

No. 23-10326

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

BRAIDWOOD MANAGEMENT, INC., *et al.*,
Plaintiffs-Appellees-Cross-Appellants,

v.

XAVIER BECERRA, *et al.*,
Defendants-Appellants-Cross-Appellees.

On Appeal from the United States District Court
for the Northern District of Texas,
No. 4:20-CV-283-O, Hon. Reed C. O'Connor

**BRIEF FOR AMERICAN PUBLIC HEALTH ASSOCIATION,
PUBLIC HEALTH DEANS AND SCHOLARS, THE ROBERT
WOOD JOHNSON FOUNDATION, AND PUBLIC HEALTH
ADVOCATES AS *AMICI CURIAE*
IN SUPPORT OF CROSS-APPELLEES**

Andrew J. Pincus
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000
apincus@mayerbrown.com

Counsel for Amici Curiae

**CORPORATE DISCLOSURE STATEMENT AND
SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES**

**Case No. 23-10326, *Braidwood Management, Inc., et al.*
*v. Xavier Becerra, et al.***

The undersigned counsel of record certifies that the following listed persons and entities as described in Rule 28.2.1, in addition to those disclosed in the parties' and amici's statements of interested persons, have an interest in this case's outcome. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

American Public Health Association

The American Public Health Association is a professional association. It is not publicly traded and has no parent corporation. No publicly held corporation owns 10% or more of its stock.

Individual *Amici Curiae*

Burroughs, Thomas E., PhD, MS, MA, Dean and Professor, SLU College for Public Health and Social Justice, Saint Louis University

Chandler, G. Thomas, MS, PhD, Dean and Professor of Environmental Health Sciences, Arnold School of Public Health, University of South Carolina

Deardorff, Julianna, PhD, Executive Associate Dean of Faculty and Academic Affairs and Associate Professor, University of California Berkeley School of Public Health

Drenkard, Karen, PhD, RN, NEA-BC, FAAN, Associate Dean of Clinical Practice and Community Engagement, School of Nursing Center for Health Policy and Medical Engagement, The George

Washington University

El-Mohandes, Ayman, MBBCh, MD, MPH, Dean, CUNY Graduate School of Public Health & Health Policy

Fallin, Daniele, PhD, James W. Curran Dean of Public Health, Rollins School of Public Health, Emory University

Fried, Linda P., MD, MPH, Dean and DeLamar Professor of Public Health, Mailman School of Public Health, Professor of Epidemiology and Medicine, Columbia University

Galea, Sandro, MD, DrPH, Dean, Robert A. Knox Professor, Boston University

Godwin, Hilary, PhD, Dean, University of Washington School of Public Health

Goldman, Lynn R., MD, MPH, MS, Michael and Lori Milken Dean of Public Health, Milken Institute School of Public Health, The George Washington University

Gusmano, Michael K., PhD, Professor and Associate Dean of Academic Programs, College of Health, Director, Center for Ethics, Lehigh University

Hoffman, Allison K., JD, Deputy Dean and Professor of Law, University of Pennsylvania Carey Law School

Jeffries, Pamela R., PhD, RN, FAAN, ANEF, FSSH, Dean, Vanderbilt School of Nursing, Valere Potter Distinguished Professor of Nursing, RWJF Nurse Executive Fellow Alumna, Vanderbilt School of Nursing

Lu, Michael C., MD, MS, MPH, Dean, UC Berkeley School of Public Health

Lushniak, Boris, MD, MPH, Professor and Dean, University of Maryland School of Public Health

Parker, Edith A., MPH, DrPH, Dean, Professor, Community and

Behavioral Health, The University of Iowa College of Public Health

Petersen, Donna J., ScD, MHS, CPH, Dean, College of Public Health, Professor of Public Health, University of South Florida

Schuster, Mark A., MD, PhD, Founding Dean and CEO, Kaiser Permanente Bernard J. Tyson School of Medicine

Thorpe, Jane, JD, Professor and Sr. Associate Dean for Academic, Student & Faculty Affairs, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Trapido, Edward, ScD, FACE, Interim Dean, LSU School of Public Health – New Orleans

Alder, Joan, MPhil, Research Professor, McCourt School of Public Policy, Georgetown University

Ashe, Marice, JD, MPH, Lecturer, University of California Berkeley Law

Bard, Jennifer S., JD, MPH, PhD, Professor of Law, College of Law, Professor, Department of Internal Medicine, University of Cincinnati

Beckerman, Julia Zoe, JD, MPH, Teaching Associate Professor & Vice Chair, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Blewett, Lynn A., PhD, MA, Professor of Health Policy, University of Minnesota School of Public Health

Bonar, Robert, DrHA, Professor and Program Director, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Borden, William B., MD, FACC, FAHA, Chief Quality and Population Officer, Associate Professor of Medicine and Health Policy, George Washington University Medical Faculty Associates

Brindis, Claire D., DrPH, Professor, Departments of Pediatrics and Obstetrics, Gynecology and Reproductive Sciences, Director, Philip R. Lee Institute for Health Policy Studies, Director emeritus and Senior Scholar, Center for Global Reproductive Health, Co-Director, Adolescent and Young Adult Health National Resource Center, Adjunct Professor, UC Hastings School of Law, University of California, San Francisco

Burke, Taylor, JD, LLM, Adjunct Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Burris, Scott, JD, Professor of Law, Director, Center for Public Health Law Research, Temple University Beasley School of Law

Byrnes, Maureen, MPA, Teaching Instructor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Cartwright-Smith, Lara, JD, MPH, Associate Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Catalanotti, Jillian, MD, MPH, FACP, Associate Professor of Medicine, Associate Professor of Health Policy and Management, Director, Internal Medicine Residency Programs, The George Washington University

Cohen, Alan B., Sc.D., Research Professor, Markets, Public Policy and Law, Boston University Questrom School of Business, and Professor of Health Law, Policy and Management, Boston University School of Public Health

Dorfman, Doron, JSD, JSM, LLM, LLB, Associate Professor of Law, Seton Hall University School of Law

Evans, Scott, PhD, MS, Director, The Biostatistics Center, Professor and Founding Chair, Department of Biostatistics and Bioinformatics, Milken Institute School of Public Health, The George Washington University

Field, Robert I., JD, MPH, PhD, Professor of Law, Thomas R. Kline School of Law, Professor of Health Management and Policy, Dornsife School of Public Health, Drexel University

Fox, Jacqueline, JD, LLM, Professor, School of Law, University of South Carolina

Frankford, David M., JD, Professor of Law, Rutgers University School of Law

Freed, Salama, PhD, Assistant Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Friedman, Leonard H., PhD, MPH, FACHE, Professor and Director, MHA@GW Program, Editor, Journal of Health Administration Education, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Gable, Lance, JD, MPH, Professor of Law, Wayne State University Law School

Goldstein, Melissa M., JD, Associate Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Grogan, Colleen M., PhD, Deborah R. and Edgar D. Jannotta Professor, Crown Family School of Social Work, Policy, and Practice, The University of Chicago

Halfon, Neal, MD, MPH, Professor of Pediatrics, Public Health and Public Policy, Director, UCLA Center for Healthier Children, Families & Communities, UCLA

Harris, Eva, PhD, Professor and Chair, Division of Infectious Diseases and Vaccinology, School of Public Health, Professor, Division of Immunology and Molecular Medicine, Department of Molecular and Cell Biology, Director, Center for Global Public Health, University of California, Berkeley

Heinrich, Janet, DrPH, RN, FAAN, Research Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Herbst, Jennifer L., JD, LLM, M.Bioethics, Professor of Law and Medical Sciences, Quinnipiac University School of Law and Frank H. Netter School of Medicine

Hermer, Laura, JD, LLM, Professor of Law, Mitchell Hamline School of Law

Hoffman, Sharona, JD, LLM, SJD, Professor of Law and Bioethics, Edgar A. Hahn Professor of Jurisprudence, Co-Director, Law-Medicine Center, Case Western Reserve University School of Law

Horton, Katherine, RN, MPH, JD, Research Professor in the Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Huberfeld, Nicole, JD, Professor of Health Law, Ethics & Human Rights, Boston University School of Public Health and Professor of Law, Boston University School of Law

Ivey, Susan L., MD, MHSA, Professor, Adjunct, University of California, Berkeley, School of Public Health and UCB-UCSF Joint Medical Program

Jacobs, Feygele, DrPH, MS, MPH, Professor and Director, Geiger Gibson Program in Community Health, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Jacobson, Peter D., JD, MPH, Professor Emeritus of Health Law and Policy, University of Michigan School of Public Health

Kershner, Stacie, JD, Deputy Director, Center for Law, Health and Society, George State University College of Law

Ku, Leighton, PhD, MPH, Professor, Department of Health Policy and Management, Director, Center for Health Policy Research, Milken Institute School of Public Health, The George Washington

University

Landers, Renée M., JD, Professor of Law and Faculty Director, Health and Biomedical Law Concentration, Suffolk University Law School

Lantz, Paula, PhD, James B. Hudak Professor of Health Policy, Professor of Public Policy, Gerald R. Ford School of Public Policy, Professor of Health Management and Policy, School of Public Health, University of Michigan

Law, Sylvia A., JD, Elizabeth K. Dollard Professor of Law, Medicine and Psychiatry, Emerita Co-Director, Arthur Garfield Hays Civil Liberties Program, NYU Law School

Levi, Jeffrey, PhD, Professor Emeritus, Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Lillie-Blanton, Marsha, PhD, Adjunct Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Magnus, Manya, PhD, MPH, Professor and Interim Chair, Department of Epidemiology, Milken Institute School of Public Health, The George Washington University

Mariner, Wendy K., JD, LLM, MPH, Professor Emerita, Health Law, Ethics and Human Rights, Boston University School of Public Health

Markus, Anne R., PhD, MHS, JD, Professor and Chair, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Mason, Diana J., RN, PhD, FAAN, Senior Policy Service Professor, Center for Health Policy and Media Engagement, School of Nursing, The George Washington University

McDonnell, Karen A., PhD, Associate Professor and Vice Chair, Department of Prevention and Community Health, Milken

Institute School of Public Health, The George Washington University

Michaels, David, PhD, MPH, Professor, Department of Environmental and Occupational Health, Milken Institute School of Public Health, The George Washington University

Minkler, Meredith, DrPH, Professor Emerita, UC Berkeley School of Public Health

Monroe, Anne K., MD, MSPH, Associate Professor, Department of Epidemiology, Milken Institute School of Public Health, The George Washington University

Morello-Frosch, Rachel, PhD, MPH, Professor, UC Berkeley School of Public Health

Musumeci, MaryBeth, JD, Associate Teaching Professor, Milken Institute School of Public Health, The George Washington University

Oberlander, Jonathan, PhD, Professor and Chair, Department of Social Medicine, Professor, Department of Health Policy & Management, University of North Carolina at Chapel Hill

Paltiel, A. David, PhD, Professor of Health Policy and Management, Yale School of Public Health

Parmet, Wendy E., JD, Matthews University Distinguished, Professor of Law and Professor of Public, Policy and Urban Affairs, Northeastern University

Perreira, Krista M., PhD, Department of Social Medicine, UNC School of Medicine

Peterson, Mark A., PhD, Professor of Public Policy, Political Science, and Law, Department of Public Policy, UCLA Meyer and Renee Luskin School of Public Affairs

Pittman, Patricia, PhD, Professor of Health Policy and Management, Director of Health Workforce Research Center,

Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Regenstein, Marsha, PhD, Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Riegelman, Richard, MD, MPH, PhD, Professor of Epidemiology and Founding Dean, Milken Institute School of Public Health, The George Washington University

Rimer, Barbara K., DrPH, MPH, Alumni Distinguished Professor, Dean Emerita, UNC Gillings School of Global Public Health

Rosenbaum, Sara, JD, Professor Emerita, Health Law and Policy, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Rosenblatt, Rand E., JD, Professor Emeritus, Rutgers University School of Law

Sawicki, Nadia N., JD, M. Bioethics, Georgia Reithal Professor of Law, Co-Director, Beazley Institute for Health Law and Policy, Ambassador, Loyola Institute for Transformative Interprofessional Education, Loyola University Chicago School of Law

Schmit, Cason, JD, Assistant Professor, Texas A&M University School of Public Health

Schneider, Andy, JD, Research Professor of the Practice, McCourt School of Public Policy, Georgetown University

Schwartz, Jason L., PhD, Associate Professor, Department of Health Policy and Management, Yale School of Public Health

Seiler, Naomi, JD, Associate Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Shin, Peter, PhD, MPH, Associate Professor and Geiger Gibson-RCHN Research Director, Department of Health Policy and

Management, Milken Institute School of Public Health, The George Washington University

Shortell, Stephen M., PhD, MBA, MPH, Distinguished Professor of Health Policy and Management Emeritus and Dean Emeritus, School of Public Health, University of California Berkeley

Siegel, Marc, MD, Professor of Medicine, Chief, Infectious Diseases, George Washington School of Medicine and Health Sciences

Silberman, Pam, JD, DrPH, Professor Emerita, Director, Executive Doctoral Program in Health Leadership, Department of Health Policy and Management, UNC Gillings School of Global Public Health

Siminoff, Laura A., PhD, Laura H. Carnell Professor of Public Health, Department of Social and Behavioral Sciences, Temple University

Sinha, Michael S., MD, JD, MPH, FCLM, Assistant Professor of Law, Center for Health Law Studies, Saint Louis University School of Law

Skinner, Daniel, PhD, Associate Professor of Health Policy, Ohio University

Slifkin, Becky, PhD, Professor Emerita, Department of Health Policy and Management, UNC Gillings School of Global Health

Strasser, Julia, DrPH, MPH, Director, Jacobs Institute of Women's Health, Assistant Research Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Swartzberg, John, MD, FACP, Clinical Professor Emeritus, Professor, Emeriti Academy, School of Public Health, Division of Infectious Diseases and Vaccinology, Chair, Editorial Board, UC Berkeley Wellness Letter, University of California

Teitelbaum, Joel, JD, LLM, Professor of Health Policy and Law, Director, Hirsh Health Law and Policy Program, Co-Director,

National Center for Medical-Legal Partnership, The George Washington University

Tielsch, James M., PhD, Professor and Chair, Department of Global Health, Milken Institute School of Public Health, The George Washington University

Ulrich, Michael R., JD, MPH, Assistant Professor, Center for Health Law, Ethics and Human Rights, Boston University School of Public Health, Boston University School of Law, Distinguished Visiting Scholar, Solomon Center for Health Law and Policy, Yale Law School

Vermund, Sten H., MD, PhD, Anna M.R. Lauder Professor of Public Health, Yale School of Public Health, and Professor of Pediatrics, Yale School of Medicine

Vichare, Anushree, PhD, MBBS, MPH, Assistant Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

Vyas, Amita N., PhD, MHS, Associate Professor, Director, Maternal & Child Health Program, Milken Institute School of Public Health, The George Washington University

Warren-Findlow, Jan, PhD, Professor and Chair, Department of Public Health Sciences, University of North Carolina Charlotte

Wasserman, Alan G., MD, MACP, Eugene Meyer Professor, Senior Academic Advisor to the Dean, Department of Medicine, The George Washington School of Medicine and Health Sciences

Westmoreland, Timothy M., JD, Professor from Practice, Emeritus, Georgetown University School of Law

Robert Wood Johnson Foundation

The Robert Wood Johnson Foundation is a New Jersey non-profit corporation without members. It is not publicly traded and has no parent corporation. No publicly held corporation owns 10% or more of its stock.

Trust for America's Health

Trust for America's Health is a non-profit organization. It is not publicly traded and has no parent corporation. No publicly held corporation owns 10% or more of its stock.

ChangeLab Solutions

ChangeLab Solutions is a non-profit organization. It is not publicly traded and has no parent corporation. No publicly held corporation owns 10% or more of its stock.

Counsel for *Amici Curiae*

Mayer Brown LLP (Andrew J. Pincus)

/s/ Andrew J. Pincus
Andrew J. Pincus
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000
apincus@mayerbrown.com

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT AND SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES	i
TABLE OF AUTHORITIES	xiv
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	4
ARGUMENT	7
PLAINTIFFS’ CROSS-APPEAL, IF SUCCESSFUL, WILL ELIMINATE COST-FREE COVERAGE OF NUMEROUS LIFE-SAVING SERVICES.	7
A. Immunizations.	7
B. Preventive services for infants, children, and adolescents.	13
C. Preventive services for women.	15
CONCLUSION	18
APPENDIX A	19
CERTIFICATE OF SERVICE.....	32
CERTIFICATIONS UNDER ECF FILING STANDARDS	33
CERTIFICATE OF COMPLIANCE.....	34

TABLE OF AUTHORITIES

	Page(s)
Statutes, Rules and Regulations	
42 U.S.C.	
§ 300gg-13(a)	4
§ 300gg-13(a)(2)-(4)	7
Fed. R. App. P. 29(a)(4)(E)	1
Other Authorities	
ACIP, <i>Influenza ACIP Vaccine Recommendations</i> (Aug. 23, 2023), https://bit.ly/3ZGiYzb	8, 9
Osayl E. Akinbosye, PhD, PAHM, <i>et al.</i> , <i>Factors Associated with Zostavax Abandonment</i> , 8 <i>Amer. J. of Pharmacy Benefits</i> 84 (July/Aug. 2016)	12
Tara C. Anderson, DVM, PhD, <i>et al.</i> , <i>Use of Recombinant Zoster Vaccine in Immunocompromised Adults Aged ≥19 Years: Recommendations of the Advisory Committee on Immunization Practices — United States, 2022</i> (Jan. 21, 2022), https://bit.ly/3rHJXxN	10
Bright Futures/American Academy of Pediatrics, <i>Recommendations for Preventive Pediatric Health Care</i> (2023), https://bit.ly/46dggDI	
CDC, <i>2021–2022 Estimated Flu Illnesses, Medical Visits, Hospitalizations, and Deaths Prevented by Flu Vaccination</i> (Jan. 25, 2023), https://bit.ly/3Q2UtZU	13
CDC, <i>Shingles Vaccination</i> (May 8, 2023), https://bit.ly/48K4v9p	10
Kathleen L. Dooling, MD, <i>et al.</i> , <i>Recommendations of the Advisory Committee on Immunization Practices for Use of Herpes Zoster Vaccines</i> (Jan. 26, 2018), https://bit.ly/3ZHiJ6O	10

Lisa A. Grohskopf, MD, *et al.*, *Prevention and Control of Seasonal Influenza with Vaccines: Recommendations of the Advisory Committee on Immunization Practices — United States, 2023–24 Influenza Season* (Aug. 25, 2023), <https://bit.ly/3rGgp3v> 8

Joseph F. Hagan, *et al.*, American Academy of Pediatrics, *Guidelines for Health Supervision of Infants, Children, and Adolescents* (4th ed. 2017), <https://bit.ly/3rHL3tp> 14

HRSA, *Newborn Screening – Condition Information* (July 2023), <https://bit.ly/3ZKQ9l7> 13

HRSA, *Preventive Guidelines and Screenings for Women, Children, and Youth* (July 2022), <https://bit.ly/46ELXpe> 14

HRSA, *Recommended Uniform Screening Panel* (Jan. 2023), <https://bit.ly/45myod7> 13

HRSA, *Women’s Preventive Services Guidelines* (Dec. 2022), <https://bit.ly/3rKAOnZ> 15

Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps* (2011) 17

Jefferson M. Jones MD, *et al.*, *Use of Nirsevimab for the Prevention of Respiratory Syncytial Virus Disease Among Infants and Young Children: Recommendations of the Advisory Committee on Immunization Practices — United States, 2023* (Aug. 25, 2023), <https://bit.ly/46Dctzu> 10

Miwako Kobayashi, MD, *et al.*, *Pneumococcal Vaccine for Adults Aged ≥ 19 Years: Recommendations of the Advisory Committee on Immunization Practices, United States, 2023* (Sept. 8, 2023), <https://bit.ly/3PRpwGS> 11

Miwako Kobayashi, MD, *et al.*, *Use of 15-Valent Pneumococcal Conjugate Vaccine Among U.S. Children: Updated Recommendations of the Advisory Committee on Immunization Practices — United States, 2022* (Sept. 16, 2022), <https://bit.ly/3Q4IUkQ> 11

Sarah A. Mbaeyi, MD, *et al.*, *Meningococcal Vaccination: Recommendations of the Advisory Committee on Immunization Practices, United States, 2020* (Sept. 25, 2022), <https://bit.ly/3tloX0i> 12

John M. McLaughlin, *et al.*, *Estimated Human and Economic Burden of Four Major Adult Vaccine-Preventable Diseases in the United States*, 36 *J. Primary Prevent.* 259 (2015)..... 13

Michael Melgar, MD, *et al.*, *Use of Respiratory Syncytial Virus Vaccines in Older Adults: Recommendations of the Advisory Committee on Immunization Practices — United States, 2023* (July 21, 2023), <https://bit.ly/48JkR24> 9

Heidi D. Nelson, MD, MPH, *et al.*, *Screening for Type 2 Diabetes After Pregnancy* (Dec. 1, 2022), <https://bit.ly/3tlpKhM> 15

Heidi D. Nelson, MD, MPH, *et al.*, *Screening for Urinary Incontinence* (Dec. 2017), <https://bit.ly/3F3grWn>..... 16, 17

Sachiko Ozawa, *et al.*, *Modeling the Economic Burden of Adult Vaccine-Preventable Diseases in the United States*, 35 *Health Affairs* 1 (Nov. 2016)..... 13

Mark K. Weng, MD, *et al.*, *Universal Hepatitis B Vaccination in Adults Aged 19–59 Years: Updated Recommendations of the Advisory Committee on Immunization Practices — United States, 2022* (Apr. 1, 2022), <https://bit.ly/48ImJbC>..... 12

INTEREST OF *AMICI CURIAE*

The American Public Health Association (“APHA”), which was founded in 1872, is the leading professional organization for public health professionals in the United States. APHA shares the latest research and information, promotes best practices, and advocates for public health issues and policies grounded in scientific research. APHA represents more than 24,000 individual members and is the only organization that combines a 150-year perspective, a broad-based member community, and a focus on influencing federal policy to improve the public’s health.¹

The individual *amici* are a group of 107 distinguished deans and professors of public health and health law and policy with deep expertise in policies that promote population health and alleviate barriers to care. They are identified in Appendix A.

The Robert Wood Johnson Foundation (“RWJF”) is the nation’s largest philanthropic organization dedicated solely to health. It supports efforts to build a national Culture of Health rooted in equity that provides

¹ No counsel for a party authored this brief in whole or in part, and no person other than *amicus* or its counsel contributed money that was intended to fund the preparation or submission of this brief. See Fed. R. App. P. 29(a)(4)(E). All parties have consented to the filing of this brief.

every individual with a fair and just opportunity for health and wellbeing. As part of those efforts, RWJF has supported research demonstrating the benefits of comprehensive coverage for no-cost preventive health services.

Trust for America's Health ("TFAH") is a nonpartisan, nonprofit organization focused on public health research and policy. TFAH is committed to promoting optimal health for every person and community and making health equity foundational to policymaking at all levels. The organization's work is focused on the antecedents of poor health and on policies and programs to advance an evidence-based public health system that is ready to meet the challenges of the 21st century. TFAH develops reports and other resources and initiatives to educate the public and recommends policies to promote health and wellbeing and to make the prevention of illness and injury a national priority.

ChangeLab Solutions is an interdisciplinary team of lawyers, planners, policy analysts, public health practitioners, and other professionals who work across the nation to advance equitable laws and policies that ensure healthy lives for all. With more than two decades of experience in enacting policy, systems, and environmental changes at

local and state levels, ChangeLab Solutions focuses on eliminating health disparities by addressing the social determinants of health. It envisions healthy, equitable communities where every person is economically secure and can attain their full health potential.

APHA has a strong interest in ensuring the continued availability of cost-free coverage for preventive healthcare, given its mission to promote public health through evidence-based policies. The individual *amici*, RWJF, TFAH, and ChangeLab Solutions all share that interest. *Amici* file this brief to explain the importance of the cost-free preventive services requirements challenged on Plaintiffs' cross-appeal and the significant harm to public health that will result if the cross-appeal is successful.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Affordable Care Act (“ACA”) requires health insurance plans that cover more than 150 million Americans to provide cost-free access to four categories of life-saving preventive services. The district court’s decision eliminated this requirement with respect to one category of these services: those recommended by the U.S. Preventive Services Task Force (“USPSTF”) since the ACA’s enactment in 2010. *Amici* explained in their brief in support of the government’s appeal (Dkt. 187) that the lower court’s ruling, if permitted to stand, would result in serious illnesses and deaths that otherwise would have been prevented.

Plaintiffs’ cross-appeal, if successful, would eliminate guaranteed cost-free access to preventive services in the other three statutory categories—immunizations; preventive treatments for infants, children, and adolescents; and preventive services for women, *see* 42 U.S.C. § 300gg-13(a)—that have been added by government experts since the ACA’s enactment. *Amici* submit this brief to explain the very serious harm to Americans’ health, and the significant increase in health care costs, that would result if Plaintiffs prevail on their cross-appeal.

Amici’s brief in support of the government’s appeal explained that:

- Congress in the ACA concluded that to prevent Americans from suffering from serious diseases, including diseases that can lead to death, it was necessary to remove barriers to Americans' use of preventive health services—and that requiring patients to pay part of the cost of these services was a key barrier to their use. Congress therefore included in the statute provisions mandating that insurers cover those services cost-free. Dkt. 187, at 7 & 19-20.
- The ACA's coverage guarantee and elimination of patient cost-sharing have increased Americans' access to and use of preventive services, Dkt. 187, at 15-19; and use of preventive services has lowered health care costs, *id.* at 15.
- If these statutory protections are eliminated, companies and insurers will re-impose cost sharing, and many Americans will not use these services. Dkt. 187 at 19-22.

The very same adverse consequences also will result if Plaintiffs' cross-appeal succeeds and Americans no longer have guaranteed cost-free access to the life-saving treatments recognized under the ACA's

three other preventive-service categories since the law's adoption more than 13 years ago. We will not repeat those arguments here.

Amici submit this brief to explain that—just as the district court's ruling eliminates statutory protection for critically important preventive services, Dkt. 187, at 8-14—upholding Plaintiffs' cross-appeal arguments would deprive Americans of access to additional life-saving treatments.

These additional treatments include vaccines that protect against deadly diseases such as influenza, RSV, and shingles; screening that tests newborns for more than seventy different genetic conditions and other diseases; testing women for post-pregnancy diabetes and annual doctor visits to enable women to access the full range of preventive services available under the ACA. Eliminating guaranteed cost-free coverage of these services will cause Americans to suffer serious illnesses, and deaths, that the services would have prevented.

This Court should affirm the district court's decision with respect to the issues raised on Plaintiffs' cross-appeal.

ARGUMENT

PLAINTIFFS’ CROSS-APPEAL, IF SUCCESSFUL, WILL ELIMINATE COST-FREE COVERAGE OF NUMEROUS LIFE-SAVING SERVICES.

Plaintiffs’ cross-appeal attacks three categories of preventive services: immunizations; “evidence-informed preventive care and screenings” for “infants, children, and adolescents”; and “preventive care and screenings” for women not adopted by the U.S. Preventive Services Task Force. 42 U.S.C. § 300gg-13(a)(2)-(4).

The government’s brief demonstrates why Plaintiffs’ cross-appeal arguments fail as a matter of law. *Amici* write separately to explain the serious harm to Americans’ health that will be the inevitable consequence of eliminating guaranteed cost-free coverage for these preventive services.

A. Immunizations.

The life-saving immunizations that would lose guaranteed cost-free coverage under Plaintiffs’ cross-appeal arguments include:

- Influenza. The formula for flu vaccine changes each year so that it targets the flu variants predicted to be prevalent in the United States—and therefore a different flu vaccine is

endorsed each year.² Accepting Plaintiffs’ arguments would mean that only flu vaccines endorsed before the ACA’s enactment in 2010 would receive guaranteed cost-free coverage.

Although “[m]ost persons who become ill after influenza virus infection recover without serious complications,” the disease “can be associated with serious illnesses, hospitalizations, and deaths, particularly among older adults, very young children, pregnant persons, and persons of all ages with certain chronic medical conditions.”³ One study found that “[d]uring each of the six influenza seasons from 2010–11 through 2015–16, influenza vaccination prevented an estimated 1.6–6.7 million illnesses, 790,000–3.1 million outpatient medical visits,

² Lisa A. Grohskopf, MD, *et al.*, *Prevention and Control of Seasonal Influenza with Vaccines: Recommendations of the Advisory Committee on Immunization Practices — United States, 2023–24 Influenza Season* (Aug. 25, 2023), <https://bit.ly/3rGgp3v> (2023 Influenza Recommendation); see ACIP, *Influenza ACIP Vaccine Recommendations* (Aug. 23, 2023), <https://bit.ly/3ZGiYzb> (archiving annual flu vaccine recommendations).

³ *2023 Influenza Recommendation*.

39,000–87,000 hospitalizations, and 3,000–10,000 respiratory and circulatory deaths each season in the United States.”⁴

- RSV. Respiratory syncytial virus, commonly known as RSV, is “a common respiratory virus that usually causes mild, cold-like symptoms.” But the disease poses serious risks to older adults and infants. Thus, RSV each year “causes substantial morbidity and mortality in older adults, including lower respiratory tract disease (LRTD), hospitalization, and death. . . . Most adult RSV disease cases occur among older adults with an estimated 60,000–160,000 hospitalizations and 6,000–10,000 deaths annually among adults aged ≥ 65 years.”⁵ Also, “RSV infection is the leading cause of hospitalization among U.S. infants”; “[a]pproximately 50,000–80,000 RSV-associated hospitalizations and 100–300 RSV-associated deaths occur annually among U.S. infants

⁴ *Id.*

⁵ Michael Melgar, MD, *et al.*, *Use of Respiratory Syncytial Virus Vaccines in Older Adults: Recommendations of the Advisory Committee on Immunization Practices — United States, 2023* (July 21, 2023), <https://bit.ly/48JkR24>.

and children aged <5 years.”⁶ CDC accordingly has recommended vaccinations for older adults and infants and young children.⁷

- Shingles. One in three Americans will suffer from herpes zoster, which is commonly known as shingles. The incidence of the disease increases with age, and older adults can suffer serious debilitating symptoms—in particular, persistent pain, which can last for three months or more. The government in 2018 recommended a new, more effective vaccine for older Americans.⁸ (The prior vaccine, recommended in 2008, is no longer available in the United States.⁹)

⁶ Jefferson M. Jones MD, *et al.*, *Use of Nirsevimab for the Prevention of Respiratory Syncytial Virus Disease Among Infants and Young Children: Recommendations of the Advisory Committee on Immunization Practices — United States, 2023* (Aug. 25, 2023), <https://bit.ly/46Dctzu> .

⁷ See notes 5 and 6.

⁸ Kathleen L. Dooling, MD, *et al.*, *Recommendations of the Advisory Committee on Immunization Practices for Use of Herpes Zoster Vaccines* (Jan. 26, 2018), <https://bit.ly/3ZHiJ6O> ; see also Tara C. Anderson, DVM, PhD, *et al.*, *Use of Recombinant Zoster Vaccine in Immunocompromised Adults Aged ≥19 Years: Recommendations of the Advisory Committee on Immunization Practices — United States, 2022* (Jan. 21, 2022), <https://bit.ly/3rHJXxN>.

⁹ CDC, *Shingles Vaccination* (May 8, 2023), <https://bit.ly/48K4v9p>.

- Pneumococcal Disease. There are a number of different types of pneumococcal diseases of which pneumonia is the most common. These diseases are especially serious for children and older adults. For example, during 2008–2014 the proportion of cases that resulted in hospitalization “rang[ed] from 8.5% among adults aged 18–49 years to 38.6% among adults aged ≥ 85 years.”; an analysis of studies based on data collected 2010–2016, found the incidence of hospitalization to be “126–422 per 100,000 adults aged < 65 years and 847–3,365 per 100,000 adults aged ≥ 65 years.”¹⁰ Similarly, studies found that “among persons aged < 18 years, 1,280 to 3,990 episodes of health care utilization per 100,000 person-years occurred in 2014 for all-cause pneumonia” and “during 2018–2019, 87 to 680 hospitalizations per 100,000 population occurred for all-cause pneumonia.”¹¹ New, safer and more effective vaccines

¹⁰ Miwako Kobayashi, MD, *et al.*, *Pneumococcal Vaccine for Adults Aged ≥ 19 Years: Recommendations of the Advisory Committee on Immunization Practices, United States, 2023* (Sept. 8, 2023), <https://bit.ly/3PRpwGS> (2023 Adult Pneumococcal Recommendations).

¹¹ Miwako Kobayashi, MD, *et al.*, *Use of 15-Valent Pneumococcal Conjugate Vaccine Among U.S. Children: Updated Recommendations of the Advisory Committee on Immunization Practices — United States*,

for these diseases have been recommended for adults and for children after enactment of the ACA.¹²

Other diseases for which vaccines would no longer receive guaranteed cost-free coverage include meningitis (for which new vaccines have become available and recommendations for various age groups have changed since enactment of the ACA)¹³ and hepatitis B (for low-risk individuals ages 19-59).¹⁴

Finally, vaccine studies confirm that “patient out-of-pocket costs” are “the most significant predictor” of failure to use preventive services¹⁵; unvaccinated individuals inflict huge costs on the health care system—

2022 (Sept. 16, 2022), <https://bit.ly/3Q4IUkQ> (2022 *Children Pneumococcal Recommendations*).

¹² 2023 *Adult Pneumococcal Recommendations* (summarizing history of approvals); 2022 *Children Pneumococcal Recommendations* (same).

¹³ Sarah A. Mbaeyi, MD, *et al.*, *Meningococcal Vaccination: Recommendations of the Advisory Committee on Immunization Practices, United States, 2020* at Box 1 & Box 2 (Sept. 25, 2022), <https://bit.ly/3tloX0i>.

¹⁴ Mark K. Weng, MD, *et al.*, *Universal Hepatitis B Vaccination in Adults Aged 19–59 Years: Updated Recommendations of the Advisory Committee on Immunization Practices — United States, 2022* (Apr. 1, 2022), <https://bit.ly/48ImJbC>.

¹⁵ Osayl E. Akinbosye, PhD, PAHM, *et al.*, *Factors Associated with Zostavax Abandonment*, 8 *Amer. J. of Pharmacy Benefits* 84, 89 (July/Aug. 2016) (study of use of Shingles vaccine).

in one study, \$7.1 billion in one year, which was 80% of the cost of vaccine-preventable disease¹⁶; and greater vaccine take-up reduces illness and health care costs.¹⁷

B. Preventive services for infants, children, and adolescents.

Critical services for infants, children, and adolescents also would lose guaranteed cost-free coverage:

- Uniform screening panel for newborns. Provides for screening of newborns for more than seventy different serious adverse conditions, including particularly genetic conditions. They include, for example, cystic fibrosis, sickle cell anemia, congenital heart disease, hearing loss, and numerous other diseases and conditions.¹⁸

¹⁶ Sachiko Ozawa, *et al.*, *Modeling the Economic Burden of Adult Vaccine-Preventable Diseases in the United States*, 35 *Health Affairs* 1 (Nov. 2016). Another study found that four adult vaccine-preventable diseases (influenza, pneumococcal disease, shingles, and pertussis) produced \$26.5 billion in health costs. John M. McLaughlin, *et al.*, *Estimated Human and Economic Burden of Four Major Adult Vaccine-Preventable Diseases in the United States*, 36 *J. Primary Prevent.* 259 (2015).

¹⁷ CDC, *2021–2022 Estimated Flu Illnesses, Medical Visits, Hospitalizations, and Deaths Prevented by Flu Vaccination* (Jan. 25, 2023), <https://bit.ly/3Q2UtZU>.

¹⁸ See HRSA, *Recommended Uniform Screening Panel* (Jan. 2023), <https://bit.ly/45myod7> (listing conditions); HRSA, *Newborn Screening –*

- Anemia screening. Screening in infants, children, and adolescents can identify iron deficiencies that can produce developmental delays and cognitive impairment.¹⁹

In addition, some important preventive services for children included in the U.S. Preventive Services Task Force recommendations are also included in the recommendations focused on infants and children—such as screening for depression in adolescents,²⁰ which is especially important in light of the post-pandemic increase in mental health issues. If the court upholds the district court’s ruling and Plaintiffs prevail on their cross-appeal, that result would eliminate guaranteed cost-free coverage of those services.

Condition Information (July 2023), <https://bit.ly/3ZKQ9l7> (describing conditions and reasons for inclusion in uniform panel); HRSA, *Preventive Guidelines and Screenings for Women, Children, and Youth* (July 2022), <https://bit.ly/46ELXpe> (stating that “[r]ecommendations for preventive pediatric care” are set forth in Bright Futures/American Academy of Pediatrics, *Recommendations for Preventive Pediatric Health Care* (2023), <https://bit.ly/46dggDI> (*Pediatric Preventive Care Recommendations*); *Pediatric Preventive Care Recommendations* at note 18 (incorporating Recommended Uniform Screening Panel).

¹⁹ Joseph F. Hagan, *et al.*, American Academy of Pediatrics, *Guidelines for Health Supervision of Infants, Children, and Adolescents* 278-79 (4th ed. 2017), <https://bit.ly/3rHL3tp> (*Infant/Children Preventive Services Guidelines*).

²⁰ *Infant/Children Preventive Services Guidelines* at 283.

C. Preventive services for women.

Finally, Plaintiffs' cross-appeal arguments would eliminate guaranteed cost-free coverage for important preventive services for women, including:

- Screening for post-pregnancy diabetes.²¹ Women who experience diabetes during pregnancy have a greater risk of developing post-pregnancy diabetes. Periodic post-pregnancy screening “provides early detection of continued glucose abnormalities, allowing for timely interventions to prevent progression and diabetes-related complications.”²²
- Screening for urinary incontinence. Annual screening to “assess whether women experience urinary incontinence and whether it impacts their activities and quality of life.”²³ Urinary incontinence is experienced by large numbers of women: it is a “common and sometimes debilitating condition,

²¹ HRSA, *Women's Preventive Services Guidelines* (Dec. 2022), <https://bit.ly/3rKAOnZ> (*Women's Preventive Services Guidelines*).

²² Heidi D. Nelson, MD, MPH, *et al.*, *Screening for Type 2 Diabetes After Pregnancy* 3 (Dec. 1, 2022), <https://bit.ly/3t1pKhM>.

²³ *Women's Preventive Services Guidelines*.

yet it is often not addressed during routine health care.”²⁴

“Early identification and intervention could reduce progression of symptoms and the need for more complex and costly treatments later. Treatment could improve social and physical function and reduce complications of incontinence such as urinary tract infections, skin ulceration, falls and fractures.”²⁵

- Well-Women Preventive Visits. One preventive care visit per year “to ensure the provision of all recommended preventive services, including preconception and many services necessary for prenatal and interconception care, are obtained. The primary purpose of these visits should be the delivery and coordination of recommended preventive services as determined by age and risk factors.”²⁶
- Contraceptives. Access to “the full range of female-controlled contraceptives to prevent unintended pregnancy and improve

²⁴ Heidi D. Nelson, MD, MPH, *et al.*, *Screening for Urinary Incontinence* 6 (Dec. 2017), <https://bit.ly/3F3grWn>.

²⁵ *Id.*

²⁶ *Women’s Preventive Services Guidelines*.

birth outcomes.”²⁷ Adopted pursuant to a recommendation by the Institute of Medicine, which is part of the National Academy of Sciences.²⁸

²⁷ *Id.*

²⁸ Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps* 10, 102-110 (2011).

CONCLUSION

With respect to Plaintiffs' cross-appeal, the Court should affirm paragraphs 2 and 4 of the district court's judgment.

Dated: October 6, 2023

Respectfully submitted,

/s/ Andrew J. Pincus

Andrew J. Pincus
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
apincus@mayerbrown.com

APPENDIX A

LIST OF *AMICI CURIAE*

1. American Public Health Association
2. Robert Wood Johnson Foundation
3. Trust for America's Health
4. ChangeLab Solutions

Public Health Deans

5. Burroughs, Thomas E., PhD, MS, MA, Dean and Professor, SLU College for Public Health and Social Justice, Saint Louis University
6. Chandler, G. Thomas, MS, PhD, Dean and Professor of Environmental Health Sciences, Arnold School of Public Health, University of South Carolina
7. Deardorff, Julianna, PhD, Executive Associate Dean of Faculty and Academic Affairs and Associate Professor, University of California Berkeley School of Public Health
8. Drenkard, Karen, PhD, RN, NEA-BC, FAAN, Associate Dean of Clinical Practice and Community Engagement, School of Nursing Center for Health Policy and Medical Engagement, The George Washington University
9. El-Mohandes, Ayman, MBBCh, MD, MPH, Dean, CUNY Graduate School of Public Health & Health Policy
10. Fallin, Daniele, PhD, James W. Curran Dean of Public Health, Rollins School of Public Health, Emory University
11. Fried, Linda P., MD, MPH, Dean and DeLamar Professor of Public Health, Mailman School of Public

Health, Professor of Epidemiology and Medicine,
Columbia University

12. Galea, Sandro, MD, DrPH, Dean, Robert A. Knox Professor, Boston University
13. Godwin, Hilary, PhD, Dean, University of Washington School of Public Health
14. Goldman, Lynn R., MD, MPH, MS, Michael and Lori Milken Dean of Public Health, Milken Institute School of Public Health, The George Washington University
15. Gusmano, Michael K., PhD, Professor and Associate Dean of Academic Programs, College of Health, Director, Center for Ethics, Lehigh University
16. Hoffman, Allison K., JD, Deputy Dean and Professor of Law, University of Pennsylvania Carey Law School
17. Jeffries, Pamela R., PhD, RN, FAAN, ANEF, FSSH, Dean, Vanderbilt School of Nursing, Valere Potter Distinguished Professor of Nursing, RWJF Nurse Executive Fellow Alumna, Vanderbilt School of Nursing
18. Lu, Michael C., MD, MS, MPH, Dean, UC Berkeley School of Public Health
19. Lushniak, Boris, MD, MPH, Professor and Dean, University of Maryland School of Public Health
20. Parker, Edith A., MPH, DrPH, Dean, Professor, Community and Behavioral Health, The University of Iowa College of Public Health
21. Petersen, Donna J., ScD, MHS, CPH, Dean, College of Public Health, Professor of Public Health, University of South Florida

22. Schuster, Mark A., MD, PhD, Founding Dean and CEO, Kaiser Permanente Bernard J. Tyson School of Medicine
23. Thorpe, Jane, JD, Professor and Sr. Associate Dean for Academic, Student & Faculty Affairs, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
24. Trapido, Edward, ScD, FACE, Interim Dean, LSU School of Public Health – New Orleans

Public Health Scholars

25. Alker, Joan, MPhil, Research Professor, McCourt School of Public Policy, Georgetown University
26. Ashe, Marice, JD, MPH, Lecturer, University of California Berkeley Law
27. Bard, Jennifer S., JD, MPH, PhD, Professor of Law, College of Law, Professor, Department of Internal Medicine, University of Cincinnati
28. Beckerman, Julia Zoe, JD, MPH, Teaching Associate Professor & Vice Chair, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
29. Blewett, Lynn A., PhD, MA, Professor of Health Policy, University of Minnesota School of Public Health
30. Bonar, Robert, DrHA, Professor and Program Director, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
31. Borden, William B., MD, FACC, FAHA, Chief Quality and Population Officer, Associate Professor of Medicine

and Health Policy, George Washington University
Medical Faculty Associates

32. Brindis, Claire D., DrPH, Professor, Departments of Pediatrics and Obstetrics, Gynecology and Reproductive Sciences, Director, Philip R. Lee Institute for Health Policy Studies, Director emeritus and Senior Scholar, Center for Global Reproductive Health, Co-Director, Adolescent and Young Adult Health National Resource Center, Adjunct Professor, UC Hastings School of Law, University of California, San Francisco
33. Burke, Taylor, JD, LLM, Adjunct Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
34. Burris, Scott, JD, Professor of Law, Director, Center for Public Health Law Research, Temple University Beasley School of Law
35. Byrnes, Maureen, MPA, Teaching Instructor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
36. Cartwright-Smith, Lara, JD, MPH, Associate Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
37. Catalanotti, Jillian, MD, MPH, FACP, Associate Professor of Medicine, Associate Professor of Health Policy and Management, Director, Internal Medicine Residency Programs, The George Washington University
38. Cohen, Alan B., Sc.D., Research Professor, Markets, Public Policy and Law, Boston University Questrom School of Business, and Professor of Health Law, Policy

and Management, Boston University School of Public Health

39. Dorfman, Doron, JSD, JSM, LLM, LLB, Associate Professor of Law, Seton Hall University School of Law
40. Evans, Scott, PhD, MS, Director, The Biostatistics Center, Professor and Founding Chair, Department of Biostatistics and Bioinformatics, Milken Institute School of Public Health, The George Washington University
41. Field, Robert I., JD, MPH, PhD, Professor of Law, Thomas R. Kline School of Law, Professor of Health Management and Policy, Dornsife University School of Public Health, Drexel University
42. Fox, Jacqueline, JD, LLM, Professor, School of Law, University of South Carolina
43. Frankford, David M., JD, Professor of Law, Rutgers University School of Law
44. Freed, Salama, PhD, Assistant Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
45. Friedman, Leonard H., PhD, MPH, FACHE, Professor and Director, MHA@GW Program, Editor, Journal of Health Administration Education, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
46. Gable, Lance, JD, MPH, Professor of Law, Wayne State University Law School
47. Goldstein, Melissa M., JD, Associate Professor, Department of Health Policy and Management, Milken

Institute School of Public Health, The George Washington University

48. Grogan, Colleen M., PhD, Deborah R. and Edgar D. Jannotta Professor, Crown Family School of Social Work, Policy, and Practice, The University of Chicago
49. Halfon, Neal, MD, MPH, Professor of Pediatrics, Public Health and Public Policy, Director, UCLA Center for Healthier Children, Families & Communities, UCLA
50. Harris, Eva, PhD, Professor and Chair, Division of Infectious Diseases and Vaccinology, School of Public Health, Professor, Division of Immunology and Molecular Medicine, Department of Molecular and Cell Biology, Director, Center for Global Public Health, University of California, Berkeley
51. Heinrich, Janet, DrPH, RN, FAAN, Research Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
52. Herbst, Jennifer L., JD, LLM, M.Bioethics, Professor of Law and Medical Sciences, Quinnipiac University School of Law and Frank H. Netter School of Medicine
53. Hermer, Laura, JD, LLM, Professor of Law, Mitchell Hamline School of Law
54. Hoffman, Sharona, JD, LLM, SJD, Professor of Law and Bioethics, Edgar A. Hahn Professor of Jurisprudence, Co-Director, Law-Medicine Center, Case Western Reserve University School of Law
55. Horton, Katherine, RN, MPH, JD, Research Professor in the Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

56. Huberfeld, Nicole, JD, Professor of Health Law, Ethics & Human Rights, Boston University School of Public Health and Professor of Law, Boston University School of Law
57. Ivey, Susan L., MD, MHSA, Professor, Adjunct, University of California, Berkeley, School of Public Health and UCB-UCSF Joint Medical Program
58. Jacobs, Feygele, DrPH, MS, MPH, Professor and Director, Geiger Gibson Program in Community Health, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
59. Jacobson, Peter D., JD, MPH, Professor Emeritus of Health Law and Policy, University of Michigan School of Public Health
60. Kershner, Stacie, JD, Deputy Director, Center for Law, Health and Society, George State University College of Law
61. Ku, Leighton, PhD, MPH, Professor, Department of Health Policy and Management, Director, Center for Health Policy Research, Milken Institute School of Public Health, The George Washington University
62. Landers, Renée M., JD, Professor of Law and Faculty Director, Health and Biomedical Law Concentration, Suffolk University Law School
63. Lantz, Paula, PhD, James B. Hudak Professor of Health Policy, Professor of Public Policy, Gerald R. Ford School of Public Policy, Professor of Health Management and Policy, School of Public Health, University of Michigan
64. Law, Sylvia A., JD, Elizabeth K. Dollard Professor of Law, Medicine and Psychiatry, Emerita Co-Director,

Arthur Garfield Hays Civil Liberties Program, NYU Law School

65. Levi, Jeffrey, PhD, Professor Emeritus Health Policy and Management, Milken Institute School of Public Health, The George Washington University
66. Lillie-Blanton, Marsha, PhD, Adjunct Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
67. Magnus, Manya, PhD, MPH, Professor and Interim Chair, Department of Epidemiology, Milken Institute School of Public Health, The George Washington University
68. Mariner, Wendy K., JD, LLM, MPH, Professor Emerita, Health Law, Ethics and Human Rights, Boston University School of Public Health
69. Markus, Anne R., PhD, MHS, JD, Professor and Chair, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
70. Mason, Diana J., RN, PhD, FAAN, Senior Policy Service Professor, Center for Health Policy and Media Engagement, School of Nursing, The George Washington University
71. McDonnell, Karen A., PhD, Associate Professor and Vice Chair, Department of Prevention and Community Health, Milken Institute School of Public Health, The George Washington University
72. Michaels, David, PhD, MPH, Professor, Department of Environmental and Occupational Health, Milken Institute School of Public Health, The George Washington University

73. Minkler, Meredith, DrPH, Professor Emerita, UC Berkeley School of Public Health
74. Monroe, Anne K., MD, MSPH, Associate Professor, Department of Epidemiology, Milken Institute School of Public Health, The George Washington University
75. Morello-Frosch, Rachel, PhD, MPH, Professor, UC Berkeley School of Public Health
76. Musumeci, MaryBeth, JD, Associate Teaching Professor, Milken Institute School of Public Health, The George Washington University
77. Oberlander, Jonathan, PhD, Professor and Chair, Department of Social Medicine, Professor, Department of Health Policy & Management, University of North Carolina at Chapel Hill
78. Paltiel, A. David, PhD, Professor of Health Policy and Management, Yale School of Public Health
79. Parmet, Wendy E., JD, Matthews University Distinguished, Professor of Law and Professor of Public, Policy and Urban Affairs, Northeastern University
80. Perreira, Krista M., PhD, Department of Social Medicine, UNC School of Medicine
81. Peterson, Mark A., PhD, Professor of Public Policy, Political Science, and Law, Department of Public Policy, UCLA Meyer and Renee Luskin School of Public Affairs
82. Pittman, Patricia, PhD, Professor of Health Policy and Management, Director of Health Workforce Research Center, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University

83. Regenstein, Marsha, PhD, Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
84. Riegelman, Richard, MD, MPH, PhD, Professor of Epidemiology and Founding Dean, Milken Institute School of Public Health, The George Washington University
85. Rimer, Barbara K., DrPH, MPH, Alumni Distinguished Professor, Dean Emerita, UNC Gillings School of Global Public Health
86. Rosenbaum, Sara, JD, Professor Emerita, Health Law and Policy, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
87. Rosenblatt, Rand E., JD, Professor Emeritus, Rutgers University School of Law
88. Sawicki, Nadia N., JD, M. Bioethics, Georgia Reithal Professor of Law, Co-Director, Beazley Institute for Health Law and Policy, Ambassador, Loyola Institute for Transformative Interprofessional Education, Loyola University Chicago School of Law
89. Schmit, Cason, JD, Assistant Professor, Texas A&M University School of Public Health
90. Schneider, Andy, JD, Research Professor of the Practice, McCourt School of Public Policy, Georgetown University
91. Schwartz, Jason L., PhD, Associate Professor, Department of Health Policy and Management, Yale School of Public Health
92. Seiler, Naomi, JD, Associate Professor, Department of Health Policy and Management, Milken Institute

School of Public Health, The George Washington University

93. Shin, Peter, PhD, MPH, Associate Professor and Geiger Gibson-RCHN Research Director, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
94. Shortell, Stephen M., PhD, MBA, MPH, Distinguished Professor of Health Policy and Management Emeritus and Dean Emeritus, School of Public Health, University of California Berkeley
95. Siegel, Marc, MD, Professor of Medicine, Chief, Infectious Diseases, George Washington School of Medicine and Health Sciences
96. Silberman, Pam, JD, DrPH, Professor Emerita, Director, Executive Doctoral Program in Health Leadership, Department of Health Policy and Management, UNC Gillings School of Global Public Health
97. Siminoff, Laura A., PhD, Laura H. Carnell Professor of Public Health, Department of Social and Behavioral Sciences, Temple University
98. Sinha, Michael S., MD, JD, MPH, FCLM, Assistant Professor of Law, Center for Health Law Studies, Saint Louis University School of Law
99. Skinner, Daniel, PhD, Associate Professor of Health Policy, Ohio University
100. Slifkin, Becky, PhD, Professor Emerita, Department of Health Policy and Management, UNC Gillings School of Global Health
101. Strasser, Julia, DrPH, MPH, Director, Jacobs Institute of Women's Health, Assistant Research Professor,

Department of Health Policy and Management, Milken
Institute School of Public Health, The George
Washington University

102. Swartzberg, John, MD, FACP, Clinical Professor Emeritus, Professor, Emeriti Academy, School of Public Health, Division of Infectious Diseases and Vaccinology, Chair, Editorial Board, UC Berkeley Wellness Letter, University of California
103. Teitelbaum, Joel, JD, LLM, Professor of Health Policy and Law, Director, Hirsh Health Law and Policy Program, Co-Director, National Center for Medical-Legal Partnership, The George Washington University
104. Tielsch, James M., PhD, Professor and Chair, Department of Global Health, Milken Institute School of Public Health, The George Washington University
105. Ulrich, Michael R., JD, MPH, Assistant Professor, Center for Health Law, Ethics and Human Rights, Boston University School of Public Health, Boston University School of Law, Distinguished Visiting Scholar, Solomon Center for Health Law and Policy, Yale Law School
106. Vermund, Sten H., MD, PhD, Anna M.R. Lauder Professor of Public Health, Yale School of Public Health, and Professor of Pediatrics, Yale School of Medicine
107. Vichare, Anushree, PhD, MBBS, MPH, Assistant Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
108. Vyas, Amita N., PhD, MHS, Associate Professor, Director, Maternal & Child Health Program, Milken Institute School of Public Health, The George Washington University

109. Warren-Findlow, Jan, PhD, Professor and Chair,
Department of Public Health Sciences, University of
North Carolina Charlotte
110. Wasserman, Alan G., MD, MACP, Eugene Meyer
Professor, Senior Academic Advisor to the Dean,
Department of Medicine, The George Washington
School of Medicine and Health Sciences
111. Westmoreland, Timothy M., JD, Professor from
Practice, Emeritus, Georgetown University School of
Law

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document was filed and served on October 6, 2023, via ECF upon counsel of record for the parties. I further certify that a copy of this brief was served on Christopher M. Lynch, counsel for U.S. Department of Justice, via United States mail.

/s/ Andrew J. Pincus

Andrew J. Pincus

CERTIFICATIONS UNDER ECF FILING STANDARDS

Pursuant to paragraph A(6) of this Court's ECF Filing Standards, I hereby certify that (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

/s/ Andrew J. Pincus
Andrew J. Pincus

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 2755 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in 14-point Century Schoolbook font.

Dated: October 6, 2023

/s/ Andrew J. Pincus

Andrew J. Pincus