
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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

v.

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

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

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS FOR AMERICAN CANCER SOCIETY, AMERICAN CANCER SOCIETY CANCER ACTION NETWORK, THE AIDS INSTITUTE, AMERICAN ACADEMY OF FAMILY PHYSICIANS, AMERICAN ACADEMY OF PEDIATRICS, AMERICAN COLLEGE OF CHEST PHYSICIANS, AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, AMERICAN COLLEGE OF PHYSICIANS, AMERICAN GERIATRICS SOCIETY, AMERICAN MEDICAL WOMEN’S ASSOCIATION, AMERICAN NURSES ASSOCIATION, AMERICAN PSYCHIATRIC ASSOCIATION, AMERICAN SOCIETY OF CLINICAL ONCOLOGY, CANCERCARE, CROHN’S & COLITIS FOUNDATION, EPILEPSY FOUNDATION, GLMA: HEALTH PROFESSIONALS ADVANCING LGBTQ+ EQUALITY, HEMOPHILIA FEDERATION OF AMERICA, INFECTIOUS DISEASES SOCIETY OF AMERICA, THE LEUKEMIA & LYMPHOMA SOCIETY, MUSCULAR DYSTROPHY ASSOCIATION, NATIONAL LGBTQI+ CANCER NETWORK, NATIONAL MULTIPLE SCLEROSIS SOCIETY, NATIONAL ORGANIZATION FOR RARE DISORDERS, NATIONAL PATIENT ADVOCATE FOUNDATION

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SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

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

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The AIDS Institute
American Academy of Family Physicians
American Academy of Pediatrics
American Cancer Society
American Cancer Society Cancer Action Network
American College of Chest Physicians
American College of Obstetricians and Gynecologists
American College of Physicians
American Geriatrics Society
American Medical Women's Association
American Nurses Association
American Psychiatric Association
American Society of Clinical Oncology
CancerCare
Crohn's and Colitis Foundation
Epilepsy Foundation
GLMA: Health Professionals Advancing LGBTQ+ Equality
Hemophilia Federation of America
Infectious Diseases Society of America
The Leukemia & Lymphoma Society
Muscular Dystrophy Association
National LGTBQI+ Cancer Network
National Multiple Sclerosis Society
National Organization for Rare Disorders
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Respectfully submitted,

Dated: November 26, 2024

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TABLE OF CONTENTS

SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES i

TABLE OF AUTHORITIES iv

IDENTITY AND INTEREST OF AMICI CURIAE1

INTRODUCTION AND SUMMARY OF ARGUMENT2

ARGUMENT3

 A. LGBTQ People With Chronic Diseases And Disabilities Face
 Distinct Challenges Accessing Health Care.....3

 B. Discrimination In Health Care Harms LGBTQ People In Many
 Different Ways10

 C. Preventing Discrimination Is Integral To Improving Health
 Outcomes, Providing Better Preventive Care, And Increasing
 Patient Satisfaction With Care13

CONCLUSION19

ADDENDUM

CERTIFICATE OF SERVICE

CERTIFICATE OF COMPLIANCE

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bostock v. Clayton County</i> , 140 S. Ct. 1731 (2020).....	2
<i>Nat’l Fed. of Indep. Bus. v. Sebelius</i> , 567 U.S. 519 (2012).....	3
Other Authorities	
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Am. Coll. of Obstetricians & Gynecologists Comm., <i>Health Care for Transgender Individuals</i> , 118 <i>Obstetrics & Gynecology</i> 1454 (2011), https://doi.org/10.1097/aog.0b013e31823ed1c1	6
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Chioun Lee et al., <i>The Association between Perceived Provider Discrimination, Health Care Utilization, and Health Status in Racial and Ethnic Minorities</i> , 19 <i>Ethnicity & Disease</i> 330 (2009).....	11
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Ctrs. for Disease Control & Prevention, <i>Diagnoses of HIV Infection in the United States and Dependent Areas, 2018 (Updated)</i> (2020), https://www.cdc.gov/hiv/pdf/library/reports/surveillance/cdc-hiv-surveillance-report-2018-updated-vol-31.pdf	5, 16
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K. Robin Yabroff et al., <i>Annual Patient Time Costs Associated with Medical Care Among Cancer Survivors in the United States</i> , 52:7 <i>MED CAR.</i> 594 (2014)	9
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IDENTITY AND INTEREST OF AMICI CURIAE¹

Amici represent millions of health-care practitioners, patients, and consumers across the country treating and/or facing serious, acute, and chronic health conditions and disabilities. Amici have a unique perspective on what individuals and families need to prevent disease, manage health, and cure illness—and a deep understanding of the harm that will result if the district court’s decision stands.

Amici are all deeply concerned about the effect the district court’s decision will have on the individuals and families they represent. As a direct result of the decision not to protect all lesbian, gay, bisexual, transgender, and queer (LGBTQ) people in the manner Section 1557 requires, many individuals will face discrimination or the threat of discrimination, which will delay access to timely treatment, lower the quality of medical care, and result in poorer health outcomes. Amici submit this brief to assist the Court in understanding the nature and extent of this harm.

A further description of each individual amicus curiae joining this brief is included in the addendum at the end of this brief.

¹ This brief is submitted under Federal Rule of Appellate Procedure 29(a) with the consent of all parties. Counsel for Amici curiae certify that this brief was not authored in whole or part by counsel for any of the parties; no party or party’s counsel contributed money for the brief; and no one other than Amici and their counsel have contributed money for this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

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

Congress agrees. Congress adopted section 1557 to protect individuals from discrimination and to avoid the costs that follow when such discrimination happens. As *Bostock v. Clayton County* makes clear, those protections extend to LGBTQ people because “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that person based on sex.” 140 S. Ct. 1731, 1741 (2020). The district court’s decision contravenes that precedent and undermines section 1557 by rolling back protections Congress intended for all LGBTQ people. Amici thus agree with the federal government that

the district court's decision should not stand and that the protections section 1557 guarantees should be restored.

ARGUMENT

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

Nearly everyone will require health care at some point in their lives. *See Nat'l Fed. of Indep. Bus. v. Sebelius*, 567 U.S. 519, 547 (2012). That fact is apparent from looking at even just a subset of the diseases on which Amici focus:

- More than 2 million new cancer cases are expected to be diagnosed in the United States in 2024, while more than 18 million Americans are living with a history of cancer. Am. Cancer Soc'y, *Cancer Facts & Figures 2024*, at 1.²
- Roughly four out of ten Americans will develop cancer in their lifetimes. *Id.* at 2.
- An additional 127.9 million American adults are living with cardiovascular diseases. Seth S. Martin et al., *2024 Heart Disease and Stroke Statistics: A Report of US and Global Data from the American Heart Association*, Am. Heart Ass'n, e352-53 (2024).³
- The lifetime risk for developing cardiovascular disease in those free of known disease at age 45 is almost two in three for men and greater than one in two for women. John T. Wilkins et al., *Lifetime Risk and Years Lived Free of Total Cardiovascular Disease*, 308 J. AM. MED. ASS'N 1795, 1798 (2012).

² <https://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/annual-cancer-facts-and-figures/2024/2024-cancer-facts-and-figures-acf.pdf>.

³ <https://www.ahajournals.org/doi/10.1161/CIR.0000000000001209>.

- Another 58.5 million Americans have arthritis; 36.6 million have some form of chronic lung disease; and 24 million suffer from autoimmune diseases, including nearly one million with multiple sclerosis (MS). Ctrs. for Disease Control & Prevention, *Improving the Quality of Life for People With Arthritis*⁴, Ctrs. for Disease Control & Prevention, *2017 National Health Interview Survey* (2018) (analysis by ALA Epidemiology and Statistics Unit using SPPS Software); Nat'l Multiple Sclerosis Soc'y, *MS Prevalence*⁵; Nat'l Inst. of Env't Health Scis., *Autoimmune Diseases*.⁶
- More than one in five adults in the United States lives with a mental illness. Nat'l Inst. of Mental Health, *Statistics*.⁷
- Approximately 1.2 million Americans are living with HIV, a disease that requires lifetime medical care. Ctrs. for Disease Control & Prevention, *HIV Surveillance Supplemental Report 2020 25:1* (2020) (Table 7).⁸
- According to the National Institutes of Health, 1 in 10 people are affected by a rare disease, and half of all people diagnosed with a rare disease are children. Nat'l Insts. of Health, *Delivering Hope for Rare Diseases* (Jan. 2023).⁹

The population of people with these chronic diseases and disabilities includes many who identify as LGBTQ. Am. Cancer Soc'y, *Lesbian, Gay, Bisexual,*

⁴ <https://www.cdc.gov/chronicdisease/resources/publications/factsheets/arthritis.htm>.

⁵ <https://www.nationalmssociety.org/About-the-Society/MS-Prevalence>.

⁶ <https://www.niehs.nih.gov/health/topics/conditions/autoimmune/index.cfm>.

⁷ <https://www.nimh.nih.gov/health/statistics/mental-illness.html>.

⁸ <http://www.cdc.gov/hiv/library/reports/hiv-surveillance.html>.

⁹ https://www.ncats.nih.gov/files/NCATS_RareDiseasesFactSheet.pdf.

Transgender, Queer (LGBTQ) People and Cancer Fact Sheet (2024).¹⁰ Indeed, the LGBTQ community has a disproportionate burden of some chronic illnesses, like cancer, HIV, and heart disease. Gwendolyn P. Quinn et al., *Cancer and Lesbian, Gay, Bisexual, Transgender/Transsexual, and Queer/Questioning (LGBTQ) Populations*, 65:5 CA: A CANCER J. FOR CLINICIANS 384, 384-86 (2015); Ctrs. for Disease Control & Prevention, *Diagnoses of HIV Infection in the United States and Dependent Areas, 2018 (Updated)* 14 (2020) (roughly 70% of new HIV diagnoses in 2018 were among gay and bisexual men); Yi Guo et al., *Statin use for Atherosclerotic Cardiovascular Disease Prevention Among Sexual Minority Adults*, J. OF AM. HEART ASSOC. (Dec. 2, 2020) (showing disparity in cardiovascular disease for sexual and gender minority people); Jennifer Griggs et al., *ASCO Position Statement: Strategies for Reducing Cancer Health Disparities Among Sexual and Gender Minority Populations*, 35 J. CLINICAL ONCOL. 19 (2017).^{11, 12, 13, 14} LGBTQ

¹⁰ <https://www.cancer.org/content/dam/cancer-org/cancer-control/en/booklets-flyers/lgbtq-people-with-cancer-fact-sheet.pdf>.

¹¹ <https://acsjournals.onlinelibrary.wiley.com/doi/pdf/10.3322/caac.21288>.

¹² <https://www.cdc.gov/hiv/pdf/library/reports/surveillance/cdc-hiv-surveillance-report-2018-updated-vol-31.pdf>.

¹³ <https://www.ahajournals.org/doi/full/10.1161/JAHA.120.018233?af=R>.

¹⁴ <https://ascopubs.org/doi/full/10.1200/JCO.2016.72.0441>

individuals are also more than twice as likely as heterosexual ones to have a mental health disorder in their lifetime. Am. Psychiatric Assoc., *Mental Health Disparities: LGBTQ* (2017);¹⁵ Griggs, *supra* at 2203-08.

Nearly all LGBTQ individuals will require health care such as preventative care, cancer screenings, and care for chronic conditions at some point in their lifetimes. Yet, despite these medical needs, LGBTQ individuals face substantial barriers to accessing health care, including lack of adequate insurance coverage, discrimination by health care professionals, and health professionals' discomfort or inexperience with the LGBTQ population.^{16, 17, 18, 19}

¹⁵ <https://www.psychiatry.org/File%20Library/Psychiatrists/Cultural-Competency/Mental-Health-Disparities/Mental-Health-Facts-for-LGBTQ.pdf>.

¹⁶ Am. Coll. of Obstetricians & Gynecologists Comm., Health Care for Transgender Individuals, 118 *Obstetrics & Gynecology* 1454 (2011), <https://doi.org/10.1097/aog.0b013e31823ed1c1>.

¹⁷ K. Kosenko et al., *Transgender patient perceptions of stigma in health care contexts*, 51 *Medical Care* 9 at 819-22 (2013), <https://doi.org/10.1097/mlr.0b013e31829fa90d>.

¹⁸ T. Poteat et al., *Managing uncertainty: A grounded theory of stigma in transgender health encounters*, 84 *Soc. Sci. & Medicine* 1 at 22-2 (2013), <https://doi.org/10.1016/j.socscimed.2013.02.019>.

¹⁹ Lambda Legal, *When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination Against LGBT People and People Living with HIV* (2010), https://legacy.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring.pdf.

Multiple studies have also found that lesbian and gay individuals face discrimination in health care, including finding that nearly half (46%) of heterosexual first-year medical students in one report expressed at least some explicit bias against these individuals. Sara E. Burke et al., *Do Contact and Empathy Mitigate Bias Against Gay and Lesbian People Among Heterosexual First-Year Medical Students?*, *Acad Med.* (May 2015).²⁰ In one survey, 8% of LGBTQ respondents who had visited a health care provider in the past year said that a doctor or health care provider had refused to see them because of their actual or perceived sexual orientation. Shabab A. Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People from Accessing Health Care*, *Ctr. for Am. Progress* (Jan. 18, 2018).²¹ Nine percent said that a doctor or health care provider used harsh or abusive language while treating them. *Id.* Other studies report similar results, including that 12% of LGBTQ people reported that some health care professionals blamed them for their health status. Lambda Legal, *supra*, at 11. Half (50%) of LGBTQ+ cancer

²⁰ <https://pubmed.ncbi.nlm.nih.gov/25674910/>.

²¹ <https://www.americanprogress.org/issues/lgbtq-rights/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>.

patients and survivors surveyed are concerned they may face discrimination in a health care setting, and one-in-five are *very* concerned.²²

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

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

²² <https://www.fightcancer.org/policy-resources/survivor-views-discrimination-among-lgbtq-cancer-patients>.

Tables Table 18 (2016).²³ For example, even long after diagnosis and initial treatment, individuals with a previous cancer diagnosis are more likely to require hospitalizations, ER visits, ambulatory surgeries, and provider visits than those without. They thus spend on average more than twice as long receiving health care in a year compared to individuals without a previous cancer diagnosis. K. Robin Yabroff et al., *Annual Patient Time Costs Associated with Medical Care Among Cancer Survivors in the United States*, 52:7 MED CAR. 594, 597-99 (2014).²⁴ Similarly, individuals living with HIV must receive lifelong treatment from medical providers to suppress the virus, treatment that helps maintain a healthy immune system and prevent spread. Dep't of Health & Human Servs., *Evidence of HIV treatment and viral suppression in preventing the sexual transmission of HIV* (2022).²⁵ For an LGBTQ person with one of these chronic conditions, frequent health care visits come with a risk of suffering discrimination from health care providers. Mirza & Rooney, *supra*.

²³ https://www.cdc.gov/nchs/data/ahcd/namcs_summary/2016_namcs_web_tables.pdf.

²⁴ <https://doi.org/10.1097/mlr.0000000000000151>.

²⁵ <https://www.cdc.gov/hiv/risk/art/evidence-of-hiv-treatment.html>.

B. Discrimination In Health Care Harms LGBTQ People In Many Different Ways

The harms from discrimination go beyond difficulty in accessing health care. The higher levels of stress related to discrimination and marginalization has led to health behavioral issues and poor health outcomes. Guo, *supra*, at 1-2. Indeed, those higher levels of stress can directly contribute to increased risk of chronic disease like heart disease. *Id.* They also contribute to higher rates of tobacco, alcohol, drug use, and obesity, all of which increase the risks for various chronic conditions. *Id.*²⁶ And they lead to disparities in mental health, including from an early age—the rate of suicide attempts is *four times* greater for LGBTQ youth than for their heterosexual peers. *Mental Health Disparities*, *supra*.

When LGBTQ people seeking health care experience bias, humiliation, or harsh treatment, they can become alienated from the health care system and reluctant to seek care at all. Lambda Legal, *supra*, at 12. In one survey, roughly 29% of LGBTQ respondents and 73% of transgender respondents felt that medical personnel would likely treat them differently because of their sexual orientation or gender

²⁶ See Mark Hatzenbuehler et al., *State-level tobacco environments and sexual orientation disparities in tobacco use and dependence in the USA*, 23 Tobacco Control e2 (2014), <https://doi.org/10.1136/tobaccocontrol-2013-051279>; Yuko Homma et al., *Is it getting better? An analytical method to test trends in health disparities, with tobacco use among sexual minority vs. heterosexual youth as an example*, INT’L J. EQUITY HEALTH 15 (2016), <https://doi.org/10.1186/s12939-016-0371-3>.

identity. *Id.* Because of fears of discrimination from medical personnel, 8% of LGBTQ people in another survey avoided or postponed medical care. Mirza & Rooney, *supra*. That number increased to 14% for those who had experienced discrimination due to their sexual orientation or gender identity in the past year. *Id.* In general, LGBTQ adults are far more likely than others not to seek health care or to lack a regular health care provider (30% for LGBTQ adults versus 10% for age-matched cisgender heterosexuals). Quinn, *supra*. The delayed or avoided medical care often includes critical preventive services—for LGBTQ people who had experienced discrimination in the past year, 17% reported delaying or avoiding seeking preventive screenings. *Id.*; see Chioun Lee et al., *The Association between Perceived Provider Discrimination, Health Care Utilization, and Health Status in Racial and Ethnic Minorities*, 19 *Ethnicity & Disease* 330 (2009) (reporting that “[p]erceived provider discrimination contributes to health disparities” and “delay” in seeking care for other minority groups).

Timely medical care and preventive screenings are vital for everyone, including LGBTQ people with diagnosed or undiagnosed chronic diseases and disabilities:

- The five-year survival rates for those diagnosed at later stages of cancer are significantly lower than rates for those diagnosed when their cancer is less advanced. Am. Cancer Soc’y, *Cancer Facts*, *supra*, at 21.
- Early treatment for multiple sclerosis is similarly critical. A growing body of evidence indicates that early and ongoing treatment with an

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

- Timely treatment for epilepsy is also critical to reduce the risk of accident, injury, or sudden unexpected death. C.E Belgley & T.L. Durgin, *The direct costs of epilepsy in the United States: A systemic review of estimates*, 56 EPILEPSIA 1376-87 (2015).²⁸
- Early detection and treatment of HIV is not only essential for people living with HIV, but it is also necessary to help stop HIV’s spread—80% of new HIV infections are the result of someone unaware of their status or not receiving treatment. Zihao Li et al., *Vital Signs: HIV Transmission Along the Continuum of Care — United States, 2016*, 68 Morbidity & Mortality Weekly Report 267 (2019).²⁹
- Untreated psychosis in individuals with mental illness “increases a person’s risk for suicide, involuntary emergency care, and poor clinical outcomes.” Vikki Wachino et al., *Coverage of Early Intervention Services for First Episode Psychosis*, 2 (Oct. 16, 2015).³⁰ In contrast, early intervention strategies have changed the trajectory of individuals’ lives, enabling people with serious mental illnesses to live safely in community settings and participate fully in family and community life. *Id.*

²⁷ <https://doi.org/10.1377/hlthaff.2018.05357>.

²⁸ <https://doi.org/10.1111/epi.13084>.

²⁹ <http://dx.doi.org/10.15585/mmwr.mm6811e1>.

³⁰ <https://www.medicaid.gov/federal-policy-guidance/downloads/cib-10-16-2015.pdf>.

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

Discrimination in health care also harms LGBTQ people because it deters them from disclosing their sexual orientation or gender identity to health care providers, leading to worse health outcomes for those with chronic diseases and disabilities. Multiple studies report that the threat of discrimination pressures LGBTQ people to stay “closeted” in this way when seeking medical care. Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* 63 (2011); UC Davis Comprehensive Cancer Center, *LGBT Task Force Finds Disparities in Cancer Screening and Care* (2012)³¹; Liz Hamel et al., *HIV/AIDS In the Lives of Gay and Bisexual Men in the United States*, Kaiser Family Foundation (2014).^{32, 33} That lack of disclosure can lead to worse care. Gwendolyn P. Quinn et al., *The Importance of Disclosure: Lesbian, Gay, Bisexual, Transgender/Transsexual, Queer/Questioning*,

³¹ <https://health.ucdavis.edu/synthesis/issues/fall2012/lgbt-task-force-tackles-disparities-in-cancer-screening-and-care.html>.

³² <https://www.kff.org/hivaids/report/hivaids-in-the-lives-of-gay-and-bisexual-men-in-the-united-states/>.

³³ See S. E. James et al., *The report of the 2015 U.S. Transgender Survey*, Washington, DC: National Center for Transgender Equality (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

and Intersex Individuals and the Cancer Continuum 121 *CANCER* 1160, 1161-62 (2015).³⁴ These risks and concerns are well documented.³⁵ Practitioners have unsurprisingly identified reducing stigma and mistrust in the health care system as a key component of quality care for LGBTQ people. Charles S. Kamen et al., *State of Cancer Care in America: Achieving Cancer Health Equity Among Sexual and Gender Minority Communities*, *JCO ONCOLOGY PRACTICE* 19 (2023).³⁶ And when clinicians understand and recognize “the importance of social and structural determinants of health,” they can “better understand patients, effectively communicate about health-related conditions and behavior, and contribute to improved health outcomes, including patients’ experience of care and their trust in the health care system.”³⁷

³⁴ <https://acsjournals.onlinelibrary.wiley.com/doi/epdf/10.1002/cncr.29203>.

³⁵ *E.g.*, Erin E. Kent et al., *Care delivery, patient experiences, and health outcomes among sexual and gender minority patients with cancer and survivors: A scoping review*, 125 *CANCER* 24 (2019), <https://doi.org/10.1002/cncr.32388>.

³⁶ <https://doi.org/10.1200/OP.23.00435>.

³⁷ Am. Coll. of Obstetricians & Gynecologists Comm. on Advancing Equity in Obstetric and Gynecologic Health Care, *Addressing Social and Structural Determinants of Health in the Delivery of Reproductive Health Care - Committee Statement Number 11* (Nov. 2024), <https://www.acog.org/clinical/clinical-guidance/committee-statement/articles/2024/11/addressing-social-and-structural-determinants-of-health-in-the-delivery-of-reproductive-health-care>.

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

³⁸ See Cancer.org, HPV and Cancer, <https://www.cancer.org/healthy/cancer-causes/infectious-agents/hpv/hpv-and-cancer-info.html>; Homma, *supra*, at 1-8; Howard H. Bailey et al., *ASCO Statement: Human Papillomavirus Vaccination for Cancer Prevention*, 34 J. OF CLINICAL ONCOLOGY 15 (2016), <https://ascopubs.org/doi/10.1200/JCO.2016.67.2014>.

they account for the overwhelming majority (70%) of new cases. Liz Hamel et al., *supra* at 16; Ctrs. for Disease Control & Prevention, *Diagnoses of HIV Infection*, *supra*. LGBTQ people also experience higher rates of mental health disorders, rates that are at least partly attributable to the excess stress they experience because of discrimination. Wendy B. Bostwick et al., *Discrimination and Mental Health Among Lesbian, Gay and Bisexual Adults in the United States*, 84 AM. J. ORTHOPSYCHIATRY 35-45 (2014).³⁹

Such discrimination contributes to LGBTQ people's documented lower patient satisfaction. Patient satisfaction is an important metric for health care providers that depends on many factors, including effective and clear communication between health care providers and patients, a safe environment of mutual respect that lets patients disclose information, and support by providers that empowers patients to participate in their own treatment, such as by choosing among different treatment options. Jennifer Jabson & Charlie S. Kamen, *Sexual Minority Cancer Survivors' Satisfaction with Care* 34:1-2 J. PSYCHOSOC. ONCOL. 28, 28-30 (2016).⁴⁰ Patient satisfaction positively correlates with better health outcomes—patients who report better satisfaction with their overall experience are more likely

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

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

to complete prescribed treatment and follow care provider recommendations. *Id.*; Ashish K. Jha et al., *Patients' Perception of Hospital Care in the United States*, 359 *NEW ENG. J. MED.* 1921, 1925-26 (2008).⁴¹

Unsurprisingly, discrimination against LGBTQ patients lowers their satisfaction level with the care they receive or can access. Jabson, *supra*, at 28-30; Joseph B. Clift & J. Kirby, *Health Care Access and Perceptions of Provider Care Among Individuals in Same-Sex Couples: Findings From the Medical Expenditure Panel Survey (MEPS)*, 59 *J. HOMOSEXUALITY* 839, 839-40 (2012).⁴² For example, one study found that gay and bisexual men were almost twice as likely as heterosexual men (12% versus 7%) to report lower satisfaction with medical care, including reporting that doctors did not show them respect and did not spend enough time with them. Clift & Kirby, *supra*, at 840-42. Another study showed similar results, finding across all measured satisfaction items that LGBTQ cancer survivors reported lower satisfaction with care than heterosexual cancer survivors. Jabson, *supra*, at 35-38.

Prohibiting discrimination in health care on the basis of sexual orientation or gender identity must be part of the solution to these many harms suffered by LGBTQ

⁴¹ <https://www.nejm.org/doi/pdf/10.1056/NEJMsa0804116>.

⁴² <https://doi.org/10.1080/00918369.2012.694766>.

people with chronic conditions and disabilities. Provider groups welcome and recommend strong non-discrimination standards, promote culturally responsive training for clinicians as critical to closing gaps in outcomes and patient satisfaction for LGBTQ patients. Kamen, *supra*. The alternative of telling LGBTQ patients to avoid the harm by finding another provider is not an adequate answer. Many chronic conditions and disabilities require specialized care, and in some regions of the country there may be only one or two providers with the necessary expertise. Beth O'Connor et al., *LGBTQIA+ health in rural America, National Rural Health Policy Brief* (Feb. 2022).⁴³ Thus, one survey found that “18 percent of LGBTQ people said it would be ‘very difficult’ or ‘not possible’ to find the same type of service at a different hospital,” and 17% said the same about finding service at a different community health center or clinic. Mirza & Rooney, *supra*. Even if an alternative provider exists, finding one can delay critical treatment for chronic conditions and disabilities or deter LGBTQ people from receiving or completing the treatment they need. *Supra* at pp. 13-19.

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

⁴³ [https://www.ruralhealth.us/getmedia/6589dfad-a5f9-494e-b0e8-749f8b60ff68/2022-NRHA-LGBTQ-Policy-Paper-Final-\(1\).pdf](https://www.ruralhealth.us/getmedia/6589dfad-a5f9-494e-b0e8-749f8b60ff68/2022-NRHA-LGBTQ-Policy-Paper-Final-(1).pdf).

CONCLUSION

For these reasons, the Court should vacate the district court's preliminary injunction and stay order.

Dated: November 26, 2024

Respectfully submitted,

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ADDENDUM

American Cancer Society's (ACS's) mission is to save lives, celebrate lives, and lead the fight for a world without cancer. American Cancer Society Cancer Action Network is the nonpartisan advocacy affiliate of ACS, making cancer a top priority for policymakers, and believing that everyone should have a fair and just opportunity to prevent, detect, treat, and survive cancer.

The AIDS Institute is a national nonpartisan, nonprofit organization that promotes action for social change through public policy, research, advocacy, and education and works to protect and improve health care access for people living with HIV/AIDS, Hepatitis, and patients living with chronic diseases.

Founded in 1947, the American Academy of Family Physicians (AAFP) is one of the largest national medical organizations, representing 130,000 family physicians and medical students nationwide. AAFP seeks to improve the health of patients, families, and communities by advocating for the health of the public and by supporting its members in providing continuous comprehensive health care to all.

The American Academy of Pediatrics (AAP) is a national, not-for-profit organization representing 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. In its dedication to the health of all children, the AAP

strives to improve health care access and eliminate disparities for all children, including those who identify as lesbian, gay, bisexual, transgender, or questioning of their sexual or gender identity. Pediatricians know that discrimination in health care settings can impede a child's ability to access the services they need for healthy development, and AAP strongly opposes any attempt to limit access to comprehensive, developmentally appropriate care for our nation's children and adolescents.

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

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

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

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

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

nurses, social workers, family practitioners, physician assistants, pharmacists, and internists, all of whom are pioneers in advanced illness care for older individuals. AGS has worked tirelessly to ensure that all older adults have access to interprofessional care teams dedicated to eliciting personal care goals and treating older people as whole persons. AGS believes in a just society, one where we all are supported by and able to contribute to communities where ageism, ableism, classism, homophobia, racism, sexism, xenophobia, and other forms of bias and discrimination no longer impact healthcare access, quality, and outcomes for older adults and their caregivers. AGS advocates for policies and programs that support the health, independence, and quality of life of all of us as we age.

American Medical Women's Association (AMWA) is a multi-specialty organization dedicated to advancing women in medicine and improving women's health. Our membership is comprised of physicians, residents, medical students, pre-medical students, health care professionals, and supporters. Our mission is to advance women in medicine, advocate for equity, and ensure excellence in health care.

The American Nurses Association (ANA) is the only association that represents and serves as the professional home for all registered nurses in every specialty and practice setting. Founded in 1896, ANA has members in all 50 states and in U.S. territories. Nurses have a critical role in the delivery of healthcare

services, and it is ANA's calling to champion nurses and the causes they care about. ANA advocates to improve the quality of healthcare for all and to amplify nurses' voices across healthcare and in society.

The American Psychiatric Association (APA), with more than 38,000 members, is the nation's leading organization of physicians who specialize in psychiatry. Its member physicians work to ensure high quality care and effective treatment for all persons with mental health disorders. It is the position of the APA that discrimination, including against those with gender dysphoria, has negative mental health consequences. The APA opposes all public and private discrimination against transgender and gender-diverse individuals, including in health care.

The American Society of Clinical Oncology (ASCO) is a national organization representing more than 50,000 oncology professionals who care for patients with cancer. Through research, education, and promotion of the highest-quality, equitable patient care, our members are committed to ensuring access to evidence-based care for the prevention, diagnosis, and treatment for all Americans. ASCO is committed to eliminating disparities in cancer outcomes, promoting research that benefits all populations, and working collaboratively across the oncology community to achieve this mission.

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

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

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

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

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

Infectious Diseases Society of America's mission is to bring together the curiosity, compassion and knowledge of our members to strengthen the field of infectious diseases, advance science and advocate for health equity.

The Leukemia & Lymphoma Society (LLS) is the world's largest voluntary health agency dedicated to fighting blood cancer and ensuring that the more than 1.3 million blood cancer patients and survivors in the United States have access to the care they need. LLS's mission is to cure leukemia, lymphoma, Hodgkin's disease, and myeloma, and to improve the quality of life of patients and their families. LLS advances that mission by advocating that blood cancer patients have sustainable access to quality, affordable, coordinated health care, regardless of the source of their coverage.

The Muscular Dystrophy Association (MDA) is the number one voluntary health organization in the United States for people living with muscular dystrophy, ALS, and related neuromuscular diseases. For over 70 years, MDA has led the way in accelerating research, advancing care, and advocating for the support of our families. MDA's mission is to empower the people we serve to live longer, more independent lives.

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

The National Multiple Sclerosis Society exists because there are people living with multiple sclerosis (MS). Our vision is a world free of MS. Our mission is: We will cure MS while empowering people affected by MS to live their best lives.

National Organization for Rare Disorders (NORD), a 501(c)(3) organization, is a patient advocacy organization dedicated to individuals with rare diseases and the organizations that serve them. NORD, along with its more than 350 patient organization members, is committed to improving the health and well-being of people with rare diseases by driving advances in care, research, and policy.

National Patient Advocate Foundation's mission is to make the healthcare system work for all of us.

CERTIFICATE OF SERVICE

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

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

Dated: November 26, 2024

/s/ Deanne E. Maynard
Deanne E. Maynard

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 3,699 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface, including serifs, using Microsoft Word in Times New Roman 14-point font.

Dated: November 26, 2024

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