No. 19-1410

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RICHARD ROE, et al.,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF DEFENSE, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Virginia

BRIEF FOR AMICI CURIAE AIDS UNITED, THE AMERICAN PUBLIC HEALTH ASSOCIATION, DUKE LAW HEALTH JUSTICE CLINIC, SOUTHERN AIDS COALITION, THE NATIONAL ALLIANCE OF STATE & TERRITORIAL AIDS DIRECTORS, AND NMAC IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

BENNETT KLEIN
CHRIS ERCHULL
GLBTQ Legal Advocates & Defenders
18 Tremont Street, Suite 950
Boston, Massachusetts 02108
(617) 426-1350

KEVIN J. MINNICK
ADAM K. LLOYD
300 South Grand Avenue
Suite 3400
Los Angeles, California 90071
(213) 687-5000

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

RULE **PAGE(S)**

OTHER AUTHORITIES

OTHER AUTHORITIES **PAGE(S)**

OTHER AUTHORITIES **PAGE(S)**

OTHER AUTHORITIES **PAGE(S)**

INTRODUCTION[1]

"Few aspects of [disease] give rise to the same level of public fear and misapprehension as contagiousness." *Sch. Bd. of Nassau County v. Arline*, 480 U.S. 273, 284 (1987). This case involves the most stigmatized disease in our nation's history.[2] Infectious, incurable, and once almost always lethal, HIV and AIDS[3] occupy a unique space in our social and cultural consciousness.

HIV-related stigma and discrimination are fueled by deeply ingrained prejudice against the groups disproportionately affected by the epidemic, including gay men, people who inject drugs, and people of color, as well as widespread ignorance about the nature and risk of HIV transmission. Historically, HIV has been characterized as a gay plague and God's punishment of gay sexual conduct. One prominent commentator called for people to be tattooed with the words "HIV-

---

[1] No counsel for a party authored this brief in whole or in part, and no one other than the *amici*, their members, or their counsel contributed money toward the brief's preparation or submission. In addition, all parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a).

[2] "Stigma is an attitude of disapproval and discontent towards an individual or group from other individuals or community and public institutions because of the presence of an attribute perceived as undesirable." White House Office of National AIDS Policy: National HIV/AIDS Strategy for the United States: Updated to 2020 (July 2015) at 41 [hereinafter "White House Policy"].

[3] "HIV stands for human immunodeficiency virus," and is a retrovirus "that can lead to acquired immunodeficiency syndrome or AIDS if not treated." Centers for Disease Control, *About HIV/AIDS* (2019), https://www.cdc.gov/hiv/basics/whatishiv.html.

positive," amidst calls for the quarantine of people with HIV. Doctors, dentists, and other healthcare providers commonly refused to treat patients with HIV based on fears of contagiousness, *see, e.g.*, *Bragdon v. Abbott*, 524 U.S. 624, 652-53 (1998), and discrimination by nursing homes, day care centers, restaurants, gyms, and other public accommodations was rampant. Children with HIV were expelled from school, including most notably Ryan White of Indiana, and a federal court's order mandating one child's admission prompted bitter backlash and even arson. At least 33 states enacted criminal laws targeting people living with HIV during the height of the public's fears of HIV, meting out sentences that often exceed punishments for murder without regard to condom use or the risk of transmission from the act in question.

More recently, medical advances have transformed HIV into a chronic, controlled health condition that no longer leads to debilitation. HIV-related stigma persists nonetheless. Over half of young adults in a 2017 survey responded that they would be uncomfortable having a roommate with HIV or having their food prepared by someone with HIV. The Centers for Disease Control and Prevention ("CDC") recently reported "no progress" in reducing stigma in its 2019 HIV Prevention Progress Report.

In this case, the district court granted the plaintiffs' motion for a preliminary injunction because they had made a strong preliminary showing that the Air

Force's categorical ban on deployment of servicemembers living with HIV to combat zones is "irrational, inconsistent, and at variance with modern science." Slip op. at 54; *id.* at 38 ("[T]here appears to be no reason why asymptomatic HIV is singled out for treatment so different from that given to other chronic conditions."). This disparate treatment should be assessed and analyzed in the context of the nearly four-decade history of deeply ingrained myths, stereotypes, and stigma associated with HIV, an experience that endures and unavoidably permeates our society's response to the epidemic at every level. As the district court observed, "the military would hardly be the first American institution to react to HIV in a manner incommensurate with the true nature of the disease and those affected by it." Slip op. at 46 n.42.

The *amici* submit this brief to bring the Court's attention to the history and manifestations of HIV-related stigma and the stigmatizing impact of the military's HIV policies, which are not limited to the lives and careers of qualified and patriotic servicemembers. The military's HIV policies—including the irrational "deployability" argument advanced here—reflect and perpetuate stigma based on outdated perceptions of prognosis and transmission risks.

As a core social institution of immense prestige and influence, the military's policies have an outsized influence on American society. In the case of HIV-related stigma, the military's imprimatur risks promoting attitudes that harm the

nation's public health efforts to end the HIV epidemic. HIV-related stigma causes people to avoid getting tested, disclosing their status, accessing critical medical care, and adhering to the medications that save lives and prevent HIV transmission. The *amici* urge this Court to affirm the district court's preliminary injunction to ensure fair treatment and to prevent enforcement of an unscientific policy that undermines public health.

IDENTITY AND INTEREST OF *AMICI CURIAE*

AIDS United is dedicated to ending the HIV epidemic in the United States through strategic grant making, capacity building, policy, and advocacy. AIDS United leads the Public Policy Council ("PPC"), the largest and longest-running community-based HIV/AIDS national policy coalition in the country. For the last 35 years, the PPC has led initiatives to shape and inform federal policies that impact people living with and affected by HIV to ensure that the U.S. engages in sound and just policies and programs to respond to the modern HIV epidemic. AIDS United has supported and continues to support community-driven responses to the HIV epidemic around the country that reach the nation's most disproportionately affected populations.

The American Public Health Association ("APHA") champions the health of all people and all communities; strengthens the profession of public health; shares the latest research and information; promotes best practices; and advocates for

public health issues and policies grounded in scientific research. APHA represents more than 23,000 individual members and is the only organization that combines a nearly 150-year perspective, a broad-based member community, and the ability to influence federal policy to improve the public's health.

Duke Law Health Justice Clinic is a clinical program of Duke Law School that has been providing free legal services to low-income people living with HIV since 1996, including in matters relating to disability, access to health care, breach of confidentiality, and discrimination. In addition, the Clinic engages in policy advocacy in North Carolina and recently partnered with advocates to modernize North Carolina's HIV criminal laws so they reflect current science regarding transmission of HIV. On a daily basis, the Clinic encounters the adverse impact of HIV stigma.

Southern AIDS Coalition ("SAC"), founded in 2001, is a coalition of individuals, community-based HIV organizations, local and state health departments, and businesses that works to end the HIV epidemic in the South through: (1) intersectional advocacy, (2) leadership development and education, (3) research and evaluation, and (4) strategic grant making. SAC envisions a better South for people living with and at risk for HIV where every person has access to high quality healthcare, support services, routine screening, and HIV prevention interventions, free of stigma and discrimination.

The National Alliance of State & Territorial AIDS Directors ("NASTAD"), founded in 1992, is a leading nonpartisan nonprofit association that represents public health officials who administer HIV and hepatitis programs in the U.S. and around the world. NASTAD's mission is to end the intersecting epidemics of HIV, viral hepatitis, and related conditions. As a national leader in health department mobilization, NASTAD encourages the use of applied scientific knowledge and community engagement as a method of reducing the incidence of HIV and hepatitis in the U.S., its territories, and around the world. NASTAD's programmatic teams interpret and influence policies, conduct trainings, offer technical assistance, and provide advocacy mobilization for U.S. health departments and ministries of health around the world to improve health outcomes for people living with and at risk for HIV and hepatitis.

NMAC, formerly known as the National Minority AIDS Council, was founded in 1987 and represents over 3,000 community and faith-based organizations nationwide. NMAC engages in education, training, technical assistance, capacity building programs, grassroots organizing, and political advocacy to fight for health equity and racial justice in order to end the HIV epidemic. NMAC's programs strategically aim to normalize the discussion of race within the HIV movement, reduce the number of new HIV diagnoses in communities of color, and retain people of color living with HIV in care.

ARGUMENT

I. HIV-Related Stigma Is Persistent And Harmful

A. HIV-Related Stigma Spans The Last Four Decades Despite Significant Medical Advances

The stigma directed at people living with HIV, and the self-stigmatization that so often follows, is both prevalent and quantifiable. *See, e.g.*, Marc A. Pitasi et al., *Stigmatizing Attitudes Toward People Living with HIV Among Adults and Adolescents in the United States*, 22 HIV & Behavior 3887, 3890 (2018) ("Nearly 1 in 5 adults and 1 in 3 adolescents reported fear of" people living with HIV); Amy R. Baugher et al., *Prevalence of Internalized HIV-Related Stigma Among HIV-Infected Adults in Care, United States, 2011-2013*, 21 AIDS Behavior 2600, 2605 (2017) ("Nearly eight out of ten persons receiving HIV care in the United States agreed with at least one stigma statement. Almost two-thirds said that it was difficult to tell others about their HIV infection.").

These stigmatizing attitudes emanate from a tendency—starting at the very beginning of the AIDS epidemic nearly four decades ago—to associate HIV with perceived immorality and with people from already marginalized communities. According to a 1987 Gallop Poll, 43 percent of Americans viewed AIDS as a form of punishment for moral decline. Kaiser Family Foundation, *HIV/AIDS at 30: A Public Opinion Perspective* (2011). During the six years leading up to that 1987 poll, the majority (as many as 65 percent) of individuals receiving HIV diagnoses

were gay and bisexual men. *See* James W. Curran et al., *Epidemiology of HIV Infection and AIDS in the United States*, 239 Science No. 4840 610, 610 (1988). HIV has also disproportionately impacted people of color, as well as people who inject drugs and sex workers, causing the racism and stigma directed at those communities and behaviors to exacerbate the underlying stigma for people living with HIV. *See* White House Policy at 41 ("HIV-related stigma can be confounded with or made more complicated by stigma related to substance use, mental health, sexual orientation, gender identity, race/ethnicity, or sex work.").

As a result, people from historically marginalized communities, including sexual and racial minorities, have long reported experiencing HIV-related stigma at higher levels than others. Researchers working for the CDC have shown through survey data that "[o]verall, women and transgender persons had higher stigma scores than men and, compared to non-Hispanic whites, all other racial/ethnic groups had higher stigma scores." Baugher, *supra*, at 2605. The authors of the People Living With HIV Stigma Index have similarly observed that "gay men and other men who have sex with other men (MSM), transgender individuals, sex workers, and people who use drugs (PWUD)—often referred to as key populations—are situated at the intersection of HIV-related stigma and prejudice against their identities, occupations, or behaviours, often exacerbating their experiences of stigma and discrimination." Barbara A. Friedland et al., *Measuring*

Intersecting Stigma Among Key Populations Living With HIV; Implementing the People Living with HIV Stigma Index 2.0, 21 J. of Int'l AIDS Soc. 115, 115 (2018).

As the district court correctly found, "[b]ecause of advances in medicine and science, HIV is no longer a progressive, terminal illness." Slip op. at 38. Citing a Department of Defense study published in a peer-reviewed journal, the district court observed that "HIV 'has gone from an untreatable disease marked by inexorable clinical progression though extreme debility to death to a treatable disease'—one 'that is compatible with active service throughout a full career in the U.S. military.'" *Id.* (quoting John F. Brundage et al., *Durations of Military Service After Diagnoses of HIV-1 Infections Among Active Component Members of the U.S. Armed Forces, 1990-2013*, 22 Med. Surveillance Monthly Rep. 9, 12 (2015)).

Despite the medical advances identified by the district court, HIV-related stigma remains prevalent today, as several sources and recent events confirm. The CDC's most recent HIV Prevention Progress Report uses "Reduce HIV stigma" as a performance indicator for HIV prevention, but finds "No progress" on that metric. Centers for Disease Control, *HIV Prevention Progress Report* 13 (2019), *available at* https://www.cdc.gov/hiv/pdf/policies/progressreports/cdc-hiv-preventionprogressreport.pdf. In 2017, the Kaiser Family Foundation surveyed 1,794 people under 30 about their understanding of HIV. Kaiser Family Foundation, *National Survey of Young Adults on HIV/AIDS* 1 (2017) [hereinafter

"Kaiser 2017 Survey"], *available at* https://www.kff.org/hivaids/report/national-survey-of-young-adults-on-hiv-aids/. Stigma remains evident. "Half or more say they would be uncomfortable having a roommate with HIV (51%) or having their food prepared by someone with HIV (58%)." *Id.* at 2. "Three quarters (73%) respond that [they] are 'very uncomfortable' having a sexual partner with HIV, another 18 percent say they would be 'somewhat uncomfortable.'" *Id.*; *see also* Kaiser Family Foundation, *Health Tracking Poll March 2019* 15 (2019), *available at* https://www.kff.org/hivaids/poll-finding/kff-health-tracking-poll-march-2019/ [hereinafter "Kaiser 2019 Survey"] (finding that only 52 percent of respondents reported that they would be "very comfortable" working with someone living with HIV).

These recent results are consistent with the social science literature reporting HIV-related stigma throughout the 2010s. *See, e.g.*, Gregory M. Herek et al., *Stigma and Psychological Distress in People With HIV/AIDS*, Basic & Applied Social Psychology, 35, 41, 50 (2013) ("The present data clearly show that [people living with HIV] continue to experience stigma, even in the socially tolerant San Francisco Bay Area."); Baugher, *supra*, at 2604 ("Overall, 79.1% (95% CI 77.4–80.7) of HIV-infected adults receiving medical care endorsed at least one stigma statement."); Pitasi, *supra*, at 3890 ("Our findings suggest that stigmatizing

attitudes toward [people living with HIV] persist in the United States despite reported declines in the 1990s.").

Examples of patent bias and discrimination resulting from stigma continue. For instance, a Los Angeles man was recently forced to sue just to get a haircut from his usual barber, who refused to serve him upon learning of his diagnosis. Lambda Legal, *California District Court Grants Judgment to HIV-Positive Man Denied Haircut at Los Angeles Barbershop* (June 4, 2019), https://www.lambdalegal.org/news/ca_20190604_briteramos-judgment-granted. In 2011, the Milton Hershey School in Pennsylvania denied admission to a 14-year-old boy after learning he was living with HIV, showing little progress in ending the same stigma Ryan White faced over 20 years before. AIDS Law Project, *Milton Hershey School to Pay $700,000 to End Complaint Over HIV Discrimination* (June 1, 2012), http://www.aidslawpa.org/aids-law-project-milton-hershey-school-reach-settlement/.

Several recent judicial decisions similarly acknowledge that HIV-related stigma remains prevalent despite treatment advances. For instance, in *Henderson v. Thomas*, 913 F. Supp. 2d 1267 (M.D. Ala. 2012), the Court found that a prison's policy of categorically segregating prisoners living with HIV violated the Americans With Disabilities Act. The Court observed:

> While in 2012, outcomes are better, treatment simpler, and prevention possible, social perceptions of HIV have yet to catch up with the

> modern realities of the illness. Undoubtedly exacerbated by the terror that accompanied the disease in its early history, a relentless stigma adheres to HIV. This stigma has at least two plausible sources. First, HIV is most frequently found among historically marginalized populations: particularly, gay men.… Because HIV is also more common among minorities and the poor, the stigma attached to HIV deeply implicates race and class prejudice, as well as homophobia.
>
> A second source of stigma stems from the means of HIV transmission.… People make judgments just by the virtue of HIV that you must have done ... something dirty or something awful to have acquired HIV. Being gay. Being a prostitute. Being sexually promiscuous.

Id. at 1278 (citations omitted); *see also Doe v. BlueCross BlueShield of Tennessee, Inc.*, 2018 WL 3625012, at *8 (W.D. Tenn. July 30, 2018) ("The Court also recognizes that despite advances in education and medicine, being HIV/AIDS positive still carries a stigma.").

For similar reasons, courts often allow litigants living with HIV to proceed pseudonymously, as is the case here. *See, e.g.*, *Doe v. Griffon Mgmt.*, 2014 WL 7040390 (E.D. La. 2014); *Jones v. Oss Orthopaedic Hosp.*, 2016 WL 3683422 (M.D. Pa. 2016); *ABC v. XYZ Corp.*, 2019 WL 1292503 (S.D.N.Y. 2019). And, due in part to ongoing stigma, the involuntary disclosure of a person's HIV status has been held to constitute an actionable violation of privacy in the prison context despite low transmission risks. *Doe v. Beard*, 63 F. Supp. 3d 1159, 1164 (C.D. Cal. 2014) (finding a constitutionally significant danger in such disclosures insofar as "knowledge of a prisoner's HIV-positive status can be dangerous for the

prisoner, because his fellow prisoners may harbor irrational fears about transmission, however unlikely"). Notwithstanding the advances in treatment correctly acknowledged by the district court, HIV-related stigma persists.

B. Stigma's Real World Harms

These stigmatizing views enact real world harms. Public attitudes toward people living with HIV have for decades manifested themselves in discrimination and criminalization. For instance, prominent cultural figures have called for quarantines and even tattooing the words "HIV-positive" on those living with HIV. *See* Gregory M. Herek & Eric K. Glunt, *An Epidemic of Stigma: Public Reactions to AIDS*, 43 Am. Psych. No. 11 886, 887 (1988). Children living with HIV have been systematically ostracized from school and community. Families who pressed for the rights of their children with HIV to attend school experienced violent community backlash and even arson. *See* Mike Thomas, *Arson Cause of Fire at Rays – Boys Start School Today*, Orlando Sentinel (Sept. 23, 1987), https://www.orlandosentinel.com/new/os-xpm-1987-09-23-0150050182-story.html.

This discrimination has proliferated even in the very facilities that people living with HIV depend on for medical care. Ronald A. Brooks et al., *Preventing HIV Among Latino and African American Gay and Bisexual Men in a Context of HIV-Related Stigma, Discrimination, and Homophobia: Perspectives of Providers*,

19 AIDS Patient Care & STDs No. 11 737, 738 (2005) (referencing 2003 report of American Civil Liberties Union survey finding that HIV stigma resulted in denials of medical treatment, privacy violations, and refused admittance to nursing homes).

In terms of public policy, this history of stigma is exemplified perhaps most vividly by state laws that criminalize HIV status. Staff from the CDC and Department of Justice have identified at least 33 states with criminal laws targeting people with HIV without regard to accurate information about HIV transmission and prevention. J. Stan Lehman et al., *Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States*, 18 AIDS & Behavior No. 6 997, 997 (2014).

The sociologist, criminologist, and public health educator Trevor Hoppe (who filed an expert report in the district court) has demonstrated through case studies that such criminal laws result in harsh prison sentences without any regard for actual HIV transmission risk. In one case, a man who bit a health care professional while in the throes of a suicide attempt was convicted and sentenced to three years under Tennessee's HIV exposure law, despite the fact that biting has never been shown to effectively transmit HIV. Trevor Hoppe, *Punishing Disease: HIV and the Criminalization of Sickness* 150-51 (2018). In 2012, an Iowa man with an undetectable viral load was sentenced to *25 years* in prison for a single

sexual encounter even though he used a condom and there was no transmission of HIV. *See* Saundra Young, *Imprisoned Over HIV: One Man's Story*, CNN (Nov. 9, 2012), https://www.cnn.com/2012/08/02/health/criminalizing-hiv/index.html.

In another recent case, a jury recommended the maximum sentence of *over 60 years* for a Missouri man convicted of failing to disclose his HIV status before engaging in consensual sex with other men, despite no genetic evidence that the man actually transmitted HIV to any of his partners. Emily S. Rueb, *He Emerged From Prison a Potent Symbol of H.I.V. Criminalization*, N.Y. Times (July 14, 2019), https://www.nytimes.com/2019/07/14/us/michael-johnson-hiv-prison.html. After receiving a 30-year sentence, the man was released on parole earlier this month. The prosecutor's office remarked that "[w]e're still operating under laws that were based on views that are outdated and are proven inaccurate by science." *Id.*

In sum, HIV stigma has left in its wake an ongoing, persistent, multi-decade history of fear and misperception. No institution, including the military, can be entirely unaffected by attitudes that have permeated our social consciousness so deeply. The Court should be mindful of this history, which illuminates the district court's finding that the military has relied on only "conclusory assertions" in response to "persuasive[]" evidence that its policies are "inconsistent with the state of science and medicine." Slip op. at 42.

II. Myths, Fears, And Stereotypes About HIV Transmission Deepen And Worsen HIV-Related Stigma

A. The Public Is Often Misinformed About Infection Risks

The general public has a profound difficulty accurately assessing the risk of infection from contagious diseases. As the Supreme Court has recognized, "[t]he isolation of the chronically ill and of those perceived to be ill or contagious appears across cultures and centuries, as does the development of complex and often pernicious mythologies about the nature, cause, and transmission of illness." *Sch. Bd. of Nassau County*, 480 U.S. at 284 n.12. Neighboring circuit courts have similarly noted that "the irrational fear" a person may be contagious still drives discrimination, *see Adams v. Rice*, 531 F.3d 936, 954 (D.C. Cir. 2008), which remains especially acute when it comes to HIV. *See, e.g.*, *Doe v. Delie*, 257 F.3d 309, 315 (3d Cir. 2001) (noting that HIV still carries with it "stigma" and "potential for harassment").

Indeed, mythologies about transmission risks are especially pronounced when it comes to HIV. Early studies showed that "a disturbingly large proportion of respondents believed that HIV can be transmitted through various kinds of casual contact," including 45.4 percent of respondents who believed that transmission is "likely" if a person with HIV sneezes or coughs on someone else. Gregory M. Herek & John P. Capitanio, *Public Reactions to AIDS in the United States: A Second Decade of Stigma*, 83 Am. J. of Pub. Health 574, 574 (1993).

Fully 46.2 percent of respondents believed that transmission is "likely" whenever two *HIV negative* gay men have sex without using a condom, suggesting an absurd (but no less pernicious) belief that gay people can spontaneously generate the virus. *Id.* at 575, Table 2.

These views unfortunately survived the 1980s and 1990s. For example, the 2017 Kaiser Family Foundation survey discussed above found that "[m]ore than a third incorrectly believe HIV can be spread through everyday items, such as plates and glasses (38%) or toilets (38%)." Kaiser 2017 Survey at 2. And, "[m]ajorities are misinformed in thinking HIV can be transmitted by spitting (54%) or kissing (58%)." *Id.*

But HIV is not as easily transmitted as many people believe. The CDC estimates that the transmission rate for even the riskiest sexual activity with an untreated person living with HIV is only 1.38 percent. Centers for Disease Control, *HIV Risk Behaviors* (Dec. 4, 2015), https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html [hereinafter "*CDC Risk Behaviors*"]. And, as the district court found, when an individual's viral load has been effectively suppressed by antiretroviral treatment, the risk of transmitting

HIV to others is essentially reduced to zero. Slip op. at 11; Brief of Appellees at 7.[4]

Americans remain generally unaware that antiretroviral treatment so greatly reduces transmission risks, however. A March 2019 study found that only 27 percent of Americans knew that antiretroviral medications were very effective at "improving the health of people with HIV," and an even smaller percentage—15 percent—knew that antiretroviral medications were very effective at "preventing the spread of HIV to sexual partners." Kaiser 2019 Survey at 13. The same survey found that six in ten Americans were unaware that a person living with HIV's viral load could become "undetectable" through treatment or were unsure of what the term meant. *Id.* at 14.[5]

---

[4] The CDC has repeatedly endorsed this conclusion, and publicly stated earlier this year that "[p]eople with HIV who take HIV medicine as prescribed and get and keep an undetectable viral load (or stay virally suppressed) have *effectively no risk* of transmitting HIV to their HIV-negative sexual partners." Centers for Disease Control, *HIV Treatment as Prevention* (July 22, 2019), https://www.cdc.gov/hiv/risk/art/.

[5] These numbers have not significantly improved, insofar as a 2017 survey of young adults in the United States made similar findings. There, researchers found that "[m]ost young adults do not know being on consistent treatment also prevents the spread of HIV to sexual partners (23% say 'not at all effective,' and another 29% say 'not too effective')" and "[j]ust one in ten (11%) know modern treatments have been shown to be 'very effective'—another 36 percent say 'somewhat effective'—in preventing the spread of HIV." Kaiser 2017 Survey at 5. And, 57 percent said that "they have never heard" of the term signifying that HIV could become "undetectable." *Id.*

Unfortunately, the clinical evidence about transmission risks is "radically at odds with the status quo." HIV Prevention Access Campaign, *About*, https://www.preventionaccess.org/about (last visited July 24, 2019). "After thirty-five years of deeply ingrained fear of HIV and attachment to the established dogma about how to prevent it, it is difficult to accept that people living with HIV can be no risk to their intimate partners." *Id.*

HIV transmission through vectors other than intimate contact, such as accidental contact with bodily fluids, "is technically possible but unlikely and not well documented." *CDC Risk Behaviors.* For example, regarding the occupational transmission risk of HIV to healthcare workers, the CDC estimates that the "[r]isk of exposure due to splashes with body fluids is thought to be near zero even if the fluids are overtly bloody," and "[f]luid splashes to intact skin or mucous membranes are considered to be extremely low risk of HIV transmission, whether or not blood is involved." Centers for Disease Control, *Occupational HIV Transmission and Prevention among Health Care Workers* (May 16, 2019), https://www.cdc.gov/hiv/workplace/healthcareworkers.html.

In light of these findings, the military's attempt to justify the enjoined policies by pointing to transmission risks and inadvertent contact with blood echoes the general public's tendency to mythologize about illness and contagion. This Court's review of those stated justifications should account for that tendency.

B. Mythologies About HIV Worsen HIV-Related Stigma

As the government's primary public health authority has declared, misconceptions about HIV directly cause and exacerbate stigma. In 2018, the CDC stated that "HIV stigma and discrimination" is "rooted in a fear of HIV" based on "outdated beliefs" and "misconceptions about how HIV is transmitted and what it means to live with HIV today." Centers for Disease Control, *Facts about HIV Stigma* (July 31, 2018), https://www.cdc.gov/actagainstaids/campaigns/lsht/hiv-stigma-facts/index.html. Unfortunately for those living with HIV, as is still true today, "[l]arge segments of the public remain uneducated about HIV and how it is transmitted, which promotes fear and antipathy" that can "often translate into biased and discriminatory actions." Katherine R. Waite et al., *Literacy, Social Stigma, and HIV Medication Adherence*, 23 J. Gen. Internal Med. 1367, 1367 (2008).

In sum, HIV-related stigma remains entrenched because large segments of the population misunderstand how the disease is transmitted, drastically overestimate transmission risks, and remain unaware of recent advancements in medical treatment that have rendered HIV a chronic but manageable illness and nearly eliminated the likelihood of transmission to others. Unfortunately, these persistent myths, fears, and stereotypes seem to be animating the military's policy

at issue here, deepening the HIV-related stigma already faced by those living with HIV.

III. The Military's Policy At Issue Here Perpetuates Stigma And Undermines Public Health

A. The Military Is A Critical Institution With Profound Influence

The military is among our society's core civic institutions. Among other prominent cultural roles, the military is the world's largest employer, with 2.15 million servicemembers and over 730,000 civilians working at the Department of Defense. U.S. Dep't of Defense, *Our Story*, https://www.defense.gov/Our-Story/ (last visited July 24, 2019); World Economic Forum, *Who is the world's biggest employer? The answer might not be what you expect* (June 17, 2015), https://www.weforum.org/agenda/2015/06/worlds-10-biggest-employers/?link=mktw. The military also provides significant access to education and job training "including . . . valuable nontechnical skills, such as leadership, oral communication, decisionmaking, persistence, and attention to detail," such that servicemembers leaving the military have much to offer in civilian life. Chaitra M. Hardison et al., *Methodology for Translating Enlisted Veterans' Nontechnical Skills into Civilian Employers' Terms*, RAND Corp. 1 (2017), *available at* https://www.rand.org/pubs/research_reports/RR1919.html. Thus, American society's regard for our armed forces—and for those who have served

them honorably—imbues the military with especially strong power over our culture.

As the historian Beth Bailey argues, the military is a "critical institution" for several reasons. Beth Bailey, *Introduction*, *Integrating the US Military: Race, Gender, and Sexual Orientation Since World War II* 3 (Douglas Walter Bristol, Jr., & Heather Marie Stur, eds.) (2017). "Millions of Americans spen[d] time in the military and [are] subject to its regulations, to its policies, and to its training." *Id.* at 4. They inevitably carry "their military experiences and the understandings born of them back to all corners of the nation." *Id.* Military service also "remains closely linked to our definitions of citizenship." *Id.*

Perhaps most importantly, military policies are fundamentally important to broader questions of public policy because of "the public nature of discussions about them and the transparent and official nature of policies adopted" by the military. *Id.* The public therefore has a strong interest in military policies that are most likely to touch on cultural fears and biases, and everyone has a stake in ensuring the military treats its personnel fairly. *See United States v. Alvarez*, 567 U.S. 709, 724 (2012) ("[P]ublic recognition of valor and noble sacrifice by men and women in uniform" continues to "reinforce[] the pride and national resolve that the military relies upon to fulfill its mission."); Jonathan Turley, *The Military Pocket Republic*, 97 N.W. U. L. Rev. 1, 133 (2002) (noting that "Thomas Jefferson

recognized that the military system was symbolic not only of our strength, but our values"). As other courts have recognized, "the public has a strong interest in having a military that conducts itself fairly and according to its stated regulations and policies." *E.g.*, *Cooney v. Dalton*, 877 F. Supp. 508, 515 (D. Haw. 1995). "If the military misapplies its own rules and unfairly discharges and stigmatizes a serviceman without giving him the constitutional consideration he is due, this erodes trust in the military." *Id.*

Beyond the military's public role as a reflection of cultural values, the public has a further stake in ensuring the military treats servicemembers fairly because disrespect of certain groups within the military causes disrespect of those same groups in the general culture. Indeed, when reviewing the constitutionality of the now defunct don't-ask-don't-tell policy, four judges of this Court observed that "[p]ermitting disrespect of constitutional rights to flourish within the military would inevitably cause disrespect of them without it." *Thomasson v. Perry*, 80 F.3d 915, 949-50 (4th Cir. 1996) (Hall, J., dissenting, joined by Ervin, Michael, and Motz, JJ.).

Importantly, the military's strong influence over the culture does not depend on the military's motives. Even differential treatment once considered benign or protective of a minority group has a ripple effect. For instance, the exclusion of women from combat roles was once popularly understood as chivalrous, not

discriminatory. But, these paternalistic "judgments have attended, and impeded, women's progress toward full citizenship stature throughout our Nation's history," even if not maliciously conceived. *United States v. Virginia*, 518 U.S. 515, 542 n.12, 546-47 (1996) (holding that the Virginia Military Institute's exclusion of women, in part to protect them from VMI's "adversative model" of boot-camp education, violates equal protection and that the state's interest in creating "citizen-soldiers" "is not substantially advanced by women's categorical exclusion, in total disregard of their individual merit"); *see also* Pamela S. Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, Stanford Law School, Public Law Research Paper No. 45, at 9 (Dec. 2002) ("During the nineteenth century, opponents of women's suffrage linked their position to women's lack of military service.").

Here, too, one could advance a superficially appealing argument that protecting people living with an illness from the rigors and challenges of deployment is a benign goal, lacking the animus often associated with discrimination. But the ill effects of discrimination are not lessened by avowedly kind motives, particularly when the discrimination bears the military's weighty imprimatur. Just as excluding women from service contributed to disenfranchisement on the basis of sex, *id.*, so too will the military's unscientific treatment of servicemembers living with HIV reverberate into the greater culture.

People living with HIV, even those with an undetectable viral load who experience no significant symptoms, would remain subject to discharge.

"Dismissal [from the military] is one thing; dismissal with stigma, as here, is quite another. Dismissal with stigma is a severe penalty." *Beard v. Stahr*, 370 U.S. 41, 43 (1962) (Douglas, J., dissenting). Such exclusion inevitably diminishes the excluded servicemembers in the eyes of the society. Unfortunately, when it comes to HIV, that discrimination contributes also to stigma that has a significant public health consequence.

B. The Policy At Issue Undermines Public Health

The impact of a military policy that reflects obsolete scientific information about the transmission and medical management of HIV reaches far beyond the denial of equal treatment for Americans dedicated to serving their country. The policy at issue in this case perpetuates and brings the weight of military prestige and governmental authority to the very myths, fears, and stereotypes about HIV that our government has, in fact, declared must be eliminated to end the epidemic.

Public health authorities have always understood that stigma and discrimination undermine the nation's efforts to limit the spread of the HIV. *See, e.g.*, Presidential Comm'n on the Human Immunodeficiency Virus Epidemic, *Report of The Presidential Commission on the Human Immunodeficiency Virus Epidemic* 128 (June 24, 1988), *available at*

https://files.eric.ed.gov/fulltext/ED299531.pdf ("As long as discrimination occurs … individuals who are infected with HIV will be reluctant to come forward for testing, counseling and care.… [which] will undermine our efforts to contain the HIV epidemic."). This imperative is even more critical today. We now have the tools to end the epidemic, but approximately 50,000 people become newly infected each year. Centers for Disease Control, *Today's HIV/AIDS Epidemic* (Aug. 2016), *available at* https://www.cdc.gov/nchhstp/newsroom/docs/factsheets/todaysepidemic-508.pdf.

Unfortunately, today's call to eradicate stigma echoes the same warnings issued decades earlier. According to the White House Policy, "[i]t is imperative that all levels of government … work to combat stigma and discrimination in order to reduce new infections and improve health outcomes for people living with HIV." White House Policy at 6, 41. The federal government continues to stress that "HIV-related stigma and discrimination prevents individuals from learning their HIV status, disclosing their status even to family members and sexual partners, and/or accessing medical care and treatment, weakening their ability to protect themselves from getting or transmitting HIV, and to stay healthy." U.S. Dep't of Health and Human Servs., *Activities Combating HIV Stigma and Discrimination*¸ HIV.gov (May 20, 2017), https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-

discrimination; *see also* Boris D. Lushinak [Acting Surgeon General], *C. Everett Koop and the National HIV/AIDS Strategy*, 129 Pub. Health Reports, Mar.-Apr. 2014, at 112, 113 ("[R]educing the stigma and discrimination against people with HIV is critical; people will not come forward for testing and treatment if they fear the adverse consequences of discrimination."); Pitasi, *supra*, at 3890 (noting the persistence of stigmatizing attitudes and concluding that "the continued monitoring of public attitudes is needed to advance HIV prevention goals"); Jelani C. Kerr et al., *HIV-Related Stigma Among African-American Youth in the Northeast and Southeast US*, 18 AIDS Behav. 1063, 1066 (2014) ("Stigma reduction holds promise for . . . enhancing long-term prevention benefits.").

Numerous research studies and literature reviews confirm that stigma interferes with the implementation of proven strategies to prevent HIV, including recent evidence that medication adherence in people with HIV and the use of antiretroviral medications as prophylaxis by HIV-negative individuals stop the spread of HIV. *See, e.g.*, Angelica Geter et al., *HIV-Related Stigma by Healthcare Providers in the United States: A Systematic Review*, 32 AIDS Patient Care 418, 418 (2018) ("The experience of HIV-related stigma has been associated with decreased HIV testing, condom use, PrEP uptake, medication adherence, linkage to care, and retention in care."); Baugher, *supra*, at 2601 ("Internalized stigma has been linked to poor antiretroviral [ART] adherence, [and] avoiding disclosure of

HIV status."); Whitney S. Rice et al., *Association Between Internalized HIV-Related Stigma and HIV Care Visit Adherence*, 76 J. Acquired Immunodeficiency Syndrome 482, 485 (2017) ("[I]nternalized HIV-related stigma is significantly associated with lower HIV care visit."); Nicole M. Overstreet et al., *Internalized stigma and HIV status disclosure among HIV-positive black men who have sex with men*, 25 AIDS Care 466, 466 (2013) (greater internalized stigma was associated with less HIV status disclosure to sexual partners). Notably, even though the use of antiretroviral medications during pregnancy and delivery drastically reduce the risk of perinatal HIV transmission, stigma still prevents pregnant women from accessing care. *See* Kavita Shah Arora & Barbara Wilkinson, *Eliminating Perinatal HIV Transmission in the United States: The Impact of Stigma*, 21 Maternity Child Health J. 393, 393 (2017) ("[A]ntiretroviral therapy during labor and delivery … make total elimination of [mother-to-child transmission] of HIV possible … [e]radication of mother-to-child transmission requires elimination of stigma towards HIV-positive pregnant women"). Stigma even contributes to antigay violence. *See* Wilson Vincent et al., *The Association Between AIDS-Related Stigma and Aggression Toward Gay Men and Lesbians*, 42 Aggressive Behav. 542, 542 (2016) (public perception that gay men spread HIV is an "understood factor in antigay aggression" and finding that "AIDS-related stigma was associated with aggression toward gay men and lesbians").

Another study of stigma among African-American youth concluded that "[r]acial minorities are priority populations to reduce HIV/AIDS disparities in the United States," but that "African-American [people living with HIV] experience greater levels of stigma … [which] increases the likelihood of engaging in HIV risk behavior and inhibiting treatment engagement." *See Kerr*, *supra*, at 1063, 1065. The American Journal of Public Health recently noted that while "[h]eterosexual Black women accounted for 61% of new HIV diagnoses among U.S. women . . . stigma resulting from multiple co-occurring devalued social identities pushes many to keep their statuses hidden, places Black women at increased risk for HIV infection, [and] … can compound the negative effect of stigma on medication adherence." Deepa Rao et al., *HIV Stigma Among Black Women in the United States: Intersectionality, Support, and Resilience*, 108 Am. J. Pub. Health 446, 446-47 (2018).

The elimination of HIV stigma has been an intractable challenge. The military's policy at issue in this case affirms stigma and social misunderstanding of HIV and impairs public health efforts to end the epidemic.

CONCLUSION

In reviewing the district court's injunction, the Court should take account of the four-decade history of HIV-related stigma and its consequences and affirm.

Dated: July 25, 2019

Respectfully submitted,

/s/ Bennett Klein
BENNETT KLEIN
CHRIS ERCHULL
GLBTQ Legal Advocates & Defenders
18 Tremont Street, Suite 950
Boston, MA 02108
(617) 426-1350

/s/ Kevin J. Minnick
KEVIN J. MINNICK
ADAM K. LLOYD
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071
(213) 687-5000

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Effective 12/01/2016

No. 19-1410 **Caption:** Richard Roe v. United States Department of Defense, et

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

Type-Volume Limit for Briefs: Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 13,000 words or 1,300 lines. Appellee's Opening/Response Brief may not exceed 15,300 words or 1,500 lines. A Reply or Amicus Brief may not exceed 6,500 words or 650 lines. Amicus Brief in support of an Opening/Response Brief may not exceed 7,650 words. Amicus Brief filed during consideration of petition for rehearing may not exceed 2,600 words. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include headings, footnotes, and quotes in the count. Line count is used only with monospaced type. See Fed. R. App. P. 28.1(e), 29(a)(5), 32(a)(7)(B) & 32(f).

Type-Volume Limit for Other Documents if Produced Using a Computer: Petition for permission to appeal and a motion or response thereto may not exceed 5,200 words. Reply to a motion may not exceed 2,600 words. Petition for writ of mandamus or prohibition or other extraordinary writ may not exceed 7,800 words. Petition for rehearing or rehearing en banc may not exceed 3,900 words. Fed. R. App. P. 5(c)(1), 21(d), 27(d)(2), 35(b)(2) & 40(b)(1).

Typeface and Type Style Requirements: A proportionally spaced typeface (such as Times New Roman) must include serifs and must be 14-point or larger. A monospaced typeface (such as Courier New) must be 12-point or larger (at least 10½ characters per inch). Fed. R. App. P. 32(a)(5), 32(a)(6).

This brief or other document complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. R. 32(f) (cover page, disclosure statement, table of contents, table of citations, statement regarding oral argument, signature block, certificates of counsel, addendum, attachments):

☑ this brief or other document contains 6,433 [*state number of*] words

☐ this brief uses monospaced type and contains _____ [*state number of*] lines

This brief or other document complies with the typeface and type style requirements because:

☑ this brief or other document has been prepared in a proportionally spaced typeface using
Microsoft Word [*identify word processing program*] in
14-point Times New Roman font [*identify font size and type style*]; **or**

☐ this brief or other document has been prepared in a monospaced typeface using
_____ [*identify word processing program*] in
_____ [*identify font size and type style*].

(s) Kevin J. Minnick

Party Name Amici Curiae AIDS United, et al.

Dated: July 25 2019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-1410 Caption: Richard Roe, et al. v. United States Department of Defense, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Duke University School of Law Health Justice Clinic
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: Kevin J. Minnick Date: July 25 2019

Counsel for: Amicus Duke Law Health Justice

CERTIFICATE OF SERVICE

****

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick (signature) July 25 2019 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-1410 Caption: Richard Roe, et al. v. United States Department of Defense, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

NASTAD (National Alliance of State & Territorial AIDS Directors)
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Kevin J. Minnick Date: July 25 2019

Counsel for: Amicus NASTAD

CERTIFICATE OF SERVICE

****

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick (signature) July 25 2019 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-1410 Caption: Richard Roe, et al. v. United States Department of Defense, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

AIDS United
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Kevin J. Minnick Date: July 25 2019

Counsel for: Amicus AIDS United

CERTIFICATE OF SERVICE

****

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick (signature) July 25 2019 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-1410 Caption: Richard Roe, et al. v. United States Department of Defense, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Southern AIDS Coalition
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Kevin J. Minnick Date: July 25 2019

Counsel for: Amicus Southern AIDS Coalition

CERTIFICATE OF SERVICE

****

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick
(signature)

July 25 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-1410 Caption: Richard Roe, et al. v. United States Department of Defense, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

American Public Health Association
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Kevin J. Minnick Date: July 25 2019

Counsel for: Amicus American Public Health Assn

CERTIFICATE OF SERVICE

****

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick
(signature)

July 25 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-1410 Caption: Richard Roe, et al. v. United States Department of Defense, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

NMAC
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: Kevin J. Minnick Date: July 25 2019

Counsel for: Amicus NMAC

CERTIFICATE OF SERVICE

****

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick (signature) July 25 2019 (date)

CERTIFICATE OF SERVICE

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick
Signature

July 25 2019
Date

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at Register for eFiling.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 19-1410 as

☐ Retained ☐ Court-appointed(CJA) ☐ Court-assigned(non-CJA) ☐ Federal Defender ☑ Pro Bono ☐ Government

COUNSEL FOR: See attached list of Amici Curaie

_____ as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

/s/ Kevin J. Minnick
(signature)

Please compare your information below with your information on PACER. Any updates or changes must be made through PACER's Manage My Account.

Kevin J. Minnick
Name (printed or typed)

213-687-5272
Voice Phone

Firm Name (if applicable)

213-621-5272
Fax Number

300 South Grand Avenue, 34th Floor

Los Angeles, California 90071
Address

kevin.minnick@probonolaw.com
E-mail address (print or type)

CERTIFICATE OF SERVICE

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick
Signature

July 25 2019
Date

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at Register for eFiling.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 19-1410 as

☐ Retained ☐ Court-appointed(CJA) ☐ Court-assigned(non-CJA) ☐ Federal Defender ☑ Pro Bono ☐ Government

COUNSEL FOR: See attached list of Amici Curaie

_____ as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

/s/ Adam K. Lloyd
(signature)

Please compare your information below with your information on PACER. Any updates or changes must be made through PACER's Manage My Account.

Adam K. Lloyd
Name (printed or typed)

213-687-5382
Voice Phone

Firm Name (if applicable)

213-621-5382
Fax Number

300 South Grand Avenue, 34th Floor

Los Angeles, California 90071
Address

adam.lloyd@probonolaw.com
E-mail address (print or type)

CERTIFICATE OF SERVICE

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick
Signature

July 25 2019
Date

ATTACHMENT - LIST OF AMICI CURIAE

AIDS UNITED
THE AMERICAN PUBLIC HEALTH ASSOCIATION
DUKE LAW HEALTH JUSTICE CLINIC
SOUTHERN AIDS COALITION
THE NATIONAL ALLIANCE OF STATE & TERRITORIAL AIDS DIRECTORS
NMAC

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at Register for eFiling.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 19-1410 as

☐ Retained ☐ Court-appointed(CJA) ☐ Court-assigned(non-CJA) ☐ Federal Defender ☑ Pro Bono ☐ Government

COUNSEL FOR: See attached list of Amici Curaie

_____ as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

/s/ Bennett Klein
(signature)

Please compare your information below with your information on PACER. Any updates or changes must be made through PACER's Manage My Account.

Bennett Klein
Name (printed or typed)

617 426-1350
Voice Phone

GLBTQ Legal Advocates & Defenders
Firm Name (if applicable)

Fax Number

18 Tremont Street, Suite 950

Boston, Massachusetts 02108
Address

bklein@glad.org
E-mail address (print or type)

CERTIFICATE OF SERVICE

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick
Signature

July 25 2019
Date

ATTACHMENT - LIST OF AMICI CURIAE

AIDS UNITED
THE AMERICAN PUBLIC HEALTH ASSOCIATION
DUKE LAW HEALTH JUSTICE CLINIC
SOUTHERN AIDS COALITION
THE NATIONAL ALLIANCE OF STATE & TERRITORIAL AIDS DIRECTORS
NMAC

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at Register for eFiling.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 19-1410 as

☐ Retained ☐ Court-appointed(CJA) ☐ Court-assigned(non-CJA) ☐ Federal Defender ☑ Pro Bono ☐ Government

COUNSEL FOR: See attached list of Amici Curaie

_____ as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

/s/ Chris Erchull
(signature)

Please compare your information below with your information on PACER. Any updates or changes must be made through PACER's Manage My Account.

Chris Erchull
Name (printed or typed)

617 426-1350
Voice Phone

GLBTQ Legal Advocates & Defenders
Firm Name (if applicable)

Fax Number

18 Tremont Street, Suite 950

Boston, Massachusetts 02108
Address

cErchull@glad.org
E-mail address (print or type)

CERTIFICATE OF SERVICE

I certify that on July 25 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Kevin J. Minnick
Signature

July 25 2019
Date

ATTACHMENT - LIST OF AMICI CURIAE

AIDS UNITED
THE AMERICAN PUBLIC HEALTH ASSOCIATION
DUKE LAW HEALTH JUSTICE CLINIC
SOUTHERN AIDS COALITION
THE NATIONAL ALLIANCE OF STATE & TERRITORIAL AIDS DIRECTORS
NMAC