

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK *et al.*,

Plaintiffs,

v.

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

Defendants.

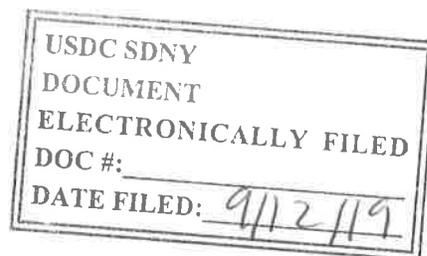
DR. REGINA FRONT and CHRISTIAN
MEDICAL AND DENTAL
ASSOCIATIONS,

Defendants-Intervenors.

19 Civ. 4676 (PAE) (lead)

19 Civ. 5433 (PAE) (consolidated)

19 Civ. 5435 (PAE) (consolidated)



UNOPPOSED MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF
NATIONAL CENTER FOR LESBIAN RIGHTS ET AL. IN SUPPORT OF
PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION
AND SUMMARY JUDGMENT

National Center for Lesbian Rights, joined by Bay Area Lawyers for Individual Freedom, Center for Constitutional Rights, Equality California, Equality Federation, Empire Justice Center, Family Equality, FORGE, FreeState Justice, Inc., GLBTQ Legal Advocates & Defenders, Human Rights Campaign, Legal Voice, LGBT Bar Association of New York, Movement Advancement Project, National Center for Transgender Equality, National LGBTQ Task Force, National Trans Bar Association, One Colorado, OutFront Minnesota, SAGE, San Francisco LGBT Center, Transgender Law Center, and Transgender Legal Defense and Education Fund, Inc. (collectively, “Amici”) file this unopposed motion for leave to file a brief as amicus curiae in support of Plaintiffs’ motions for preliminary injunction and summary judgment.¹ The proposed brief is attached.

IDENTITIES AND INTEREST OF AMICI CURIAE

Amici are national, state, and local organizations that share an interest in ensuring the equal treatment of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) people, including in the context of access to health care.

The **National Center for Lesbian Rights (NCLR)** is a national nonprofit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, transgender, and queer people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBTQ people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in eradicating discrimination against LGBTQ people in healthcare settings and represents LGBTQ people in cases relating to access to healthcare in courts throughout the country.

¹ Plaintiffs, Defendants, and Defendants-Intervenors have consented to the filing of the proposed brief.

Bay Area Lawyers for Individual Freedom (BALIF) is a bar association of approximately 500 lesbian, gay, bisexual, transgender, queer and intersex (“LGBTQI”) members in the San Francisco Bay Area legal community. BALIF promotes the professional interests and social justice goals of its members and the legal interests of the LGBTQI community at large. For nearly 40 years, BALIF has actively participated in public policy debates concerning the rights of LGBTQI people and has authored and joined amicus efforts concerning matters of broad public importance.

The **Center for Constitutional Rights (CCR)** is a national, not-for-profit legal, educational and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases on behalf of individuals impacted by arbitrary and discriminatory state policies, including policies that disproportionately impact LGBTQI communities of color.

Founded in 1999, **Equality California (EQCA)** is the nation’s largest statewide lesbian, gay, bisexual, transgender and queer (“LGBTQ”) civil rights organization. Equality California brings the voices of LGBTQ people and allies to institutions of power in California and across the United States, striving to create a world that is healthy, just, and fully equal for all LGBTQ people. We advance civil rights and social justice by inspiring, advocating, and mobilizing through an inclusive movement that works tirelessly on behalf of those we serve. Equality California frequently participates in litigation in support of the rights of LGBTQ persons.

Equality Federation is the strategic partner to state-based equality organizations advocating on behalf of LGBTQ people. Since 1997, we have worked throughout the country

with our member organizations to make legislative and policy advances on critical issues including marriage, nondiscrimination, safe schools, and healthy communities.

The **Empire Justice Center** is a New York-based multi-issue, multi-strategy public interest law firm founded in 1973 that is focused on changing the systems within which poor and low-income families live, including those marginalized based upon sexual orientation, gender identity and gender expression. We believe in the critical importance of eliminating discrimination and harassment in all forms and ensuring that all people do not face discriminatory barriers when seeking health care or in any public benefit or public accommodation. Our core practice includes ensuring the legal and civil rights of lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) individuals and their families and ensuring full and equal access to health care and services. We advance our work through impact litigation and direct legal services, policy advocacy, training, and education.

Family Equality (formerly Family Equality Council) is a national organization that advances lived and legal equality for LGBTQ families and those who wish to form them. Since its founding in 1979, Family Equality has worked to change attitudes, laws, and policies through advocacy and public education to ensure that all families, regardless of creation or composition, are respected, loved, and celebrated in all aspects of their life. Given the profound impact that health care has on an individual and their family, Family Equality has an ongoing interest in ensuring that LGBTQ people have equal access to quality health care services and are able to receive health care from welcoming and affirming providers.

FORGE is a 25-year-old, national transgender anti-violence organization. The people we work with are survivors of all types of crime and trauma, and frequently need both acute and long-term medical care, which they are all too often denied.

FreeState Justice, Inc. (FreeState) is Maryland’s statewide legal advocacy organization that seeks to improve the lives of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) people. FreeState advocates for LGBTQ Marylanders by combining direct legal services with education and outreach to ensure that the LGBTQ community receives fair treatment in the law and in society. As such, FreeState has a particular interest in ensuring the equal treatment of LGBTQ individuals seeking to access health care.

Through strategic litigation, public policy advocacy, and education, **GLBTQ Legal Advocates & Defenders (GLAD)** works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. GLAD has litigated widely in both state and federal courts in all areas of the law in order to protect and advance the rights of lesbians, gay men, bisexuals, transgender individuals, and people living with HIV and AIDS. Since its founding in 1978, GLAD has zealously advocated for LGBTQ people and people living with HIV/AIDS who have been profoundly harmed by discrimination in access to healthcare by hospitals, healthcare providers, and insurers.

The **Human Rights Campaign (HRC)**, the largest national lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) advocacy organization, envisions an America where LGBTQ people are ensured of their basic equal rights, and can be open, honest and safe at home, at work and in the community. Equal treatment when seeking healthcare is among these basic rights.

Legal Voice, founded in 1978 as the Northwest Women’s Law Center, is a non-profit public interest organization in the Pacific Northwest dedicated to protecting the rights of women, girls, and LGBTQ people through litigation, legislative advocacy, and the provision of legal information and education. Legal Voice’s work includes decades of advocacy in the courts and in the Washington Legislature to advance the rights of LGBTQ people and their families to

ensure that they are free from discrimination based on their sex, sexual orientation, and gender identity or expression. Legal Voice has participated as counsel and as *amicus curiae* in numerous cases throughout the Northwest and the country, and serves as a regional expert and advocate in the area of gender equality.

The **LGBT Bar Association of New York** is a non-profit bar organization based in New York, New York that is dedicated to promoting equality and access to justice for members of the LGBTQ community.

Movement Advancement Project (MAP) works to ensure that all people have a fair chance to pursue health and happiness, earn a living, take care of the ones they love, be safe in their communities, and participate in civic life. MAP provides independent and rigorous research, insight and communications that help speed equality and opportunity for all.

National Center for Transgender Equality (NCTE) is a national social justice organization founded in 2003 and devoted to advancing justice, opportunity, and well-being for transgender people through education and advocacy on national issues. NCTE works with policymakers and communities around the country to develop fair and effective public policy, including in the area of health care access for transgender people.

The **National LGBTQ Task Force** is the nation's oldest national LGBTQ advocacy group. As a progressive social-justice organization, the Task Force works to achieve full freedom, justice, and equality for Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) people and their families. The Task Force trains and mobilizes activists across the Nation to combat discrimination against LGBTQ people in every aspect of their lives, including housing, employment, healthcare, retirement, and basic human rights. Recognizing that LGBTQ persons of color are subject to multifaceted discrimination, the Task Force is also committed to racial

justice. To that end, the Task Force hosts the Racial Justice Institute at its annual Creating Change Conference, which equips individuals with skills to advance LGBTQ freedom and equality.

The National Trans Bar Association (NTBA) is a non-profit professional association of attorneys promoting equality both in the legal profession and under the law. In addition to working directly with transgender and gender non-conforming legal professionals, NTBA seeks to educate and advocate for legislative change that expands formal legal protections and access to legal representation for transgender and gender non-conforming people.

One Colorado is the state's leading advocacy organization for LGBTQ Coloradans and their families. The mission of the organization is to secure protections and advance opportunities for LGBTQ Coloradans and their families.

OutFront Minnesota (OFM) is the largest advocacy organization for lesbian, gay, bisexual, transgender, and queer people in the Northstar State. OFM is dedicated to making Minnesota a place where people can be who they are, love whom they love, and live without fear of discrimination, harassment, or violence.

SAGE is the country's oldest and largest organization dedicated to improving the lives of LGBT older people. In conjunction with 30 affiliates in 22 states and Puerto Rico, SAGE offers supportive services and consumer resources to LGBT older people and their caregivers, advocates for public policy changes that address the needs of LGBT older people, and provides training for agencies and organizations that serve LGBT older people. Pursuant to a grant from the Department of Health and Human Services' Administration for Community Living (ACL), SAGE—in collaboration with 18 leading organizations nationwide—operates the National Resource Center on LGBT Aging (NRC), which is the country's first and only technical

assistance resource center aimed at improving the quality of services and supports offered to LGBT older people. The NRC provides training, technical assistance, and educational resources to aging providers, LGBT organizations, and LGBT older people. To date, the NRC and our training arm, SAGECare, have trained more than 50,000 professionals in every State and the District of Columbia. In addition, the NRC has published, and made widely available, best practice guides, including, “Inclusive Services for LGBT Older Adults, A Practical Guide to Creating Welcoming Agencies.”

The **San Francisco LGBT Center (the Center)** connects San Francisco’s diverse LGBT community to opportunities, resources and each other to achieve our vision of a stronger, healthier, and more equitable world for LGBT people and our allies. The Center provides free services to community members in the areas of health & wellness, economic development, and youth services as well opportunities for LGBT people to connect and organize to secure equal rights for LGBT people.

Transgender Law Center (TLC) is the largest national trans-led organization advocating self-determination for all people. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming (“TGNC”) people alive, thriving, and fighting for liberation. TLC believes that TGNC people hold the resilience, brilliance, and power to transform society at its root, and that the people most impacted by the systems TLC fights must lead this work. TLC builds power within TGNC communities, particularly communities of color and those most marginalized, and lays the groundwork for a society in which all people can live safely, freely, and authentically regardless of gender identity or expression. TLC works to achieve this goal through leadership development and by connecting TGNC people to legal resources. It also pursues impact litigation

and policy advocacy to defend and advance the rights of TGNC people, transform the legal system, minimize immediate threats and harms, and educate the public about issues impacting our communities.

Transgender Legal Defense and Education Fund, Inc. (TLDEF) is a national civil rights organization committed to achieving full recognition of transgender persons' civil rights in the United States. Since its founding in 2003, TLDEF has represented transgender persons who have experienced health care discrimination through advocacy, administrative appeals, administrative charges of discrimination, and impact litigation.

ARGUMENT

Amici seek leave to file the proposed brief in support of Plaintiffs' motions for preliminary injunction and summary judgment to highlight the harm to LGBTQ patients that will result if the challenged provisions of the U.S. Department of Health and Human Services' regulation "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority," 84 Fed. Reg. 23170 (May 21, 2019) ("the Final Rule"), are not enjoined.

"A court may grant leave to file an *amicus* brief in its discretion." *Lehman XS Tr., Series 2006-GP2 v. Greenpoint Mortg. Funding, Inc.*, No. 12 CIV. 7935 ALC, 2014 WL 265784, at *1 (S.D.N.Y. Jan. 23, 2014). It "may grant leave to appear as an *amicus* if the information offered is timely and useful." *Id.* at *2 (citation omitted). In addition, "[a]n *amicus* brief should normally be allowed . . . when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Id.* (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997)).

As national, state, and local organizations that share an interest in ensuring the equal treatment of LGBTQ patients seeking to access health care, Amici offer an important and useful

perspective on the issues before the Court. The proposed brief seeks to assist the Court in analyzing the factors for a grant of injunctive relief, including the harm to the plaintiffs and public interest that will result from the Final Rule. The proposed brief explains that the Final Rule will harm LGBTQ patients, who already face significant barriers to health care, including pervasive and harmful discrimination in health care settings. The proposed brief also explains that Final Rule will invite discrimination and exacerbate the barriers LGBTQ people face in accessing care.

CONCLUSION

For the reasons above, Amici request that the Court grant leave to file the proposed brief.

Dated: September 12, 2019

Respectfully submitted,

/s/ Julie Wilensky

Julie Wilensky
NATIONAL CENTER FOR
LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Tel.: (415) 392-6257
Fax: (415) 392-8442
jwilensky@nclrights.org

*Counsel for Amici Curiae National Center
for Lesbian Rights et al.*

Granted.
SO ORDERED.

9/12/19



PAUL A. ENGELMAYER
United States District Judge