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## ADDENDUM

American Cancer Society (ACS) mission is to save lives, celebrate lives, and lead the fight for a world without cancer. American Cancer Society Cancer Action Network is the nonpartisan advocacy affiliate of ACS, making cancer a top priority for policy.

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strives to improve health care access and eliminate disparities for all children, including those who identify as lesbian, gay, bisexual, transgender, or questioning of their sexual or gender identity. Pediatricians know that discrimination in health development, and AAP strongly opposes any attempt to limit access to comprehensive, developmentally appropriate care for adolescents.

The American College of Chest Physicians (CHEST) is a global leader in pulmonary, critical care, and sleep medicine. Established in 1935, CHEST supports more than 21,000 clinicians through education, research, and advocacy. CHEST believes best patient outcomes cannot be achieved without eradication of health disparities that currently impact specific populations, including disproportionate health risks and barriers to health care access faced by LGBTQ+ patients.

Representing more than 90% of board-certified OB/GYNs in the United States, American College of Obstetricians and Gynecologists (ACOG) is the - gynecologists dedicated to access to evidence-based, high-quality, safe, and equitable obstetric and gynecologic care. ACOG maintains the highest standards of clinical practice and continuing education of its members, promotes patient education, and increases awareness among its members and the public of the



ACOG is committed to ensuring access for all people to the full spectrum of evidence-based quality reproductive health care, including abortion care, and is a leader in the effort to confront the maternal mortality crisis in the United States.

The American College of Physicians (ACP) is the largest medical specialty organization and the second largest physician membership society in the United States. ACP members include 161,000 internal medicine physicians, related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge, clinical expertise, and compassion to the preventive, diagnostic, and therapeutic care of adults across the spectrum from health to complex illness. ACP has a longstanding commitment to improving the health of all Americans and opposes any form of discrimination in the delivery of health care services. ACP is dedicated to eliminating disparities in the quality of or access to health care and is committed to working toward fully understanding the unique needs of the LGBTQ community and eliminating health disparities for LGBTQ persons.

The American Geriatrics Society (AGS) is a national-profit organization of geriatrics healthcare professionals dedicated to improving the health, independence, and quality of life of all older Americans. Its more than 6,000 members include geriatricians, geriatrics nurse practitioners and advanced practice

nurses, social workers, family practitioners, physician assistants, pharmacists, and internists, all of whom are pioneers in advanced illness care for older individuals.



CancerCare is the leading national organization providing free, professional support services and information to help people manage the emotional, practical, and financial challenges of cancer.

is a nonprofit, volunteer-fueled organization dedicated to finding cures for Crohn's disease and ulcerative colitis, and improving the quality of life of children and adults affected by these diseases.

The mission of the Epilepsy Foundation is to improve the lives of people affected by epilepsy through education, advocacy, research, and connection.

GLMA: Health Professionals Advancing LGBTQ+ Equality is a national organization committed to ensuring health equity for lesbian, gay, bisexual, transgender, and queer (LGBTQ+) communities and equality for LGBTQ+ health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

Hemophilia Federation of America (HFA) is a community-based, grassroots advocacy organization that assists, educates, and advocates for people with hemophilia, von Willebrand disease, and other rare bleeding disorders. HFA works for patient access to quality and affordable care and coverage priorities that reflect the nature of bleeding disorders as serious, life-long, and expensive health conditions.

o bring together the curiosity, compassion and knowledge of our members to strengthen the field of infectious diseases, advance science and advocate for health equity.

health agency dedicated to fighting blood cancer and ensuring that the more than 1.3million blood cancer patients and survivors in the United States have access to the care they need.

disease, and myeloma, and to improve the quality of life of patients and their families. LLS advances that mission by advocating that blood cancer patients have sustainable access to quality, affordable, coordinated health care, regardless of the source of their coverage.

The Muscular Dystrophy Association (MDA) is the number one voluntary health organization in the United States for people living with muscular dystrophy, ALS, and related neuromuscular diseases. For over 70 years, MDA has led the way in accelerating research, advancing care, and advocating for the support of our families.

independent lives.

The mission of the National LGBTQI+ Cancer Network is to improve the lives of LGBTQI+ individuals on the cancer journey and those at risk through educational, training, and advocacy initiatives.

ADD8

## CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system on November 26, 2024.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 26, 2024

## CERTIFICATE OF COMPLIANCE

This brief complies with the type volume limitation of Fed. R. App. P. 29(a)(5) because the brief contains 92 words excluding the parts of the brief that are required by Fed. R. App. P. 29(a)(5) to be included in the brief.