Nos. 20-15398, 20-15399, 20-16045 and 20-35044

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO, *Plaintiff-Appellee*,
v.
ALEX M. AZAR II, et al., *Defendants-Appellants*.

COUNTY OF SANTA CLARA, et al., *Plaintiffs-Appellees*,
v.
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al., *Defendants-Appellants*.

STATE OF CALIFORNIA, *Plaintiff-Appellee*,
v.
ALEX M. AZAR, et al., *Defendants-Appellants*.

STATE OF WASHINGTON, *Plaintiff-Appellee*,
v.
ALEX M. AZAR II, et al., *Defendants-Appellants*.

On Appeal from the United States District Courts for the Northern District of California and the Eastern District of Washington

BRIEF OF *AMICI CURIAE* LOCAL GOVERNMENTS IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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TABLE OF AUTHORITIES

Cases

Arrington v. Wong, 237 F.3d 1066 (9th Cir. 2001).....31, 33

National Federation of Independent Business v. Sebelius,
567 U.S. 519 (2012) 18

Planned Parenthood Fed'n of Am., Inc. v. Azar,
No. 1:19-cv-05433 (S.D.N.Y. June 11, 2019).....22

San Francisco v. Azar,
No. 20-15398 (Oct. 13, 2020) 18

Statutes

42 U.S.C. § 1395 .....31, 32

42 U.S.C. § 1995 33

45 C.F.R pt. 88….. .....10, 17

84 Fed. Reg. 23,170 10

84 Fed. Reg. 23,188 30

84 Fed. Reg. 23,223 17

84 Fed. Reg. 23,263 25

84 Fed. Reg. 23,269 .....17, 21

84 Fed. Reg. 23,271 .....17, 21

84 Fed. Reg. 23,272 .....17, 21

California Welfare & Institutions Code,
Section 17000 15

Other Authorities

About Columbus Health,
The City of Columbus,
https://www.columbus.gov/publichealth/About/About-Columbus-Public-Health/ 17

Altman, D. & Morgan, D.
The Role of State and Local Government in Health, Health Affairs (Jan. 1, 1983),
https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2.4.7 14

Arrowsmith, Laura
When Doctors Refuse to See Transgender Patients, the Consequences Can Be Dire, WASH. POST (Nov. 26, 2017),
https://www.washingtonpost.com/national/health-science/when-doctors-refuse-to-see-transgender-patients-the-consequences-can-be-dire/2017/11/24/d063b01c-c960-11e7-8321-481fd63f174d_story.html 22

Association of American Medical Colleges,
Comment Letter on Proposed Rule to Protect Statutory Conscience Rights in Healthcare (Mar. 26, 2018),
https://www.regulations.gov/document?D=HHS-OCR-2018-0002-67592 24

Balt. City Code
art. 4, §§ 1-1(f)(1) 16

Byrne, James et al.
Association Between Emergency Medical Service Response Time and Motor Vehicle Crash Mortality in the United States, J. Am. Med. Assoc. E1 (2019) 33

Casalotti, Adriane,
Health department workforce has shrunk 23 perfect since 2008,
NATL. ASSN. OF COUNTIES (April 16, 2019),

https://www.naco.org/articles/health-department-workforce-has-shrunk-23-percent-2008 20

City of Oakland,
Proposed Policy Budget: Fiscal Year 2019-2021 26 (2019), https://cao-94612.s3.amazonaws.com/documents/FY-2019-21-Proposed-Budget-Book-WEB-VERSION.pdf 30

Columbus City Codes
§§ 2331.04, 3906.02 (2019) 16

Division of Fire, City of Columbus,
https://www.columbus.gov/public-safety/fire/reports/EMS-Reports/ 30

Fast Facts on U.S. Hospitals, 2019,
Am. Hosp. Ass'n (Jan. 2019), https://www.aha.org/statistics/fast-facts-us-hospitals#community. 12, 23

Fire Department, Medical Services Division,
City of Oakland California,
http://www2.oaklandnet.com/government/o/OFD/o/EmergencyMedicalServices/index.htm (last visited June 21, 2019) 30

Fraze,Taressa et al.
Public Hospitals in the United States, 2008, Agency for Healthcare Res. & Quality, Sept. 2010 https://www.hcup-us.ahrq.gov/reports/statbriefs/sb95.pdf 20

Fronstin, P. & Woodbury, S.,
How Many Americans Have Lost Jobs with Employer Health Coverage During the Pandemic?, THE COMMONWEALTH FUND (Oct. 7, 2020),
https://www.commonwealthfund.org/publications/issue-briefs/2020/oct/how-many-lost-jobs-employer-coverage-pandemic 15

HHS Factsheet: Final Conscience Regulation,
Dep't of Health & Hum. Servs. (May 2, 2019),

https://www.hhs.gov/sites/default/files/final-conscience-rule-factsheet.pdf 21, 22

Inst. of Med.,
Committee on Public Health Strategies To Improve Health, For the Public's Health: Investing in a Healthier Future, Ch. 4, Funding Sources and Structures to Build Public Health (April 10, 2010), https://www.ncbi.nlm.nih.gov/books/NBK201025/ 28

Inst. of Med.,
The Future of the Public's Health in the 21st Century (2003) (hereinafter "Future of the Public's Health"), at 110, https://www.nap.edu/read/10548/chapter/5#111 (last accessed Sept. 12, 2019) 13, 14

Inst. of Med.,
U.S. Committee on the Consequences of Uninsurance, A Shared Destiny: Community Effects of Uninsurance (2003) https://www.ncbi.nlm.nih.gov/books/NBK221329/pdf/Bookshelf_NBK221329.pdf 13, 15, 16

Lambda Legal,
When Health Care Isn't Caring: Lambda Legal's Survey on Discrimination Against LGBT People and People Living with HIV (2010), https://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring.pdf.....23

Maani, N. & Galea, S.,
COVID-19 and Underinvestment in the Public Health Infrastructure of the United States, THE MILBANK QUARTERLY (June 2020), https://www.milbank.org/quarterly/articles/covid-19-and-underinvestment-in-the-public-health-infrastructure-of-the-united-states/.....18

Martin, E. & Kronstadt, J.
No Longer Invisible: The Critical Role of Local health Departments in Responding to COVID-19, HEALTH AFFAIRS (April 16, 2020)

https://www.healthaffairs.org/do/10.1377/hblog20200408.106373/full/.....13, 14, 24

Meisel, Zachary et al.
Variations in Ambulance Use in the United States: the Role of Health Insurance, 18 Academic Emergency Medicine 1036, 1042 (2011), https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1553-2712.2011.01163.x.....35, 36

Mirza, S. & Rooney, C.
Discrimination Prevents LGBTQ People from Accessing Health Care, Center for American Progress (Jan. 18, 2018), https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/ 25

Mun. Code of the City of Gary, Ind.
§§ 26-19, 139 (2010).....16

Oakland Mun. Code
ch. 9.40, 9.44 (2019).....16, 17

Part A: Grants to Eligible Metropolitan and Transitional Areas, Health Resources & Servs. Admin., https://hab.hrsa.gov/about-ryan-white-hivaids-program/part-a-grants-emerging-metro-transitional-areas.....28

Price, Tom
Here's What's So Great About Community Health Centers, U.S. Dep't of Health & Hum. Servs. (Aug. 18, 2017), https://www.hhs.gov/blog/2017/08/18/heres-whats-so-great-about-community-health-centers.html. 12

Reinberg, Steven
Many Drugstores Won't Dispense Opioid Antidote as Required, Medical Xpress (Nov. 13, 2018), https://medicalxpress.com/news/2018-11-drugstores-wont-opioid-antidote-required.html.....34

Salinsky, Eileen
Government Public Health: An Overview of State and Local Public Health Agencies
NAT'L HEALTH POL'Y F., Aug. 18, 2010
https://www.nhpf.org/library/background-papers/BP77_GovPublicHealth_08-18-2010.pdf.....12, 13, 14

Squire, Benjamin
At-Risk Populations and the Critically Ill Rely Disproportionately on Ambulance Transport to Emergency Departments, 56 Annals Emergency Medicine 341 (2010), https://www.annemergmed.com/article/S0196-0644(10)00384-7/fulltext 36

The HIV/AIDS Epidemic in the United States: The Basics, Henry J. Kaiser Fam. Found. (Mar. 25, 2019), https://www.kff.org/hivaids/fact-sheet/the-hivaids-epidemic-in-the-united-states-the-basics/#endnote_link_391348-59.....26

Weber, L., Unger, L., Smith, M., Recht, H. & Barry-Jester, A., *Hollowed-Out Public Health System Faces More Cuts Amid Virus*, The Associated Press & Kaiser Health News (July 1, 2020, updated Aug. 24, 2020) https://khn.org/news/us-public-health-system-underfunded-under-threat-faces-more-cuts-amid-covid-pandemic/ 18

Acts

Affordable Care Act.....22

Public Health Services Act.....16, 22

Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990,
Pub. L. No. 101-381, 104 STAT. 576 (1990).....16

Ryan White HIV/AIDS Treatment Extension Act of 2009.....27

The Emergency Medical Treatment and Active Labor Act (EMTALA) 31, 32, 33

INTERESTS OF AMICI CURIAE

Amici are local governments across the United States—including Columbus, Ohio, Oakland, California, and 21 other cities and counties—who are responsible for the health and wellbeing of their communities.[1] Combined, Amici represent over 18 million people in 14 states. Amici vary in size and are situated in regions across the country with different political realities. They run public health departments, subsidize and fund public health centers, and operate specialty clinics, including clinics for alcohol and drug abuse prevention, family planning, immunizations, sexual health, HIV/STD treatment, and women's health and wellness. They also provide emergency medical services, and are at the forefront of

[1] Amici are: the City of Albuquerque, New Mexico; the City of Austin, Texas; the City of Berkeley, California; the City of Cambridge, Massachusetts; the City of Chicago, Illinois; the City of Cincinnati, Ohio; the City of Columbus, Ohio; Cook County, Illinois; the City of Dallas, Texas; the City of Dayton, Ohio; the City and County of Denver, Colorado; the City of Gary, Indiana; the City and County of Honolulu, Hawaii; the City of Houston, Texas; the City of Los Angeles, California; the City of Oakland, California; the City of Philadelphia, Pennsylvania; the City of Pittsburg, Pennsylvania; the City of Providence, Rhode Island; the City of Sacramento, California; the City of Saint Paul, Minnesota; the City of Seattle, Washington; the City of Somerville, Massachusetts; the City of Tempe, Arizona; and Travis County, Texas.

monitoring and responding to communicable disease outbreaks like COVID-19.

Amici will be significantly harmed if the United States Department of Health and Human Services' (HHS) "conscience" rule—*Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 84 Fed. Reg. 23,170 (May 21, 2019) (to be codified as 45 C.F.R. pt. 88) (the "Final Rule")—takes effect. Because cities, counties, and townships often serve as the healthcare provider of last resort for the most vulnerable segments of their populations, Amici and our vulnerable residents will bear the negative impacts of this Final Rule. This new federally mandated requirement will leave Amici with a Hobson's choice: allow their employees to circumvent the intent of Amici's local antidiscrimination policies by refusing service to residents in need of medical care, or risk forfeiting hundreds of millions of dollars in federal funding. By HHS's own estimate, 613,000 hospitals, health clinics, doctors' offices, and nonprofits will be impacted by the Final Rule. When employees of these providers are enabled to refuse to provide treatment to patients, local governments and their most vulnerable constituents will bear the burden.

The Final Rule will strain already depleted local budgets and deteriorate healthcare outcomes for patients. And because the Final Rule applies to emergency transportation personnel, it will quite literally put the lives of Amici's residents—whose care, or lack thereof, may be left to the religious or moral objections of the particular responders who arrive on the scene—at risk. Amici thus oppose the Final Rule and support affirmance of the District Court's decision not only because the Final Rule would violate statutory and constitutional provisions, but also because it will cause substantial, imminent, and irreparable harm to Amici and their citizens.

Counsel for all parties have consented to the filing of this amicus brief.[2]

INTRODUCTION

Local governments play a critical role in the American healthcare system. Across the United States, there are roughly 2,794 local health

[2] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Amici certify that its counsel authored this brief in whole, no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than Amici contributed any money that was intended to fund preparing or submitting this brief.

departments.[3] Local governments also run community hospitals[4] and fund community health centers and clinics that provide free or low-cost healthcare to low-income and medically underserved communities.[5] More than 1,400 government-funded or -operated community health centers in the United States provide essential care to over 25 million Americans every year, including one in ten American children and one in three Americans living in poverty.[6] Emergency life-saving care is also provided by local governments through their fire departments and paramedics.

These local health departments, hospitals, clinics, emergency medical services providers, and healthcare centers offer crucial services to their residents. They are at the forefront of monitoring and responding

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[3] Eileen Salinsky, *Government Public Health: An Overview of State and Local Public Health Agencies*, NAT'L HEALTH POL'Y F. (Aug. 18, 2010), at 1, 10, https://www.nhpf.org/library/background-papers/BP77_GovPublicHealth_08-18-2010.pdf (last accessed Oct. 19, 2020).

[4] *Fast Facts on U.S. Hospitals, 2019*, AM. HOSP. ASS'N (Jan. 2019) (hereinafter "*Fast Facts*"), https://www.aha.org/statistics/fast-facts-us-hospitals#community (last accessed Oct. 19, 2020).

[5] Tom Price, *Here's What's So Great About Community Health Centers*, U.S. DEP'T OF HEALTH & HUM. SERVS. (Aug. 18, 2017), https://www.hhs.gov/blog/2017/08/18/heres-whats-so-great-about-community-health-centers.html (last accessed Oct. 19, 2020).

[6] *See id.*

to outbreaks of communicable diseases like COVID-19, and critical to investigating and mitigating the spread of infection and its sequela.[7] In terms of preventive care, they screen for communicable diseases, such as COVID-19, tuberculosis, and Hepatitis, as well as provide vital adult and childhood immunizations.[8] For instance, 98% of county health departments provide childhood immunizations.[9] Moreover, most local governments provide treatment for communicable diseases like tuberculosis and sexually transmitted infections (STIs).[10] Some local governments also provide maternal and child health services,[11] family planning services including contraception and abortion,[12] developmental

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[7] Erika G. Martin & Jessica Kronstadt, *No Longer Invisible: The Critical Role of Local health Departments in Responding to COVID-19*, HEALTH AFFAIRS (April 16, 2020) https://www.healthaffairs.org/do/10.1377/hblog20200408.106373/full/ (last accessed Oct. 19, 2020).

[8] Salinsky, *supra* note 3 at 15.

[9] INST. OF MED., THE FUTURE OF THE PUBLIC'S HEALTH IN THE 21ST CENTURY (2003) (hereinafter "FUTURE OF THE PUBLIC'S HEALTH"), at 110, https://www.nap.edu/read/10548/chapter/5#111 (last accessed Oct. 19, 2020).

[10] Salinsky, *supra* note 3 at 15.

[11] INST. OF MED., U.S. COMMITTEE ON THE CONSEQUENCES OF UNINSURANCE, A SHARED DESTINY: COMMUNITY EFFECTS OF UNINSURANCE (2003) (hereinafter "COMMUNITY EFFECTS OF UNINSURANCE"), at 69, https://www.ncbi.nlm.nih.gov/books/NBK221329/pdf/Bookshelf_NBK221329.pdf (last accessed Oct. 19, 2020).

[12] *See, e,g.*, *Publicly Supported Family Planning Services in the United States*, GUTTMACHER INST. (Oct. 2019), https://www.guttmacher.org/fact-sheet/publicly-supported-FP-services-US (last accessed Oct. 19, 2020).

screenings,[13] and nutrition counseling services for women, infants, and children.[14] Finally, local public health agencies offer population-based services, including pandemic prevention planning, testing, and mitigation, including vaccination[15]; communicable disease monitoring and tracing[16]; restaurant inspections and licensing, environmental health services[17]; and mental, behavioral, and substance abuse services.[18]

Local governments act as the "healthcare safety net" for their residents, particularly for the underinsured and uninsured—including over 14.5 million Americans who lost their employer-based healthcare between February and June 2020 as a result of the COVID-19 pandemic and economic recession[19]—and those patients turned away from private

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[13] Salinsky, *supra* note 3 at 15.

[14] Drew E. Altman & Douglas H. Morgan, *The Role of State and Local Government in Health*, HEALTH AFFAIRS (Jan. 1, 1983), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2.4.7 (last accessed Oct. 19, 2020).

[15] Martin, *supra* note 7.

[16] *Id.*

[17] *Id.*; *see also* FUTURE OF THE PUBLIC'S HEALTH, *supra* note 9 at 111.

[18] FUTURE OF THE PUBLIC'S HEALTH, *supra* note 9 at 111.

[19] Paul Fronstin & Stephen A. Woodbury, *How Many Americans Have Lost Jobs with Employer Health Coverage During the Pandemic?*, THE COMMONWEALTH FUND (Oct. 7, 2020), https://www.commonwealthfund.org/publications/issue-

healthcare institutions because they are unable to pay.[20] Therefore, cities, counties, and special-purpose health or hospital districts "bear a large share of the direct financing of public hospital and clinic services."[21] In California, for example, state law requires counties to serve as the healthcare provider of last resort for their residents.[22] Across the country, emergency medical services are also a vital component of the healthcare safety net.[23]

To help serve low-income patients and increase their capacity to provide these essential services, local hospitals and healthcare centers also receive funding from Medicare, Medicaid, and other HHS programs.[24] Notably, for some of these funding sources, the number of patients treated and the amount of care provided are not taken into

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briefs/2020/oct/how-many-lost-jobs-employer-coverage-pandemic (last accessed Oct. 19, 2020).

[20] COMMUNITY EFFECTS OF UNINSURANCE, *supra* note 11 at 43

[21] *See id.* at 128.

[22] Cal. Welf. & Inst. Code § 17000.

[23] *See, e.g.*, *EMTALA Fact Sheet*, Am. College of Emergency Physicians, https://www.acep.org/life-as-a-physician/ethics--legal/emtala/emtala-fact-sheet/ ("Who pays for EMTALA-related medical care? Ultimately we all do, although EMTALA places the greatest responsibility on hospitals and emergency physicians to provide this health care safety net and shoulder the financial burden of providing EMTALA related medical care.") (last accessed Oct. 19, 2020).

[24] *See id.* at 61.

account when allocating funds.[25] And when local governments do receive federal funds, they are often statutorily mandated to provide services to all of their residents and vulnerable populations—such as individuals with HIV.[26]

ARGUMENT

I. THE FINAL RULE WILL FORCE LOCAL GOVERNMENTS TO BETRAY THE INTENT OF THEIR OWN NON-DISCRIMINATION POLICIES OR POTENTIALLY FORFEIT HUNDREDS OF MILLIONS OF DOLLARS IN FEDERAL FUNDING.

To provide equal access and opportunities to their citizens, Amici have all enacted a variety of non-discrimination policies and laws.[27] Most apply to employment, housing, and public accommodations, including hospitals. Some also specifically address how healthcare will be provided by Amici to their patients in a non-discriminatory fashion. For example,

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[25] COMMUNITY EFFECTS OF UNINSURANCE, *supra* note 11 at 61.

[26] *See, e.g.*, Public Health Services Act, § 330, 42 U.S.C. §§ 254b (requiring federally-qualified health centers to serve all residents); Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, PUB. L. NO. 101-381, 104 STAT. 576 (1990) (requiring providers to offer HIV/AIDS medications and healthcare services to poor patients who need them but cannot otherwise access them).

[27] *See, e.g.*, GARY, IND., MUN. CODE OF THE CITY OF GARY, IND. §§ 26-19, 139 (2010); OAKLAND, CAL., OAKLAND MUN. CODE ch. 9.40, 9.44 (2019); COLUMBUS, OHIO, COLUMBUS CITY CODES §§ 2331.04, 3906.02 (2019); BALT., MD., BALT. CITY CODE art. 4, §§ 1-1(f)(1), 3-4.

Columbus Public Health maintains a "Customer Non-Discrimination Policy" that requires, *inter alia*, that employees "serve all without malice or bias on the basis of race, ethnicity, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status, military status."[28] As local governments, Amici are the unit of government closest to their residents, and these ordinances were oftentimes passed in direct response to local findings and harms.[29]

The Final Rule demands that Amici make an impossible choice. If Amici do not permit discrimination in the provision of local government services, we may risk losing critical federal funding[30] at a time when the

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[28] *More About Columbus Health*, THE CITY OF COLUMBUS, https://www.columbus.gov/publichealth/More-About-Columbus-Public-Health/ (last accessed Oct. 19, 2020).

[29] *See, e.g.*, OAKLAND, CAL., OAKLAND MUN. CODE § 9.40.020 (Findings) ("The 1985 Alameda County AIDS Response Plan reported that AIDS cases in Alameda County are doubling every nine to twelve (12) months, and that for every case of AIDS there exist two or three individuals with ARC or other related, nonfatal illnesses. The report states that as of June 14, 1985, there were one hundred thirteen (113) diagnosed AIDS cases in Alameda County, and estimates that by the end of 1989 there could be nearly eight thousand (8,000) diagnosed AIDS cases in the county. The report indicates that as of June 14, 1985, there were sixty-seven (67) diagnosed AIDS cases in Oakland.").

[30] Protecting Statutory Conscience Rights in Health Care, 84 Fed. Reg. 23,223, 23,269, 23,271-72 (May 21, 2019) (to be codified at 45 C.F.R. pt. 88).

public health departments remain chronically underfunded[31] and lack resources necessary to confront the worst health crisis in a century.[32] Although styled as a choice by HHS, it is really no choice at all.[33] If Amici do not permit discrimination, the loss of federal funds will inevitably and necessarily force Amici to close key services, eliminate personnel, and compromise the health and safety of their residents. But following and implementing the Final Rule and permitting discrimination will cause a distinct and particularly insidious harm by (1) placing the weight of government behind the discrimination, and (2) disproportionately

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[31] Nason Maani & Sandro Galea, *COVID-19 and Underinvestment in the Public Health Infrastructure of the United States*, THE MILBANK QUARTERLY (June 2020), https://www.milbank.org/quarterly/articles/covid-19-and-underinvestment-in-the-public-health-infrastructure-of-the-united-states/ (last accessed Oct. 19, 2020).

[32] Lauren Weber, Laura Unger, Michelle R. Smith, Hannah Recht & Anna Maria Barry-Jester, *Hollowed-Out Public Health System Faces More Cuts Amid Virus*, The Associated Press & Kaiser Health News (July 1, 2020, updated Aug. 24, 2020) https://khn.org/news/us-public-health-system-underfunded-under-threat-faces-more-cuts-amid-covid-pandemic/ (last accessed Oct. 19, 2020) (describing how the public health funding crisis has only gone from bad to worse with the COVID-19 outbreak; for example, Cooper County, Missouri's Public Health Center administrator described her state funding to fight COVID-19 as follows: "For us, not a nickel, not a face mask. . . . We got (5) gallons of homemade hand sanitizer made by the prisoners.").

[33] As San Francisco accurately notes, this is not mere encouragement, but rather will place a gun to Amici's heads. *See* City & Cty. of San Francisco's Answering Br. at 55, *San Francisco v. Azar*, No. 20-15398 (Oct. 13, 2020) (quoting *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 581 (2012)).

impacting low-income patients who rely on local governments for care, as well as patients who have lost employer-based healthcare in the recession. As a result, the Final Rule leaves Amici trapped between two untenable options.

The Final Rule attacks Amici's non-discrimination ordinances and policies in two ways. First, it hampers Amici's ability to manage their safety net healthcare services fairly, predictably, and effectively. The Final Rule does not allow local governments to ask, prior to hiring, whether a prospective employee will object to performing essential job functions, so it is possible that Amici will not be aware, until the moment an emergency occurs, that an employee objects to performing an essential function.[34] The Final Rule also bars Amici from reassigning an employee who refuses to perform a health service unless she voluntarily accepts the accommodation.[35] For example, if a local health department is responding to the COVID-19 outbreak and has an employee unwilling to administer a treatment or future vaccine, it would prevent the local

[34] 84 Fed. Reg. at 23,263.
[35] *Id.*

health department from responding to a Class A Infectious Disease Outbreak.

In addition, the Final Rule will amplify staffing issues that already uniquely affect public hospital and health clinics, who have fewer dedicated staff than private facilities. For example, only 28.5% of public hospitals have a dedicated in-patient physician who works exclusively in a hospital.[36] Rural public hospitals have even fewer healthcare providers on staff when compared to metropolitan public hospitals.[37] Even before the COVID-19 pandemic struck, local public health agencies had lost almost a quarter of their overall workforce since 2008—a reduction of almost 60,000 healthcare workers.[38] Thus, if employees of public healthcare systems—particularly rural ones—opt out of providing certain services as the Final Rule allows them to do, another qualified

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[36] Taressa Fraze et al., *Public Hospitals in the United States, 2008*, AGENCY FOR HEALTHCARE RES. & QUALITY, Sept. 2010, at 2, https://www.hcup-us.ahrq.gov/reports/statbriefs/sb95.pdf (compared with 50.3% of private non-profit hospitals who have hospitalist on staff) (last accessed Oct. 19, 2020).

[37] *See id.*

[38] Adriane Casalotti, *Health department workforce has shrunk 23 perfect since 2008*, NATL. ASSN. OF COUNTIES (April 16, 2019), https://www.naco.org/articles/health-department-workforce-has-shrunk-23-percent-2008 (last accessed Oct. 19, 2020).

employee may be unavailable to help patients, even in emergency circumstances.

Second, and more coercively, the Final Rule conditions the receipt of federal funds on compliance with its provisions and authorizes HHS to withhold, deny, or suspend federal funds if Amici fail to comply.[39] If Amici adhere to their current non-discrimination policies, this may be deemed a "failure to comply" and could amount to hundreds of millions of dollars in lost funding for Amici. For example, HHS funding for Columbus accounts for over $12 million dollars of Columbus Public Health's budget and funds 100 city jobs. Moreover, it is unclear under the Final Rule whether only HHS funds are at stake or whether federal funds from the Department of Labor, Department of Education, Medicare, and Medicaid may also be withheld if local governments do not comply.[40] The loss of funding from any, let alone all, of these sources

[39] 84 Fed. Reg. at 23,269, 23,271-72.

[40] *See id.* at 23272 ("[C]ompliance . . . may be effected by . . . temporarily withholding Federal financial assistance or other Federal funds, in whole or in part, pending correction of the deficiency); *id.* at 23172 (implicating funds made available in Labor, HHS, and Education appropriations); *see also Factsheet: Final Conscience Regulation*, DEP'T OF HEALTH & HUM. SERVS. (May 2, 2019) (hereinafter "*HHS Factsheet*"), https://www.hhs.gov/sites/default/files/final-conscience-rule-factsheet.pdf (last accessed Oct. 19, 2020).

would be cataclysmic for a wide swath of services provided by Amici and other local governments.

II. THE FINAL RULE WILL BURDEN LOCAL GOVERNMENTS AND HARM THEIR RESIDENTS.

If HHS is allowed to enforce the Final Rule, Amici will be uncertain as to whether medical providers throughout the country, including Amici's providers, will refuse to treat patients,[41] and may not direct those patients to needed care.[42] Those turned away will invariably look to

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[41] The non-state and local government entities covered by the Rule include HHS, private health providers that receive HHS funds, universities and schools that provide health care training, and individuals and entities that receive taxpayer dollars from HHS or programs administered by HHS, such as Medicare, Medicaid, the Affordable Care Act, and the Public Health Services Act. *See* HHS *Factsheet*, *supra* note 33. Some estimate this will impact over 613,000 hospitals, health clinics, doctors' offices, and nonprofits. *See* Complaint for Declaratory and Injunctive Relief at 5, *Planned Parenthood Fed'n of Am., Inc. v. Azar*, No. 1:19-cv-05433 (S.D.N.Y. June 11, 2019), https://www.courthousenews.com/wp-content/uploads/2019/06/PlannedParenthood.pdf (last accessed Oct. 19, 2020).

[42] 84 Fed Reg. at 23263 (defining "assist in the performance" to include "counseling, referral, training, or otherwise making arrangements"). Unfortunately discrimination in the provision of healthcare is anything but hypothetical. For example, one transgender woman was told to "[g]o back to California" when she sought treatment in Tulsa, suffering from terrible pain due to complications from surgery. Laura Arrowsmith, *When Doctors Refuse to See Transgender Patients, the Consequences Can Be Dire*, WASH. POST (Nov. 26, 2017), https://www.washingtonpost.com/national/health-science/when-doctors-refuse-to-see-transgender-patients-the-consequences-can-be-dire/2017/11/24/d063b01c-c960-11e7-8321-481fd63f174d_story.html (last accessed Oct. 19, 2020); *see also* LAMBDA LEGAL, WHEN HEALTH CARE ISN'T CARING: LAMBDA LEGAL'S SURVEY ON DISCRIMINATION AGAINST

Amici for their healthcare needs and add stress to an already strained and underfunded system. Some of those in need simply will not receive the care they require. This will lead to worse health outcomes for patients and have significant negative effects on counties and municipalities.

If they are denied care by other healthcare providers under the Final Rule, residents will naturally rely on Amici, the providers of last resort for their communities, for routine healthcare and emergency treatment. Of the 5,262 community hospitals in the United States, 972 are run by state and local governments.[43] As a result, an uptick in the number of patients funneled to local hospitals will significantly impact their ability to provide care to existing and new patients, particularly in a pandemic. Local government clinics and health departments also will need to step in if private doctors' offices and clinics covered by the Final

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LGBT PEOPLE AND PEOPLE LIVING WITH HIV (2010), https://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring.pdf (finding that over half of lesbian, gay, or bisexual respondents, and 70 percent of transgender respondents, had been refused care or subjected to discriminatory or abusive treatment in the course of seeking medical care) (last accessed Oct. 19, 2020).

[43] *Fast Facts*, *supra* at note 4.

Rule begin turning away patients. More patients, even those with insurance, will consume appointment times, vaccination doses, and resources allocated for other uses.[44] For example, if a pediatricians' office employs a scheduler who morally objects to vaccinations, and so refuses to schedule those appointments, whether for COVID-19 or other diseases, parents and caregivers could be funneled to public options. Adding patients to a system when those patients should be receiving services outside of the system will harm Amici's citizens, particularly those most in need.

This harm to the public is not speculative.[45] The Final Rule by its terms allows any healthcare provider, whether an entity or an individual working for one, to deny healthcare to patients on the basis of "religious,

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[44] This increased stress on Amici's healthcare systems would be occurring at the same time as they are responding to the unprecedented COVID-19 crisis, *see* Martin, *supra* at note 6, and the number of uninsured in the United States is rising, *see* Congressional Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 2028* (May 2018).

[45] *See, e.g.*, Association of American Medical Colleges, Comment Letter on Proposed Rule to Protect Statutory Conscience Rights in Healthcare (Mar. 26, 2018), https://www.aamc.org/system/files/c/1/488276-aamccommentsonhhsproposedconsciencerightsrule.pdf (explaining that the Rule, as proposed, will harm lower-income Americans, racial and ethnic minorities, the LGBTQ community, and patients in rural areas) (last accessed Oct. 19, 2020).

moral, ethical, or other reasons" without justification or notice.[46] This threatens to embolden refusals to administer vaccinations or to deny services for lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ) individuals, individuals seeking reproductive healthcare, the elderly, those struggling with substance abuse, and other vulnerable populations.

The likely effect on local LGBTQ communities provides a concrete illustration of the disastrous impact the Final Rule could have on Amici's residents. Per the express terms of the Final Rule, gay and bisexual men can be denied healthcare services. But LGBTQ individuals already face significant discrimination when accessing healthcare services,[47] so the Final Rule will exacerbate an already acute problem. Although gay and bisexual men make up approximately 2% of the U.S. population, they account for 71% of new HIV infections and represent 61% of those

[46] 84 Fed. Reg. at 23,263.

[47] Shabab Ahmed Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People from Accessing Health Care,* CENTER FOR AMERICAN PROGRESS (Jan. 18, 2018), https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/ (last accessed Oct. 19, 2020).

currently living with HIV.[48] Early detection and treatment as soon as one is diagnosed are critical in helping reduce mortality rates and further transmission.[49]

To the extent LGBTQ people, and particularly gay and bisexual men, are denied services, there necessarily will be either (1) a harmful delay in the detection and treatment of HIV patients, or (2) more people living with HIV who do not know it.[50] Healthcare workers will be entitled to refuse to perform specific services for LGBTQ patients, such as screening for STIs, fertility treatment for lesbian couples, and providing hormone therapy for transgender individuals. Consequently, the Final Rule is likely to lead to LGBTQ patients hiding or failing to disclose their identity or medical history out of fear of discrimination, resulting in incomplete care.

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[48] *The HIV/AIDS Epidemic in the United States: The Basics*, HENRY J. KAISER FAM. FOUND. (Mar. 25, 2019), https://www.kff.org/hivaids/fact-sheet/the-hivaids-epidemic-in-the-united-states-the-basics/#endnote_link_391348-59 (last accessed Oct. 19, 2020).

[49] *See id.*

[50] *Id.* (the CDC estimates that "as of 2016 15% of those infected with HIV are unaware they are infected, and 38% infections resulted from individuals who did not know they had HIV").

Along with the obvious harms incomplete care will inflict on LGBTQ individuals, creating an environment where people do not feel safe sharing their sexual identity and medical history will also have serious public health impacts. For example, during a communicable disease outbreak like COVID-19 the Center for Disease Control may identify men who have sex with men as a high risk group making them eligible for free treatment. However, if men in this group are afraid to disclose their identity due to discrimination they may not receive necessary care. This will put them at greater risk and hamper local government's ability to contain and mitigate diseases. Thus, the Final Rule will create an environment of discrimination that will significantly harm each LGBTQ person and may have a deleterious ripple effect for all residents.

In addition, LGBTQ individuals denied care elsewhere will turn to Amici's healthcare services. For example, cities and counties often work to provide services to people living with HIV through Part A grants from the Ryan White HIV/AIDS Treatment Extension Act of 2009.[51] Cities

[51] *Part A: Grants to Eligible Metropolitan and Transitional Areas*, HEALTH RESOURCES & SERVS. ADMIN., https://hab.hrsa.gov/about-ryan-

like Columbus also provide HIV testing through sexual health clinics. But local governments have not had time to prepare their budgets or their facilities for additional patients. Further, local governments who receive Ryan White funding are left in a state of perpetual contradiction because they are both legally mandated to provide services to HIV patients and legally required by the Final Rule to allow staff to refuse to care for such patients.

In the short-term, all local services, including those for people living with HIV, could be overrun and lead to gaps in healthcare. Key safety net services will be underfunded or funds from other local services will need to be diverted to make up shortfalls, while Amici already lack the resources to successfully meet the needs of their residents.[52] For those individuals who are denied private services and do not turn to services

white-hivaids-program/part-a-grants-emerging-metro-transitional-areas (last accessed Oct. 19, 2020).

[52] *See, e.g.*, INST. OF MED., COMMITTEE ON PUBLIC HEALTH STRATEGIES TO IMPROVE HEALTH, FOR THE PUBLIC'S HEALTH: INVESTING IN A HEALTHIER FUTURE, Ch. 4, Funding Sources and Structures to Build Public Health (April 10, 2010), https://www.ncbi.nlm.nih.gov/books/NBK201025/ ("Public health departments have a history of chronic underfunding and unstable budgets.") (last accessed Oct. 19, 2020). As one example, Ohio requires counties to perform tuberculosis control, but does not provide designated funding for them to do so. Many counties are forced to contract with other counties to comply with this mandate.

Amici provide, they will undeniably suffer worse health outcomes. Amici will also incur downstream costs of a population that is sicker and less productive.

If local residents are denied or delayed in receiving services by other healthcare providers, Amici will be further overwhelmed with patients at a time when they are responding to an unprecedented crisis, have unhealthier populations, and face higher costs to their healthcare systems.

III. THE FINAL RULE ENDANGERS THE PUBLIC BY ALLOWING EMTS AND PARAMEDICS TO REFUSE TO PROVIDE CARE.

The Final Rule's applicability to both emergency responders and emergency situations will harm Amici and their residents. It will reduce the quality of emergency care available in Amici's jurisdictions, prevent Emergency Medical Services from providing the necessary speed of care, and not only endanger the provision of treatment or vaccination for COVID-19, as well as reproductive and LGBTQ healthcare, but disproportionately harm Amici's low-income and vulnerable populations. Many local governments offer emergency transportation and care, which may be provided via ambulance services or under the auspices of

Emergency Medical Services (EMS), often run via local fire departments.[53] Fire department Emergency Medical Technicians (EMTs) and paramedics are typically first on the scene in response to EMS calls, and they provide life-saving care to individuals suffering from medical emergencies.[54] If local governments are asked to choose between vital federal funding and enabling discrimination, their residents' lives will be endangered.

The Final Rule explicitly includes EMTs and paramedics as individuals who may decline to provide healthcare services based on religious objections.[55] It also fails to provide any exception for patients

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[53] *See, e.g.*, *Fire Department, Medical Services Division*, CITY OF OAKLAND CALIFORNIA, http://www2.oaklandnet.com/government/o/OFD/o/EmergencyMedicalServices/index.htm (last accessed Oct. 19, 2020); *Division of Fire*, City of Columbus, https://www.columbus.gov/public-safety/fire/reports/EMS-Reports/ (last accessed Oct. 19, 2020).

[54] *See, e.g.*, CITY OF OAKLAND, PROPOSED POLICY BUDGET: FISCAL YEAR 2019-2021 26 (2019), https://cao-94612.s3.amazonaws.com/documents/FY-2019-21-Proposed-Budget-Book-WEB-VERSION.pdf (last accessed Oct. 19, 2020).

[55] 84 Fed. Reg. at 23,188 ("EMTs and paramedics are treated like other health care professionals under this definition. . . . EMTs and paramedics are trained medical professionals, not mere 'drivers.' If commenters contend that driving a patient to a procedure should never be construed to be assisting in the performance of a procedure, the Department disagrees and believes it would depend on the facts and circumstances of each case. For example, the Department believes driving a person to a hospital or clinic for a scheduled abortion could constitute 'assisting in

in life-threatening or critical condition, which is contrary to EMTALA,[56] and will literally endanger the lives of patients who rely on EMTs and paramedics to respond rapidly and appropriately to emergencies. For example, under the Final Rule, Amici are concerned that an emergency responses could refuse to provide care to an individual in medical distress who is perceived to be LGBTQ, based purely on that real—or imagined—identity. An emergency responder could also refuse to provide a pregnant woman who is suffering from a life-threatening miscarriage with the drugs that would induce a life-saving abortion.[57] Similarly, an ambulance driver could refuse to transport a patient with an ectopic

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the performance of' an abortion, as would physically delivering drugs for inducing abortion.").

[56] The Emergency Medical Treatment and Active Labor Act (EMTALA) requires hospitals with emergency departments to screen and offer emergency medical treatment and stabilization regardless of patients' inability to pay. 42 U.S.C. § 1395dd; *see also* City & Cty. of San Francisco's Answering Br. at 41-42 (Oct. 13, 2020) (challenged provisions of the Final Rule are contrary to EMTALA). EMTALA also applies to hospital-owned ambulances. *See Arrington v. Wong*, 237 F.3d 1066 (9th Cir. 2001) (noting that under 42 C.F.R. § 489.24, a patient "comes to the emergency department" within the meaning of EMTALA such that EMTALA's requirements to provide stabilizing care apply when she "presents [her]self at any . . . vehicle owned or operated by the hospital.").

[57] "[T]he Department believes driving a person to a hospital or clinic for a scheduled abortion could constitute 'assisting in the performance of' an abortion, as would physically delivering drugs for inducing abortion." 84 Fed. Reg. at 23,188.

pregnancy to the hospital, anticipating an abortion to be the course of treatment.[58]

At the same time, EMTALA defines active labor as an emergency situation, so it must be screened for and stabilizing treatment must be provided.[59] EMTALA also imposes restrictions on transferring a women in labor to another facility. For example, a hospital may provide "appropriate transfer" to another hospital.[60] But for a women in labor, an appropriate transfer is one that "minimizes the risks to the individual's health" and where "the provision of appropriate medical treatment at another medical facility outweigh[s] the increased risks" of the transfer.[61] So, for women in labor in particular, Amici's hospitals and ambulances cannot simply refuse to treat them or send them elsewhere.

As Amici know well, fire personnel and EMTs must be dispatched urgently after a 911 call is received, and care and treatment must often be administered as soon as possible upon arrival. Speed is of the essence in providing emergency medical treatment, when even a minute's delay

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[58] *See, e.g.*, *id.*
[59] 42 U.S.C. § 1395dd(b).
[60] *Id.*, § 1395dd(e)(1).
[61] *Id.*, § 1395dd(c).

in some life-threatening cases can have a measurable impact on mortality rates.[62] If EMTs and paramedics are able to refuse to provide care when they arrive at the scene, it will be costly—if not impossible[63]—for localities to provide adequate alternative care to acutely suffering patients. In addition, because hospital-owned ambulances are covered by EMTALA,[64] either a local government's hospital's ambulances must treat everyone and risk losing all of its HHS funding, or the hospital must allow the opt-outs by ambulance drivers required by the Final Rule in violation of EMTALA, which carries monetary penalties of $50,000 per violation.[65]

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[62] *See, e.g.*, James P. Byrne et al., *Association Between Emergency Medical Service Response Time and Motor Vehicle Crash Mortality in the United States*, J. Am. Med. Assoc. E1 (2019).

[63] When fire personnel respond to an emergency, they can be dispatched to the scene and may not learn until arrival what type of medical emergency they are called to address. If an EMT or paramedic were to object to providing care to the patient at the scene, that patient would have no other recourse to receive the urgent and potentially life-saving care EMS is designed to provide.

[64] *See Arrington*, 237 F.3d 1066 (under 42 C.F.R. § 489.24, a patient "comes to the emergency department" within the meaning of EMTALA such that EMTALA's requirements to provide stabilizing care apply when she "presents [her]self at any . . . vehicle owned or operated by the hospital").

[65] 42 U.S.C. § 1995dd(d)(1)-(2).

Furthermore, to enable employees to endanger community-members' lives in this way would be an abdication of Amici's duty to provide for their citizens' health, safety, and welfare. For example, many regions of the United States continue to experience an opioid crisis. Under the broad terms of the Final Rule, Amici fear that an emergency responder who religiously or morally objects may refuse to administer naloxone to an individual overdosing on an opioid, reducing the chance of survival.[66]

In addition to the material and financial harms that the Final Rule would cause to Amici and other local governments, it would also discourage patients from seeking appropriate care in a timely manner, further increasing the burden on emergency services provided by local governments. A person seeking contraception could be deterred for fear of being turned away by a Final Rule-invoking doctor or pharmacist. Such patients would be endangered and more likely to need costly emergency care as a result of unwanted pregnancy or medical

[66] *See, e.g.*, Steven Reinberg, *Many Drugstores Won't Dispense Opioid Antidote as Required*, Medical Xpress (Nov. 13, 2018), https://medicalxpress.com/news/2018-11-drugstores-wont-opioid-antidote-required.html (describing some individuals' moral objection to providing naloxone to individuals with substance abuse disorders) (last accessed Oct. 19, 2020).

complications. An LGBTQ individual, similarly, could delay seeking both regular and emergency treatment for fear of discriminatory refusals by Final Rule-invoking healthcare professionals. This chilling effect will compound the already severe negative consequences of the Final Rule and increase reliance on Amici's safety-net care and emergency services.

Not only will the Final Rule have a devastating impact on local governments' ability to provide life-saving emergency reproductive and LGBTQ healthcare, it will also disproportionately harm low-income and marginalized populations who are more likely to use emergency services. Individuals with less access to routine medical care are more likely to utilize EMS.[67] Perhaps because ambulance care and transportation to the hospital is overwhelmingly offered without requiring proof of insurance or ability to pay (unlike nearly all other medical care), lower-income and uninsured patients use EMS at a higher rate than those with other forms of insurance.[68] In addition, low-income Medicaid recipients

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[67] Zachary F. Meisel et al., *Variations in Ambulance Use in the United States: the Role of Health Insurance*, 18 Academic Emergency Medicine 1036, 1042 (2011), https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1553-2712.2011.01163.x (last accessed Oct. 19, 2020).

[68] *Id.*

are more likely to rely on ambulance transportation than other groups.[69] In metropolitan areas, uninsured ambulance use is even higher than in rural areas.[70] The Final Rule therefore will harm those of Amici's residents that are least able to withstand additional threats to their health and wellbeing.

The Final Rule invites providers of emergency care to discriminate against the distressed patients they are duty-bound to treat, and attempts to undermine local governments' antidiscrimination policies and laws in the provision of healthcare with the threat of withdrawal of critical federal funding. This proposal will have life-and-death consequences for Amici's residents, who will suffer greatly and needlessly from the reduced availability and efficacy of healthcare and emergency services.

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[69] Benjamin T. Squire, *At-Risk Populations and the Critically Ill Rely Disproportionately on Ambulance Transport to Emergency Departments*, 56 Annals Emergency Medicine 341 (2010), https://www.annemergmed.com/article/S0196-0644(10)00384-7/fulltext (last accessed Oct. 19, 2020).

[70] Meisel, *supra* note 67 at 1041.

CONCLUSION

The Final Rule violates statutory and constitutional provisions. If it takes effect, it will likely force Amici and other local governments across the United States to discriminate against their own citizens or face the loss of hundreds of millions of federal dollars, increase the number of patients accessing their healthcare systems when those systems are struggling to respond to an unprecedented pandemic, and make their residents less healthy. Further, Amici's residents will face discrimination and suffer harm from the reduction in services the loss of funding will cause to safety-net hospitals, emergency services, and private healthcare options. For the foregoing reasons, Amici support affirming the District Court's decision to prohibit Defendants from enforcing the Final Rule.

Dated: October 20, 2020

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