

No. 23-10326

United States Court of Appeals
for the
Fifth Circuit

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Braidwood Management, Incorporated; John Scott Kelley; Kelley Orthodontics; Ashley Maxwell; Zach Maxwell; Joel Starnes,

Plaintiffs—Appellees / Cross-Appellants,

Joel Miller; Gregory Scheideman,

Plaintiffs—Cross-Appellants,

versus

Xavier Becerra, Secretary, U.S. Department of Health and Human Services, in his official capacity as Secretary of Health and Human Services; United States of America; Janet Yellen, Secretary, U.S. Department of Treasury, in her official capacity as Secretary of the Treasury; Julie A. Su, Acting Secretary, U.S. Department of Labor, in her official capacity as Secretary of Labor,

Defendants—Appellants / Cross-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* HIV AND
HEPATITIS POLICY INSTITUTE, AIDS ALABAMA, AIDS FOUNDATION OF
CHICAGO, AIDS UNITED, [ADDITIONAL *AMICI* LISTED ON INSIDE COVER] IN
SUPPORT OF APPELLANTS/CROSS-APPELLEES**

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*U.S. Court of Appeals Fifth Circuit Admission Pending

**Admitted to the Bar Under D.C. App. R. 46-A

Counsel for Amici Curiae

June 23, 2023

ADDITIONAL AMICI LISTED ON INSIDE COVER

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
HIV AND HEPATITIS POLICY INSTITUTE, AIDS ALABAMA, AIDS
FOUNDATION OF CHICAGO, AIDS UNITED, AMERICAN ACADEMY OF
HIV MEDICINE, ASIAN AND PACIFIC ISLANDER WELLNESS CENTER,
INC. DBA SAN FRANCISCO COMMUNITY HEALTH CENTER, CARING
AMBASSADORS PROGRAM, INC., CENTER FOR HEALTH LAW POLICY
AND INNOVATION, COMMUNITY EDUCATION GROUP, FENWAY
COMMUNITY HEALTH CENTER, INC., FRANNIE PEABODY CENTER,
GAY MEN'S HEALTH CRISIS, INC., GEORGIA AIDS COALITION, GLOBAL
LIVER INSTITUTE, HEPATITIS B FOUNDATION, HEPATITIS
EDUCATION PROJECT, HOUSING WORKS, INC., HUMAN RIGHTS
CAMPAIGN FOUNDATION, LATINO COMMISSION ON AIDS, NATIONAL
COALITION OF STD DIRECTORS, NATIONAL MINORITY AIDS COUNCIL,
PREP4ALL, SOUTHERN AIDS COALITION, TREATMENT ACTION
GROUP AND WHITMAN-WALKER HEALTH, IN SUPPORT OF
APPELLANTS/CROSS-APPELLEES**

SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

Xavier Becerra, Secretary, U.S. Department of Health and Human Services, *et al.* v. Braidwood Management, Incorporated, *et al.*

Pursuant to Fifth Circuit Rule 29.2 and Rule 28.2.1, *amici curiae* make the following supplemental statement of interested parties to fully disclose all those with an interest in this brief.

Amici Curiae

HIV and Hepatitis Policy Institute
AIDS Alabama
AIDS Foundation of Chicago
AIDS United
American Academy of HIV Medicine
Asian and Pacific Islander Wellness Center, Inc. dba San Francisco Community Health Center
Caring Ambassadors Program, Inc.
Center for Health Law Policy and Innovation
Community Education Group
Fenway Community Health Center, Inc.
Frannie Peabody Center
Gay Men's Health Crisis, Inc.
Georgia AIDS Coalition
Global Liver Institute
Hepatitis B Foundation
Hepatitis Education Project
Housing Works, Inc.
Human Rights Campaign Foundation
Latino Commission on AIDS
National Coalition of STD Directors
National Minority AIDS Council
PrEP4All
Southern AIDS Coalition
Treatment Action Group

Whitman-Walker Health

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** *Admitted to the Bar Under D.C. App. R. 46-A*

Counsel for Amici

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Federal Rule of Appellate Procedure 27 and 29(a)(3), *amici curiae* the HIV and Hepatitis Policy Institute, AIDS Alabama, AIDS Foundation of Chicago, AIDS United, American Academy of HIV Medicine, Asian and Pacific Islander Wellness Center, Inc. dba San Francisco Community Health Center, Caring Ambassadors Program, Inc., Center for Health Law Policy and Innovation, Community Education Group, Fenway Community Health Center, Inc., Frannie Peabody Center, Gay Men's Health Crisis, Inc., Georgia AIDS Coalition, Global Liver Institute, Hepatitis B Foundation, Hepatitis Education Project, Housing Works, Inc., Human Rights Campaign Foundation, Latino Commission on AIDS, National Coalition of STD Directors, National Minority AIDS Council, PrEP4All, Southern AIDS Coalition, Treatment Action Group, and Whitman Walker Health (collectively, “*amici*”) respectfully move for leave to file an *Amici Curiae* Brief in Support of Appellants’/Cross-Appellees’ appeal requesting reversal of the District Court’s order in this case.

MOVANT'S INTERESTS

Amicus Curiae HIV and Hepatitis Policy Institute is a non-profit advocacy organization that monitors policies that impact the prevention and treatment of HIV, viral hepatitis, and other health conditions in the United States; communicates with members of the HIV, hepatitis, and other patient group communities on key policy issues that impact their access to healthcare; educates policymakers and members of the media about efforts to end both HIV and hepatitis in the United States and to improve access to quality and affordable healthcare for people with or at risk of serious or chronic health conditions. As such, *Amicus* HIV and Hepatitis Policy Institute has a crucial interest in maintaining patient access to clinical preventive interventions that prevent infection and transmission of HIV and viral hepatitis, as well as the early detection of these infections so that patients may access timely treatment.

The 24 other *amici curiae* are organizations that work throughout the country towards the elimination of HIV and/or viral hepatitis by providing or advocating for HIV testing, hepatitis B & C testing and/or HIV pre-exposure prophylaxis (PrEP). Many are national organizations that advocate on behalf of people and communities affected by HIV and

viral hepatitis, including organizations focused on women, racial, ethnic, and other groups most impacted by these infectious diseases. Others are state-based organizations that provide direct HIV and/or hepatitis services, including PrEP in states such as Alabama, Georgia, West Virginia, Pennsylvania and Maine. All share an interest in the provision of HIV and hepatitis preventive services affected by this case, including PrEP.

Amici have a vital interest in the outcome of this litigation and believe the proposed *amicus* brief will help the Court understand the importance of maintaining access to critical preventative health services, including access to preexposure prophylaxis (PrEP) medication for HIV.

CONSENT OF THE PARTIES

On June 20, 2023, *amici*, through undersigned counsel, sought consent from both parties to file the proposed *amicus curiae* brief. As of June 20, 2023, both Appellants/Cross-Appellees and Appellees/Cross-Appellants have consented to the filing of the proposed *amicus curiae* brief.

REASONS FOR AND RELEVANCE OF *AMICI CURIAE*

This case raises important questions regarding the constitutionality of a critical component of the Affordable Care Act (ACA)— the adoption of the United States Preventive Services Task Force (USPSTF) recommendations by the Secretary for the Department of Health and Human Services to require certain preventive health services to be covered without cost-sharing. *Amici* have advocated for advancements in preventive services like screening and testing for HIV and hepatitis and routinely rely on the USPSTF’s recommendations in accomplishing their mission to advance the public health. Invalidating the USPSTF’s recommendations and eliminating the cost-sharing requirements under the ACA would devastate the communities *amici* serve and set the country back in battling these viruses.

This case also considers whether the Plaintiffs/Appellees/Cross-Appellants are entitled to relief under the Religious Freedom and Restoration Act from covering preventive services, specifically PrEP, which impacts *amici* in their efforts to reduce transmission of HIV. The district court’s decisions relied upon fundamental misunderstandings of how HIV spreads and who is affected. Properly

understood, PrEP cannot be viewed as a burden on Appellees'/Cross-Appellants' earnest religious convictions but is an important medication to protect those at risk of acquiring HIV, which could include those who share their beliefs as well as those who do not.

The proposed *amici* brief would serve the critical function of providing information and context to the Court regarding the perspective of the community fighting to end HIV and hepatitis in the United States, who will be uniquely impacted by an adverse outcome in this case.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant leave to file an *amici curiae* brief in support of Appellants'/Cross-Appellees' opening brief in support of reversal of the district court's decision.

Dated: June 23, 2023

Respectfully submitted,

/s/ Richard H. Hughes IV

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**U.S. Court of Appeals Fifth Circuit
Admission Pending*

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App. R. 46-A*

Counsel for Amici

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Richard H. Hughes IV
Richard H. Hughes IV

Counsel for Amici

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 27(d), I certify that:

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because this motion contains 781 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in Times New Roman 14-point font using Microsoft Word 365.

Dated: June 23, 2023

/s/ Richard H. Hughes IV
Richard H. Hughes IV

Counsel for Amici