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8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11  
12 CITY AND COUNTY OF SAN FRANCISCO,

13 Plaintiff,

14 v.

15 ALEX M. AZAR II, Secretary of U.S.  
16 Department of Health and Human Services;  
ROGER SEVERINO, Director, Office for Civil  
17 Rights, Department of Health and Human  
Services; U.S. DEPARTMENT OF HEALTH  
18 AND HUMAN SERVICES; and DOES 1-25,

19 Defendants.  
20  
21

No. 3:19-cv-2405-JCS

**UNOPPOSED MOTION FOR LEAVE  
TO FILE AMICUS BRIEF; AMICUS  
BRIEF IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**

Date: October 30, 2019  
Time: 8:00 a.m.  
Crtrm.: 12, 19th Floor  
Judge: Hon. William H. Alsup

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**I. MOTION FOR LEAVE TO FILE AMICUS BRIEF**

The Service Employees International Union, Local 1021 (“SEIU Local 1021”) hereby moves for leave to file an Amicus Brief in Support of Plaintiff’s Motion for Summary Judgment. Plaintiff, the City and County of San Francisco (“City”), seeks declaratory and injunctive relief, declaring as unconstitutional and contrary to law, and therefore setting aside certain portions of the recently passed so-called “Conscience Rights” rule. The rule makes receipt of Department of Health and Human Services’ (“HHS” or “Department”) funds contingent on the recipient’s compliance with the requirement that individual employee beliefs be prioritized over the delivery of safe patient care. On July 1, 2019, the Court issued an Order and Briefing Schedule providing for the timely filing of amicus briefs in the instant matter. SEIU Local 1021 urges the Court to consider its timely filed briefing on the issues in this case.

The parties in this matter have each consented to the filing of an amicus brief by SEIU Local 1021.

**A. SEIU LOCAL 1021 HAS A SIGNIFICANT INTEREST IN THIS MATTER**

SEIU Local 1021 represents approximately sixty thousand workers throughout northern California, and bargains with its members’ employers to improve the terms and conditions of their employment. Over eleven thousand SEIU Local 1021 members are healthcare workers. Over sixteen thousand are employees of the City and County of San Francisco, Plaintiff in this matter. SEIU Local 1021 has a strong interest in the resolution of this matter, because the funds at risk directly support the programs and the facilities where these members work. Further, if the City lost its HHS funds, it would likely make cuts in both healthcare and in other areas, potentially affecting SEIU Local 1021 members who do not directly work in healthcare delivery. Enforcement of the HHS rule could result in job loss and financial hardship for SEIU Local 1021 members and their families.

Also, if the City and other healthcare employers choose to comply with the rule, SEIU 1021 members will bear the brunt of its enforcement. The rule will nullify a longstanding contract provision contained in the SEIU 1021 bargaining agreement with the City, for the

1 Registered Nurse bargaining unit. The contract provision asserts that nurses have the right to  
 2 refuse assignments based on their religious beliefs. Importantly, the rule also clearly states—  
 3 contrary to the HHS rule—that where the “immediate nature of the patient’s needs” does “not  
 4 allow for personnel substitutions,” the “patient’s right to receive the necessary nursing care will  
 5 take precedence over exercise of the nurse’s individual beliefs and rights until other personnel can  
 6 be provided.”<sup>1</sup> The HHS rule would nullify this provision by reversing this explicit priority of  
 7 interests and would have a significant effect both on the way SEIU Local 1021 members are  
 8 expected to deliver care and on their conditions of employment. Over eleven thousand SEIU  
 9 Local 1021’s members are healthcare providers, including nurses, nurse staffing assistants,  
 10 healthcare billing clerks, laboratory techs, psychiatric techs, and many, many others. As the new  
 11 rule significantly reverses the priorities in healthcare delivery, enforcement of the new HHS rule  
 12 will directly impact the terms and conditions of employment for all these SEIU Local 1021  
 13 members.

14 **B. THE AMICUS BRIEF IS DESIRABLE AND THE MATTERS ASSERTED ARE**  
 15 **RELEVANT TO DISPOSITION OF THE CASE**

16 SEIU Local 1021’s amicus brief is desirable and relevant because the Union represents the  
 17 interests of the healthcare workers whom the HHS rule seeks to benefit. Ostensibly, the HHS rule  
 18 purports to benefit employees who work in healthcare by protecting them from conflicts with  
 19 their religious or ethical values in performing their work. In its amicus brief SEIU Local 1021  
 20 refutes this hollow promise and demonstrates that the rule not only will fail to benefit healthcare  
 21 workers, but will disrupt the safe, ethical execution of their healthcare duties, as well as their  
 22 professional relationships. For these reasons, SEIU Local 1021 believes its interests and  
 23 arguments as amicus curiae should be heard in this matter, and respectfully requests leave to file  
 24 its amicus brief.

25  
 26 <sup>1</sup> This provision of the SEIU Local 1021 RN bargaining agreement with the City is on page 27 of  
 27 the agreement, available at: [https://www.seiu1021.org/sites/default/files/file-attachments/san-  
 28 francisco-city-and-county-staff-and-per-diem-nurses-mou-7.1.2019-6.30.2022-not-signed-0.pdf](https://www.seiu1021.org/sites/default/files/file-attachments/san-francisco-city-and-county-staff-and-per-diem-nurses-mou-7.1.2019-6.30.2022-not-signed-0.pdf)



1 ascertain congressional intent.” *Altera Corp. & Subsidiaries v. Commissioner*, 926 F.3d 1061,  
 2 1075 (9th Cir. 2019). If the meaning of the statute is clear, “that is the end of the matter” as the  
 3 court must give effect to the unambiguously expressed intent of Congress. *Encino Motorcars,*  
 4 *LLC v. Navarro*, 136 S. Ct. at 2124. If the statute is silent or ambiguous, then at the second step,  
 5 the court may defer to the agency’s interpretation only if it is “reasonable.” *Id.* at 2124-2125.  
 6 The HHS rule fails the first step because it departs dramatically from the clear meaning of the  
 7 statutory text it purports to interpret. The rule also fails at step two because it contravenes  
 8 longstanding traditions and ethical standards in healthcare and therefore is not a reasonable  
 9 interpretation of the statute. Thus, it must be set aside.

10 **A. BECAUSE THE HHS RULE DEFINES “DISCRIMINATION” IN A WAY THAT**  
 11 **CONFLICTS WITH THE STATUTE IT PURPORTS TO IMPLEMENT, IT MUST**  
 12 **BE SET ASIDE**

13 The Court must set aside any agency action that is “arbitrary, capricious, an abuse of  
 14 discretion, or otherwise not in accordance with law;” “contrary to constitutional right, power,  
 15 privilege, or immunity;” or “in excess of statutory jurisdiction, authority, or limitations, or short  
 16 of statutory right.” 5 U.S.C. § 706. The definition of “discrimination” in HHS’s new rule is  
 17 arbitrary and capricious, contrary to law, and in excess of statutory right because it overtly departs  
 18 from the statutory language it purports to implement, imposes an unconscionable standard, and  
 19 far exceeds any reasonable definition of what it means to discriminate in healthcare employment.

20 HHS’s stated purpose in enacting the new “Protecting Statutory Conscience Rights in  
 21 Health Care” rule, is to “provide for the implementation and enforcement” of the Church  
 22 Amendments, the Coats-Snowe Amendment, the Weldon Amendments, Affordable Care Act  
 23 provisions, and other statutes. 84 Fed. Reg. 23263 (Tuesday May 21, 2019 [codified at 45 C.F.R.  
 24 88.1]). However, the new rule defines discrimination differently from each of the statutory texts,  
 25 rendering the new rule a change to the statutes, rather than an implementation or enforcement  
 26 tool.

27 ///

1           **1. The HHS rule unlawfully broadens the explicit list of activities that are**  
2           **subject to the prohibitions in the Church Amendments**

3           The Church Amendments proscribe a specific type of discrimination against healthcare  
4 employees, in a limited set of circumstances. The Church Amendments provide that entities that  
5 receive the specified HHS funding may not:

6                     discriminate in the employment, promotion, or termination of  
7                     employment of any physician or other health care personnel, or . .  
8                     in the extension of staff or other privileges . . because he refused to  
9                     perform or assist in the performance of [a lawful sterilization  
10                    procedure] or abortion on the grounds that his performance or  
11                    assistance in the performance of the procedure or abortion would be  
12                    contrary to his religious beliefs or moral convictions, or because of  
13                    his religious beliefs or moral convictions respecting sterilization  
14                    procedures or abortions. . . .

15                    because he refused to perform or assist in the performance of any  
16                    [lawful health service or research activity] on the grounds that his  
17                    performance or assistance in the performance of such service or  
18                    activity would be contrary to his religious beliefs or moral  
19                    convictions.

20           42 U.S.C. § 300a-7(c)(2). As shown, the statute provides employee protections, which apply only  
21 to specifically listed employer activities: the “employment, promotion, or termination” of an  
22 employee, or the “extension of staff or other privileges.” *Id.* In contrast, the HHS rule vastly  
23 enlarges the Church Amendments’ protections through its overbroad definition of the term  
24 “discrimination.” The rule defines the term as encompassing many more activities than the  
25 handful listed in the statute, including, the “enforcement of laws,” “contractual arrangements,”  
26 “utilize[ation of] any criterion,” or “site selection,” anytime any of these activities causes the  
27 employee to experience “any adverse treatment.” 84 Fed. Reg. 23263. As shown in applying the  
28 traditional canon of statutory construction *expressio unius est exclusio alterius*, by specifying the  
list of activities subject to the prohibitions in the Church Amendments, Congress instructs that the  
list may not be expanded as the Department has done here. *See, e.g., Cruz v. Nat’l Steel &*  
*Shipbuilding Co.*, 910 F.3d 1263, 1270 (9th Cir. 2018) (applying the canon of construction to a  
dispute under the Longshore and Harbor Workers’ Compensation Act). Accordingly, the HHS  
rule must be set aside.

1           **2. The rule imposes a duty to accommodate that is contrary to the language of**  
2           **the statute**

3           In addition to this unsupported expansion of the activities that trigger the “conscience  
4 rights” protections under the Church Amendments, the new HHS definition of discrimination  
5 imposes on employers a duty to accommodate employees’ religious beliefs that contravenes the  
6 language of the statute. Where there are conflicts between an employee’s refusal to perform  
7 services and the healthcare delivery required by his or her job, the new rule requires that the  
8 employer must offer an “effective accommodation” that is “voluntarily” accepted by the objecting  
9 employee. 84 Fed. Reg. 23263. In this way, the rule imposes a duty to accommodate. The  
10 Church Amendments’ statutory text does not support the imposition of a duty to accommodate.

11           A duty to accommodate may not be inferred from the simple use of the term  
12 “discrimination” in a given statute. A duty to accommodate employees is an affirmative and  
13 complex responsibility that far exceeds the ordinary duty to refrain from discriminatory conduct.  
14 Federal laws which impose a duty to accommodate on employers explicitly assert that duty in the  
15 language of the statute. *See, e.g.*, 42 U.S.C. § 2000e (specifying, under Title VII, that the term  
16 “religion” includes all aspects of religious practice unless the employer “demonstrates that he is  
17 unable to reasonably accommodate to an employee’s or prospective employee’s religious  
18 observance or practice without undue hardship”); 42 U.S.C. § 12112 (specifying, under Title I of  
19 the Americans with Disabilities Act that “discrimination” includes the duty to reasonably  
20 accommodate unless it causes undue burden on the employer). Unlike Title VII and the  
21 Americans with Disabilities Act which explicitly reference the duty to accommodate, the Church  
22 Amendments do not set forth any duty to accommodate employees. 42 U.S.C. §300a-7.

23           In 1971, the Supreme Court in *Dewey* affirmed the Sixth’s Circuit holding that Title VII  
24 prohibitions on religious discrimination did not impose a duty to accommodate, because the  
25 statute at that time contained no language to that effect. *Dewey v. Reynolds Metals Co.*, 402 U.S.  
26 689 (1971), *aff’g Dewey v. Reynolds Metals Co.*, 429 F.2d 324, 334 (6th Cir. 1970) (“Nowhere in  
27 the legislative history of the Act do we find any Congressional intent to coerce or compel one

1 person to accede to or accommodate the religious beliefs of another.”). Congress subsequently  
 2 amended Title VII to include the duty to accommodate in 1972. Equal Employment Opportunity  
 3 Act of 1972, 86 Stat. 103, March 24, 1972. The Church Amendments were enacted the following  
 4 year, in 1973. Health Programs Extension Act of 1973, 87 Stat. 95, June 18, 1973. At the time of  
 5 its enactment, Congress knew that it should explicitly assert a duty to accommodate in the  
 6 language of the Church Amendments if it had so intended, yet it did not. Because there is no  
 7 mention of the duty to accommodate in the Church Amendments, HHS’s imposition of this duty  
 8 in its rule conflicts with the clear meaning of the statute, and is devoid of statutory authority.<sup>2</sup>

9  
 10 **3. The form of the duty to accommodate described by the HHS rule is unreasonable, unethical, arbitrary, and capricious**

11 Not only is this duty to accommodate imposed without statutory support, even if some  
 12 level of accommodation duty were justified—which it is not under the Church Amendments—the  
 13 HHS rule departs from any traditional or reasonable understanding of employee accommodation.  
 14 It outstrips the well-known and well-developed “reasonable accommodation” and “undue  
 15 hardship” doctrines of Title VII and the ADA and imposes a patently unworkable duty, rendering  
 16 the rule arbitrary and capricious.

17 The traditional doctrine of reasonable accommodation in the employment setting is  
 18 balanced by the rule that the accommodation need not impose an undue hardship on the  
 19 employer. *See, e.g., TWA v. Hardison*, 432 U.S. 63, 85 (1977) (applying the undue hardship  
 20 analysis under Title VII, the Court declined to “construe the statute to require an employer to  
 21 discriminate against some employees in order to enable others to observe their Sabbath”). The  
 22 undue hardship doctrine limits the duty to accommodate so that the employee’s exercise of his or

23  
 24 <sup>2</sup> The other statutes addressed by the HHS rule that include the term “discrimination” similarly  
 25 lack any reference to “accommodation.” For example, the Coates-Snow Amendment prohibits  
 26 discrimination by State and local governments against physicians, training programs, and  
 27 participants in healthcare training programs, on the basis that such person or program “refuses to  
 28 undergo training in the performance of induced abortions, to require or provide such training, to  
 perform such abortions, or to provide referrals for such training and such abortions,” and based on  
 other protected activities. 42 U.S.C. §238n. The statute also contains no reference to any  
 accommodation.

1 her rights does not result in unreasonable harm to the employer. *Id.* at 84 (finding that increased  
 2 costs to the employer represents an undue hardship); *US Airways, Inc. v. Barnett*, 535 U.S. 391,  
 3 411 (2002) (discussing the interplay between the “reasonable” accommodation and the “undue”  
 4 hardship analyses). In the case of the HHS rule, the harm imposed by the rule is even more  
 5 severe, as explained further below, because the harm is inflicted not only on the employer, but  
 6 also on patients and members of the public.

7 Contrary to the balance reflected in the familiar doctrine of reasonable accommodation,  
 8 the HHS rule fails to limit employers’ duty to accommodate in any manner and fails to  
 9 acknowledge healthcare employers’ important duty to provide medical care to patients. Under  
 10 the HHS rule, the offered accommodation must be “voluntarily” accepted by the employee. The  
 11 rule does not permit the employer to balance the wishes of the employee with any other  
 12 considerations—not even the need for safe patient care. *See* 84 Fed. Reg. 23191 (HHS explaining  
 13 in response to comments on the proposed rule that the rule contains no undue hardship exception  
 14 to the duty to accommodate). By failing to account for any countervailing interests in imposing  
 15 this duty, the HHS rule requires the employer to prioritize the individual employee’s demands  
 16 over patient care needs. *See* 84 Fed. Reg. 23263. The HHS rule clearly subjugates patients’  
 17 clinical needs and the employer’s duty to provide medical care, to the refusing employee’s  
 18 individually determined religious beliefs. This subjugation is patently unethical, arbitrary and  
 19 capricious, and is not grounded in statutory authority. Accordingly, the HHS rule is arbitrary and  
 20 capricious, is without basis in statutory authority, and must be set aside. 5 U.S.C. § 706.

21 **B. BECAUSE THE RULE CONTRAVENES LONGSTANDING MEDICAL AND**  
 22 **ETHICAL STANDARDS IT IS NOT A REASONABLE INTERPRETATION OF**  
 23 **THE STATUTE**

24 Where the agency action fails to constitute a reasonable interpretation of a statute, it will  
 25 be set aside. *See Encino Motorcars, LLC v. Navarro*, 136 S. Ct. at 2124-2125. Not only has  
 26 HHS failed to root its new rule in the statutory language, the rule fundamentally undermines  
 27 longstanding values in healthcare delivery, professional and ethical standards of healthcare  
 28 providers, and community expectations for healthcare delivery. For this reason, the rule does not

1 constitute a reasonable interpretation of the statute and must be set aside. By forcing employers  
2 to offer accommodations acceptable to the employee without regard to the effects on patient care,  
3 the rule prevents healthcare employers from making safe, effective patient care the top priority.  
4 This rule drastically conflicts with the ethical and moral standards of healthcare providers and  
5 traditional values of healthcare delivery.

6 The collective bargaining agreement between SEIU Local 1021 and the City contains  
7 protections for employees who wish to abstain from participation in certain procedures.<sup>3</sup> Those  
8 protections are balanced by the expectation that where patient safety is at risk, a healthcare  
9 employer must, at times, prioritize patient safety “above the nurse’s individual beliefs and rights  
10 until other personnel can be provided.”<sup>4</sup> To reverse this priority, as the HHS rule does,  
11 contravenes longstanding values and traditions of nursing, and the greater community’s  
12 expectations of the healthcare system. The ethical duty and expectation that healthcare providers  
13 will prioritize patient safety also is embodied in the American Nurses Association (“ANA”) Code  
14 of Ethics, which provides that the nurse’s “primary commitment” must be to the “patient, whether  
15 an individual, family, group, or population.”<sup>5</sup> The Code of Ethics also describes the traditional  
16 expectation that nursing care must “reduce health disparities” rather than exacerbate them, which  
17 may occur when individuals’ beliefs are allowed to negatively impact the availability of  
18 healthcare.<sup>6</sup> “While the nursing profession certainly recognizes that individual nurses must also  
19 attend to their individual health and spiritual needs, [the] profession simply does not allow for the  
20

21  
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23  
24 <sup>3</sup> See p. 27 of the agreement, available at: <https://www.seiu1021.org/sites/default/files/file-attachments/san-francisco-city-and-county-staff-and-per-diem-nurses-mou-7.1.2019-6.30.2022-not-signed-0.pdf>

25 <sup>4</sup> *Id.*

26 <sup>5</sup> The ANA Code of Ethics is available at <https://www.nursingworld.org/coe-view-only> readers  
27 must select an option before viewing in this format. *See* p. 7 of the Code.

28 <sup>6</sup> *Id.*

1 subjugation of patient care to individual healthcare workers’ beliefs.”<sup>7</sup> Indeed, where even one  
2 incident of conduct jeopardizes a patient’s “health or life,” such conduct may be considered  
3 “gross negligence,” which under California regulations is punishable by revocation of the nurse’s  
4 license. Cal. Business and Prof. Code. § 2761(a)(1); 16 Cal. Code Regs., § 1442.

5 The HHS rule so conflicts with traditional nursing and healthcare values that the nursing  
6 community rejects it, even though it purports to protect nurses’ interests. Individual nurses and  
7 other providers overwhelmingly have spoken out against the rule. The California Board of  
8 Registered Nursing, the governmental body that administers nursing licenses in this state, has  
9 officially opposed the HHS rule.<sup>8</sup>

10 The HHS rule falls so far from traditional ethics and values in healthcare and so fails to  
11 adhere to any reasonable interpretation of the meaning of the Church Amendments, as to render it  
12 arbitrary and capricious. *See Altera Corp. & Subsidiaries v. Commissioner*, 926 F.3d at 1075.

13 **C. THE HHS RULE WILL HARM PATIENTS AND COMPROMISE THE HEALTH**  
14 **AND SAFETY OF THE GREATER COMMUNITY**

15 The Court must not ignore the very real harm to patients that will be imposed by this rule.  
16 There is no question that, by subjugating patient care to the beliefs of individual employees, the  
17 HHS rule directly endangers patients.

18 **1. The duty to accommodate an employee in a manner acceptable to the**  
19 **employee introduces a dangerous element to the work of patient care**

20 Taking into consideration as an example the demands of an emergency department (“ED”)  
21 such as that at San Francisco General Hospital where many SEIU Local 1021 members work,  
22 demonstrates clearly that the requirement that employers accommodate employees—and giving  
23

24 <sup>7</sup> This quotation is taken from a sworn declaration of Sasha Cuttler, a member of the Executive  
25 Board of SEIU Local 1021. Cuttler received a Ph.D. in nursing in 2008 and has been a  
26 Registered Nurse since 1985. Cuttler also serves as the Industry Chair for Registered Nurses  
27 within SEIU Local 1021. Cuttler’s declaration is not appended to this brief because the Court’s  
28 July 1, 2019 Order instructed that amicus briefs be filed without attachments or declarations.  
However, the sworn declaration is available for inspection by the Court upon request.

<sup>8</sup> The minutes from the meeting at which the Board voted to oppose the HHS Rule are available at  
[https://www.rn.ca.gov/pdfs/meetings/brd/brdmins\\_may19-2.pdf](https://www.rn.ca.gov/pdfs/meetings/brd/brdmins_may19-2.pdf)

1 the employees the right to accept or reject a proffered accommodation without regard to the  
 2 impact on patient care, will harm patients. The ED at San Francisco General Hospital, like most  
 3 EDs in major metropolitan areas of the United States, is extremely busy. It is not possible to  
 4 predict on a given day or shift what may be required of the staff and care teams. The

5 ED sees patients from every walk of life, economic class, race and  
 6 culture, gender, and family circumstance: [] patients may or may  
 7 not have a home, they may be emotionally healthy and supported  
 8 by a family, or they may be struggling with mental illness, abuse,  
 9 criminal environments, and many other possible risk factors. They  
 10 present with all manner of medical conditions and emergencies.  
 11 [The medical staff] must be ready at all times to deal with whatever  
 12 is presented. When a patient walks through the door, everyone on  
 the team—from the staff who conduct intakes, to the physician,  
 technologists, and nurses who treat the patient—each [] has a  
 crucial role to ensure that the patient is assessed and treated safely,  
 swiftly, and effectively. When an emergent resuscitative effort is  
 required, each provider must be ready to accept the duties assigned  
 and there is absolutely no time for negotiation.<sup>9</sup>

13 If the providers are forced to stop rendering healthcare to assign staff to alternate tasks  
 14 because of individual staff beliefs, “it would unquestionably compromise patient safety and risk  
 15 lives.”<sup>10</sup>

16 The HHS rule also indirectly endangers patients by complicating the objectives of ED care  
 17 teams, impairing their effectiveness by distracting from what should be a unitary goal of excellent  
 18 patient care. Staff cohesiveness is a factor in successful patient outcomes. The crucial cohesion  
 19 of the care team is facilitated by the fact that each provider is focused and committed to  
 20 prioritizing patient care without distraction while providing care for the patient. If providers are  
 21 distracted by concerns about a team member’s religious or ethical beliefs, his or her decision not  
 22 to treat a given patient, or the need to find a replacement worker, it undermines the team’s  
 23 professional cohesion and focus on patient care. By introducing these distractions and stressors to

24 <sup>9</sup> This quotation is taken from a sworn declaration of Rachel Perry Limon, a Registered Nurse and  
 25 employee of the City in the Emergency Department of the San Francisco General Hospital. Perry  
 26 Limon has served as a Nurse Educator for the last ten years, and as such she has responsibility to  
 27 maintain the competency of the ED staff. Perry Limon has been a Registered Nurse for  
 approximately seventeen years. Perry Limon’s declaration is not appended to this brief because  
 of the Court’s instructions not to include any declarations or attachments. However, the sworn  
 declaration is available for inspection by the Court upon request.

28 <sup>10</sup> *Id.*

1 the care team, the HHS rule will undermine providers' team cohesion, and further endanger  
2 patient care.<sup>11</sup>

3 **2. The HHS rule will cause the public to lose confidence in the healthcare system**

4 “When a patient avoids seeking healthcare, this increases risk of disease and harm to that  
5 patient, as well as everyone in their community.”<sup>12</sup> Untreated, ill patients expose their  
6 communities to the risk of disease. There is no question that the HHS rule will undermine patient  
7 confidence in the healthcare system, particularly patients from marginalized communities, and  
8 discourage these patients from seeking needed care. Since the HHS rule has been publicized in  
9 the media, SEIU Local 1021 leadership have already observed patients from the transgender  
10 community making comments showing that the rule makes them feel unsafe in the healthcare  
11 system. The community perceives the rule to invite bigoted individuals to refuse them urgent  
12 healthcare in potentially desperate circumstances. Comments have appeared on social media  
13 from members of the transgender community to the effect that “they,” meaning HHS, “want to  
14 kill us,” “they want us to die,” and comments to that effect.<sup>13</sup> These extremely concerning  
15 comments vividly demonstrate how drastically the HHS rule undermines patient confidence in the  
16 healthcare system.

17 “Without open and honest communication between providers and patients, fatal errors in  
18 care can occur. . . . Particularly for matters of sexual and reproductive health, stigma and fear of  
19 judgment can result in patients withholding important subjective and objective data from their  
20 providers. It can also result in patients totally avoiding the healthcare system.”<sup>14</sup> Because the  
21 HHS rule undermines patient confidence in the healthcare system, it will increase illness in these  
22 marginalized patients, and in turn, increase risks to the greater community.

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24  
25 <sup>11</sup> These facts are also discussed in the Perry Limon Declaration.

26 <sup>12</sup> This quotation is taken from the declaration of Sasha Cuttler, referenced *supra*.

27 <sup>13</sup> *Id.*

28 <sup>14</sup> *Id.*

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**III. CONCLUSION**

For these reasons, Plaintiff’s Motion for Summary Judgment must be granted, and the HHS rule must be set aside.

Dated: September 12, 2019

WEINBERG, ROGER &  
ROSENFELDWEINBERG, ROGER &  
ROSENFELD  
A Professional Corporation

By: /s/ Xochitl A. Lopez  
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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11  
12 CITY AND COUNTY OF SAN FRANCISCO,

13 Plaintiff,

14 v.

15 ALEX M. AZAR II, Secretary of U.S.  
16 Department of Health and Human Services;  
ROGER SEVERINO, Director, Office for Civil  
17 Rights, Department of Health and Human  
Services; U.S. DEPARTMENT OF HEALTH  
18 AND HUMAN SERVICES; and DOES 1-25,

19 Defendants.  
20  
21

No. 3:19-cv-2405-WHA

**[PROPOSED] ORDER GRANTING  
MOTION FOR LEAVE TO FILE  
AMICUS BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

Date: October 30, 2019  
Time: 8:00 a.m.  
Crtrm: 12, 19th Floor  
Judge: Hon. William H. Alsup

1 This matter having come before the Court by motion of proposed *amicus curiae* Service  
2 Employees International Union, Local 1021 (“SEIU Local 1021”), seeking leave to file an *amicus*  
3 *curiae* brief in the above-captioned matter. The Court having reviewed the file and the pleadings  
4 herein, and being otherwise fully advised in the matter, hereby finds good cause to allow amicus  
5 participation.

6 IT IS HEREY ORDERED:

7 The Motion to File an *Amicus Curiae* Brief in Support of Plaintiff’s Motion for Summary  
8 Judgment is GRANTED.

9 This \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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The Honorable William H. Alsup

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