

Nos. 23-35440 & 23-35450

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

THE STATE OF IDAHO,
Defendant-Appellant.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

THE STATE OF IDAHO,
Defendant

v.

MIKE MOYLE, Speaker of the Idaho House of Representatives; et al.,
Movant-Appellants.

On Appeal from the United States District Court
For the District of Idaho
No. 1:22-cv-00329-BLW
Hon. B. Lynn Winmill

**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE IN
SUPPORT OF PLAINTIFF-APPELLEE BY 14 CITIES AND COUNTIES**

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INTRODUCTION

The County of Santa Clara, California; Travis County, Texas; County of Milwaukee, Wisconsin; Contra Costa County, California; City of Gary, Indiana; City and County of San Francisco, California; City of Saint Paul, Minnesota; City of Cincinnati, Ohio; County of Marin, California; County of Monterey, California; Cook County, Illinois; County of Los Angeles, California; Harris County, Texas; and City of New York, New York respectfully move for leave to file the enclosed brief as amici curiae in support of Plaintiff-Appellee and for affirmance of the district court's preliminary injunction.

ARGUMENT

Interest of Amici Curiae: *Amici curiae* are geographically diverse counties and cities across the United States that maintain public health departments, own or operate hospitals or clinics, or otherwise fund healthcare services for our residents. As local governments, amici are responsible both in practice and often by legal mandate for protecting the health and wellbeing of our communities. Many local governments provide direct medical services focused on serving indigent and other underserved populations, including reproductive healthcare services and services to persons who have been, are, or may become pregnant. In addition, local governments provide emergency medical transportation and public health services, operate law enforcement agencies and jail facilities, maintain public infrastructure,

assist vulnerable children and the elderly, promote economic security, and respond to public emergencies.

In light of these responsibilities, amici have a strong interest in protecting patients' ability to receive timely access to medically necessary abortions in emergency situations. A ruling reversing the district court's preliminary injunction would undermine these interests, to the detriment of public safety and welfare in the medical sphere and beyond. Furthermore, increased medical costs caused by delaying medically necessary healthcare limit the funding available for local jurisdictions that offer safety net healthcare services to provide the preventative and primary care services that help produce better health outcomes for the public, or to provide other essential public services. Accordingly, amici have a strong interest in ensuring the protections of EMTALA remain in full effect for patients suffering from pregnancy-related health complications, notwithstanding any state laws that might seek to curtail access to medically necessary abortions in such circumstances.

Purpose and Relevance of Proposed Amicus Brief: The enclosed brief includes material that is "desirable" and "relevant to the disposition of the case." Fed. R. App. P. 29(a)(3)(B). The brief provides important context about the harmful consequences to the welfare of our communities of stripping away the legal protections that ensure timely access to medically necessary emergency

abortion care. By virtue of our role in safeguarding public health and/or providing healthcare services, amici possess first-hand experience with the variety of circumstances in which abortion can be medically necessary, and the potentially severe medical and public health consequences—both at an individual level and a community-wide level—of delaying or denying care in such cases. The proposed amicus brief draws on this experience and knowledge.

First, the brief describes in detail how reversing the district court’s preliminary injunction and allowing Idaho to prohibit or delay the provision of emergency abortions would place the health and survival of pregnant patients suffering from serious health complications at risk. Second, the brief explains how the harms that flow from delays in providing medically necessary abortions to patients experiencing medical emergencies would erode public trust in healthcare providers and institutions, to the detriment of public health and welfare more broadly. Finally, the proposed amicus brief describes how increased medical costs associated with delayed care reduces funding available for local jurisdictions to offer preventative and primary care services that help produce better health outcomes or to provide other important public services that benefit the public.

Consent: As required under Circuit Rule 29-3, amici endeavored to obtain the consent of all parties before moving the Court for permission to file the proposed amicus brief. Plaintiff-Appellee the United States of America and

Defendant-Appellant the State of Idaho have consented to the filing of the proposed amicus brief. Counsel for Movant-Appellants Mike Moyle, Speaker of the Idaho House of Representatives et al. has not responded to a request for consent to file.

CONCLUSION

For the reasons set forth above, amici request that the Court grant amici curiae leave to file the enclosed brief in support of Plaintiff-Appellee and for affirmance of the district court's preliminary injunction.

Dated: 09/15/2023

Respectfully submitted:

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By: */s/ Rachel A. Neil*

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CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 27(d)(2) because it contains 710 words.

I certify that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and with the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

DATED: 09/15/2023

By: /s/ Rachel A. Neil
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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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

Date: 09/15/2023

/s/ James Lemus

James Lemus

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***AMICI CURIAE* BRIEF OF 14 CITIES AND COUNTIES IN SUPPORT OF
PLAINTIFF-APPELLEE AND FOR AFFIRMANCE OF THE
PRELIMINARY INJUNCTION**

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The County of Milwaukee, Wisconsin

Contra Costa County, California

The City of Gary, Indiana

The City and County of San Francisco, California

The City of Saint Paul, Minnesota

The City of Cincinnati, Ohio

The County of Marin, California

The County of Monterey, California

Cook County, Illinois

The County of Los Angeles, California

Harris County, Texas

The City of New York, New York

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INTERESTS OF *AMICI CURIAE*¹

Amici curiae are counties and cities across the United States that maintain public health departments, own or operate hospitals or clinics, or otherwise fund healthcare services for our residents. Amici are geographically diverse jurisdictions that range in size, specifically, the County of Santa Clara, California; Travis County, Texas; County of Milwaukee, Wisconsin; Contra Costa County, California; City of Gary, Indiana; City and County of San Francisco, California; City of Saint Paul, Minnesota; City of Cincinnati, Ohio; County of Marin, California; County of Monterey, California; Cook County, Illinois; County of Los Angeles, California; Harris County, Texas; and City of New York, New York.

As local governments, amici are responsible—both in practice and often by legal mandate—for protecting the health and wellbeing of our communities. Many local governments provide direct medical services focused on serving indigent and other underserved populations, including reproductive healthcare services and services to persons who have been, are, or hope to become pregnant. In addition, local governments provide emergency medical transportation and public health services, operate law enforcement agencies and jail facilities, maintain public

¹ This amicus brief is accompanied by a motion for leave to file, pursuant to Federal Rule of Appellate Procedure 29(a)(2) and (a)(3). No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or their counsel made a monetary contribution to this brief's preparation or submission.

infrastructure, assist vulnerable children and the elderly, promote economic security, and respond to public emergencies. Accordingly, amici have a strong interest in ensuring public safety and welfare in the medical sphere and beyond.

Moreover, by virtue of our role in safeguarding public health and/or providing healthcare services, amici possess first-hand experience with the variety of circumstances in which abortion can be medically necessary, and the potentially severe medical and public health consequences—both at an individual level and a community-wide level—of delaying or denying care in such cases. Amici submit this brief to provide critical context about the significant and dangerous consequences to the welfare of our communities of stripping away the legal protections that ensure timely access to that care.

ARGUMENT

As local governments responsible for promoting the health and welfare of our communities—including, for example, by protecting public health, providing direct medical services, promoting economic security, and responding to emergencies—amici respectfully urge the Court to affirm the district court’s grant of a preliminary injunction. The district court’s preliminary injunction bars the State of Idaho from enforcing the abortion ban set out in Idaho Code section 18-622 to the extent it conflicts with the requirements of the federal Emergency Medical Treatment and Labor Act (EMTALA). Accordingly, a reversal of the

district court's order would seriously undermine patients' ability to receive timely access to medically necessary abortions in emergency situations. This, in turn, would expose patients experiencing dangerous pregnancy complications to significant, potentially life-threatening health repercussions that would have a harmful ripple effect not only on the patients themselves, but throughout the broader community and the safety net systems—operated by amici—upon which the community relies. Because prompt treatment is often critical to protecting a patient's health, the consequences of delaying medically necessary abortions can be extreme and may mean the difference between life and death for the patient, and devastating consequences for the patient's family and the broader community.

Even under the absolute best medical circumstances, pregnancy imposes significant stress on a patient's body and on major bodily functions. In cases involving dangerous health complications, continuing a pregnancy can cause severe, and even fatal, illness or injury. In such circumstances, doctors must act quickly to safeguard patients' health and minimize the risk to patients' lives. If the district court's preliminary injunction were reversed, however, patients in Idaho who are experiencing serious pregnancy complications would be forced to suffer as their health deteriorated, sometimes irreparably, while physicians delayed or forewent medically recommended, necessary, and potentially life-saving care.

In addition to endangering individual patients, allowing Idaho to prevent or delay healthcare providers from performing medically necessary emergency abortions would threaten to harm public health more broadly by undermining patients' trust that the healthcare system will be responsive to their needs or the needs of their loved ones. Our experience has taught us that building and maintaining patient trust is paramount to healthcare providers' ability to treat patients, encourage healthy behaviors, and facilitate positive health outcomes for the public. Without that trust, patients may become skeptical that they can obtain the care they need and may, as a result, delay or altogether forgo seeking important care. When segments of the population do not or cannot access adequate health care, the wellbeing of the entire community is undermined. Finally, an increase in the costs associated with delayed medical care is likely to limit local governments' ability to provide safety net healthcare services more broadly.

For the foregoing reasons, amici respectfully urge the Court to affirm the district court's preliminary injunction ruling.

I. Delaying or Denying Abortion to Patients Experiencing Serious Pregnancy Complications Endangers Patients' Health and Risks Their Lives.

As set forth above, amici are local governments that maintain public health departments, own or operate hospitals or clinics, or otherwise fund healthcare services for our residents. As entities that are broadly responsible for ensuring the

safety and wellbeing of our communities—a foundational part of which entails providing or facilitating access to healthcare—amici have a strong interest in ensuring that the laws regulating how healthcare providers interact with patients promote, rather than undermine, individual patient health, robust and trusting provider-patient relationships, and the broader public welfare.

At the individual patient level, amici have an interest in mitigating the harm caused by dangerous health conditions and complications that sometimes arise during pregnancy and can render access to abortion necessary to protect pregnant patients' health and minimize the risk to their lives. Requiring doctors to delay abortions for patients suffering from such complications, contrary to their medical judgment, threatens patients' health and in some cases causes maternal deaths that could have been avoided.

Numerous pregnancy-related conditions, including but not limited to preeclampsia and eclampsia, preterm premature rupture of membranes, and ectopic pregnancies, pose serious risks to patient health and, if not treated in a timely or urgent manner, can prove fatal.² Reversing the district court's preliminary

² While the Idaho statute prohibiting abortion provides an exception where physicians determine, in their “good faith medical judgment ... that the abortion was necessary to prevent the death of the pregnant woman,” Idaho Code § 18-622, in practice this may not be the benevolent life-saving exception it appears to be. Rather, it is not easy task to be able to precisely define that medical moment when a condition may transform from manageable to life-threatening. And thus,

injunction and allowing Idaho to prohibit or delay the provision of emergency abortions, contrary to the requirements of EMTALA, would place the health and survival of pregnant patients with these and other medical conditions at risk. Moreover, as set forth more fully in Section III of this brief, denying timely and necessary care not only deprives each pregnant patient of their most fundamental rights, it also threatens lasting consequences to the provider-patient relationship and, in turn, to the broader public health and welfare. As entities charged with *protecting* the public health and serving the entire community, amici have a strong interest in preventing these harms.

A. Preeclampsia and Eclampsia

One circumstance where emergency abortion care can become necessary is when a patient suffers from preeclampsia or eclampsia. Preeclampsia is a complication of pregnancy characterized by high blood pressure, proteinuria (i.e., elevated levels of protein in urine), and/or other signs of kidney problems.³ In

delaying medically necessary abortions *until* the point where the patient's life is at risk means gambling with the patient's life and health. This is harmful to patients and, by forcing physicians to delay care rather than allowing them to make decisions based on their sound medical judgment, runs contrary to the fundamental principle of medical ethics that physicians must prioritize their patients' health and welfare in all medical assessments. *See* Am. College of Obstet. & Gyn., Code of Professional Ethics 2 (Dec. 2018).

³ *See* Am. College of Obstet. & Gyn., *Gestational Hypertension and Preeclampsia*, Prac. Bull. No. 222 (Dec. 2018); *Preeclampsia*, Mayo Clinic (Apr. 15, 2022),

severe cases, preeclampsia can cause organ damage, placental abruption, severe uterine bleeding, stroke or other brain injury, and even death.⁴ Eclampsia—which is one of the leading causes of maternal mortality worldwide—is an extremely dangerous complication of severe preeclampsia that is characterized by the onset of seizures or coma.

These conditions can progress rapidly and unpredictably. Thus, while preeclampsia can be managed in many cases—thereby allowing a patient to safely continue the pregnancy—patients suffering from eclampsia or severe preeclampsia prior to fetal viability may require an abortion to avoid severe, potentially life-threatening health consequences. Given the rapid and unpredictable nature of the condition, it is essential that doctors be able to act quickly to safeguard patients’ health and lives—which they would likely be constrained or chilled from doing should this Court reverse the district court’s preliminary injunction.⁵

Indeed, delaying the availability of abortion in cases of preeclampsia or eclampsia—even by as little as a day or two—can have *catastrophic* repercussions

<https://www.mayoclinic.org/diseases-conditions/preeclampsia/symptoms-causes/syc-20355745>.

⁴ See Am. College of Obstet. & Gyn., *Gestational Hypertension and Preeclampsia*, Prac. Bull. No. 222 (Dec. 2018); *Preeclampsia*, Mayo Clinic (Apr. 15, 2022), <https://www.mayoclinic.org/diseases-conditions/preeclampsia/symptoms-causes/syc-20355745>.

⁵ See Am. College of Obstet. & Gyn., *Gestational Hypertension and Preeclampsia*, Prac. Bull. No. 222 (Dec. 2018).

to the pregnant person's health and ability to carry a pregnancy in the future. A delay in receiving care may result in permanent damage to the pregnant patient's heart, kidneys, liver, lungs, and/or brain.⁶ It may also result in irrevocable damage to the patient's uterus because of severe hemorrhaging, which may require doctors to perform a hysterectomy that would have been unnecessary had the patient received timely care. And even if a hysterectomy is not required, the damage caused by hemorrhage may hinder the patient's ability to have future successful pregnancies. Finally, in the worst cases, delays in providing a medically necessary abortion to a patient suffering from severe preeclampsia and/or eclampsia can cost the patient's life.

In sum, when dealing with serious pregnancy complications like preeclampsia and eclampsia, even small differences in the timing of care can mean the difference between recovery and permanent damage, and between life and death. This throws into sharp relief the critical role of EMTALA in ensuring that pregnant patients who are experiencing emergency medical conditions receive *timely* care, and the harms that would flow from allowing Idaho to prohibit or delay the provision of medically necessary emergency abortions.

⁶ *See id.*

B. Preterm Premature Ruptured Membranes

Another dangerous pregnancy complication that can require urgent care is preterm premature rupture of the membranes of the amniotic sac. During a typical pregnancy, the membranes will rupture at or around full term, at which point the patient will go into labor. But when the membranes rupture very early in a pregnancy—i.e., long before fetal viability—this complication poses significant health risks to the pregnant patient. Once the membranes rupture, the amniotic fluid that surrounds the embryo or fetus (which is essential to fetal development) typically drains away. However, if the pregnancy is still in the early stages, the patient may not go into labor.

At this point, the patient faces a serious risk of infection because the placenta and fetus remain inside the uterus, even though the pregnancy is failing. Even if signs of a fetal heartbeat remain, the chances are very low that a pregnancy involving very early rupture could be carried to the point of successful delivery.⁷ Meanwhile, allowing the pregnancy to continue despite the ruptured membranes puts the pregnant patient's health in grave danger. If doctors do not promptly

⁷ See Z.H. Xiao et al., *Outcome of premature infants delivered after prolonged premature rupture of membranes before 25 weeks of gestation*, 90 *Eur. J. Obstet. Gyn. Reprod. Bio.* 67, 67, 70 (May 1, 2000) (describing the low chance of survival for infants who are delivered before 22 weeks because of premature rupture). By contrast, if the membranes rupture closer to viability, there is a greater likelihood that physicians will be able to perform a successful premature delivery.

terminate the pregnancy, the patient is at risk of developing an infection that could in turn lead to sepsis—a life-threatening condition in which the body’s response to infection causes inflammation and blood clotting that impairs blood flow and can damage vital organs and even lead to death.⁸ Moreover, even if the patient survives, sepsis increases patients’ risk of suffering infections in the future.

Complications arising from delays in care can also cause hemorrhaging or scarring of the uterus that permanently impairs fertility. In some cases, patients may be forced to undergo a hysterectomy due to the advanced progression of the infection, preventing them from being able to get pregnant in the future. These severe physical harms are compounded with the psychological distress and trauma that patients will suffer from being forced, against their wishes and contrary to their medical providers’ judgment, to carry a pregnancy that is very unlikely to result in a successful delivery but continues to cause physical suffering and threaten their long-term health and reproductive ability.⁹

⁸ See *Sepsis*, Mayo Clinic (Feb. 10, 2023), <https://www.mayoclinic.org/diseases-conditions/sepsis/symptoms-causes/syc-20351214>; see also *What is Sepsis?*, Center for Disease Control and Prevention (Aug. 24, 2023), <https://www.cdc.gov/sepsis/what-is-sepsis.html>.

⁹ Unnecessarily delaying medically necessary abortions, to the detriment of patient health and at the risk of their lives, is contrary to medical ethics in general. See Am. College of Obstet. & Gyn., *Code of Professional Ethics* 2 (Dec. 2018). And delaying care is particularly egregious where the fetus’s development is no longer compatible with life—including, for example, in many cases of preterm premature

The risk of such trauma and suffering is not hypothetical. Indeed, late last year, Missouri resident Mylissa Farmer was denied an abortion at two different hospitals—one in Missouri and one in Kansas—after experiencing a preterm premature rupture of membranes at around 18 weeks.¹⁰ Despite advising Ms. Farmer that her pregnancy was failing and that her condition could rapidly deteriorate—resulting in infection, hemorrhage, and potentially death—healthcare providers refused to provide her with an abortion because a fetal heartbeat could still be detected.¹¹ In Ms. Farmer’s words: “It was dehumanizing. It was terrifying.”¹² Ms. Farmer ultimately traveled to a *third* state to receive the abortion

rupture. Other conditions that are incompatible with survival of the fetus outside of the womb include: ectopic pregnancy (pregnancy implants outside of the uterus); anencephaly (fatal condition where the brain and skull of the fetus do not develop); and congenital diaphragmatic hernia (fatal condition that prevents lungs from developing).

¹⁰ See Press Release, U.S. Dep’t Health & Hum. Servs., HHS Secretary Xavier Becerra Statement on EMTALA Enforcement (May 1, 2023), <https://www.hhs.gov/about/news/2023/05/01/hhs-secretary-xavier-becerra-statement-on-emptala-enforcement.html>.

¹¹ *Id.*; see also Anne Flaherty, *Feds Say Hospital Broke the Law by Refusing to Provide Life-Saving Abortion*, ABC News (May 1, 2023, 2:32 PM), <https://abcnews.go.com/Politics/feds-hospitals-broke-law-refusing-provide-life-saving/story?id=98990243>.

¹² Anne Flaherty, *Feds Say Hospital Broke the Law by Refusing to Provide Life-Saving Abortion*, ABC News (May 1, 2023, 2:32 PM), <https://abcnews.go.com/Politics/feds-hospitals-broke-law-refusing-provide-life-saving/story?id=98990243>.

she needed—an option that will not be viable for every patient, whether due to their emergency medical condition or other reasons.

And Ms. Farmer’s experience was not unique. In December of last year, in the wake of Florida’s 15-week abortion ban, doctors in Florida refused to perform an abortion or induce labor for a woman whose water broke *five months* before her due date. The doctors instead sent the woman, Anya Cook, home.¹³ Ms. Cook then delivered alone in a bathroom knowing her baby would not be born alive, and nearly bled to death afterwards despite being rushed to the hospital.¹⁴ Many other patients and healthcare providers have described similar terrifying encounters where patients were told they must wait until their health or life was in danger before they could receive the care they needed.¹⁵

Reversing the district court’s preliminary injunction would open the door to hospitals in Idaho turning away patients, like those described above, who are

¹³ Caroline Kitchener, *Two Friends Were Denied Care After Florida Banned Abortion. One Almost Died*, Washington Post (April 10, 2023, 6:00 AM EDT), <https://www.washingtonpost.com/politics/2023/04/10/pprom-florida-abortion-ban/>.

¹⁴ *Id.*

¹⁵ See, e.g., Stephanie Emma Pfeffer, *Oklahoma Woman with Non-Viable Pregnancy Says Hospital Told Her to Sit in the Parking Lot “Until You Bleed Out”*, People (May 4, 2023, 11:16 AM EDT), <https://people.com/health/oklahoma-woman-with-non-viable-pregnancy-told-she-had-to-woa/>; Laura Ungar & Heather Hollingsworth, *Despite Dangerous Pregnancy Complications, Abortions Denied*, Associated Press News (Nov. 20, 2022, 5:43 AM PDT), [https://apnews.com/article/abortion-science-health-business-890e813d855b57cf8e92ff799580e7e8](https://apnews.com/article/abortion-science-health-business-890e813d855b57cf8e92ff799580e7e8;);

suffering from serious pregnancy related complications. In the interests of ensuring the safety and wellbeing of patients and the public more broadly—interests that local government work every day to protect—amici respectfully urge the Court to affirm the district court’s ruling safeguarding patients’ rights under EMTALA to prompt emergency care.

II. Patients with Chronic Illness May Require Abortion to Protect Their Health and/or to Allow Them to Access Treatment for Their Illness.

In addition to patients with the pregnancy-specific conditions discussed in Part I, *supra*, pregnant patients who suffer from chronic illnesses may require timely access to abortion to protect their health or allow for treatment of an underlying illness. Exacerbation of existing chronic disease can take a tremendous toll on the health and economic wellbeing of patients, their families, and their communities, and in some cases can place the patient’s life in grave danger. Amici have a powerful interest in preventing these harms to vulnerable members of the public who are suffering from chronic illness, and to the public welfare more generally. Chronic diseases that can make continuation of a pregnancy dangerous to the patient’s life or health include, but are not limited to, cancer, cardiac disease, and renal disease.

A. Cancer

Patients who are diagnosed with cancer before or during pregnancy may need a prompt abortion to protect their health. Depending on the type and severity

of the cancer, treatment may be incompatible with continuing the pregnancy. For example, in the case of cervical cancer, lifesaving treatment sometimes requires removal of the cervix and uterus, which is inconsistent with continuing the pregnancy.¹⁶ Furthermore, treatment for certain types of cancer—including cervical cancer and breast cancer—can involve radiation therapy. Depending on the location and severity of the cancer and the stage of fetal development, radiation therapy may also be incompatible with continuing the pregnancy. In cases where cancer is detected after the point of fetal viability, physicians may be able to perform an early delivery to allow the patient to seek cancer treatment; but in other cases, an abortion may be necessary to allow for timely treatment.

Delaying or denying an abortion to cancer patients under these circumstances has serious potential health consequences. Because many cancers can progress rapidly, early treatment is critical to increasing a patient's chances of going into remission and reducing the likelihood of recurrence.¹⁷ Furthermore, delaying cancer treatment against the patients' wishes and contrary to their

¹⁶ *Cervical Cancer*, Mayo Clinic (Dec. 14, 2022), <https://www.mayoclinic.org/diseases-conditions/cervical-cancer/diagnosis-treatment/drc-20352506>.

¹⁷ See Timothy P. Hanna et al., *Mortality Due to Cancer Treatment Delay: Systematic Review and Meta-Analysis*, *Brit. Med. J.*, Nov. 4, 2020, at 1, 4-5, 10 (“Even a four week delay of cancer treatment is associated with increased mortality.”); see also *Promoting Cancer Early Diagnosis*, World Health Organization, <https://www.who.int/activities/promoting-cancer-early-diagnosis> (last visited Sept. 1, 2023).

doctors' medical judgment may force patients to undergo more intrusive or risky cancer treatments than would otherwise have been necessary, once again placing the patient's health and/or life at risk.

B. Cardiac Conditions

Patients who suffer from certain cardiac conditions may be unable to sustain a pregnancy without risking severe harm to their health. In such cases, timely access to an abortion may be medically necessary to prevent the patient's heart condition from deteriorating and avoid placing the patient's life at risk. Thus, state restrictions that force doctors to delay these medically necessary abortions, contrary to the physician's medical judgment and the patient's wishes, pose a significant risk to patients' health.

Pregnancy places a significant, additional strain on almost all vital organs, including the heart. For patients with heart conditions, this additional strain can pose a serious health risk. Conditions that may place a patient at risk during pregnancy include, for example, pulmonary hypertension (blood vessels in the lungs have very high blood pressure), aortic dilation (aorta dilated and prone to rupture), heart valve disease (heart valves do not open and close properly), and cardiomyopathy (condition of the heart muscle that makes it difficult for the heart

to pump).¹⁸ Delaying the provision of an abortion to a patient with serious heart conditions—as doctors may feel forced to do under several states’ trigger laws—may place the patient at a significant risk of blood clots, heart failure, or stroke. These, in turn, can cause damage to a patient’s heart or brain, which would significantly impact the patient’s quality of life and life expectancy and, in the worst cases, could cause death.

C. Renal Conditions

Like patients who suffer from heart conditions, patients with kidney disease also face a higher risk of severe health complications during pregnancy. As a result, these patients may need to terminate a pregnancy to avoid grave health consequences. During pregnancy, the kidneys are required to filter significantly more blood volume than usual. This increased strain on the kidneys can aggravate preexisting renal insufficiency and/or renal failure, which can result in permanent kidney damage that lasts even after the pregnancy ends.¹⁹ If denied timely access to an abortion, patients who suffer from renal insufficiency but were previously able to function without dialysis may deteriorate to the point where they need dialysis. In more extreme cases, a patient’s condition may deteriorate to the point

¹⁸ See Am. College of Obstet. & Gyn., *Pregnancy and Heart Disease*, Prac. Bull. No. 212 (May 2019).

¹⁹ See Maria L. Gonzalez Suarez et al., *Renal Disorders in Pregnancy: Core Curriculum 2019*, 73 Am. J. Kidney Disease 119, 128 (2019).

where, even with dialysis, the kidneys cannot function well enough for the patient to survive. In those cases, patients will need a kidney transplant, or else their condition will prove fatal. Patients with kidney disease are also at a heightened risk of developing preeclampsia (discussed in Part I.A, *supra*) which can progress in a rapid and unpredictable manner. This underscores the importance of ensuring physicians can act without delay to provide medically necessary abortions to patients suffering from serious health complications.

Local governments have an important interest in promoting public health and preventing unnecessary harm to our communities, including to members of our communities suffering from chronic illnesses. Moreover, an increase in avoidable medical harm to some members of the community will have a ripple effect on amici's ability to care for all members of the community. For this reason, amici respectfully urge the Court to affirm the district court's preliminary injunction.

III. Denying or Delaying the Treatment of Patients with Pregnancy Complications Threatens to Erode Public Trust in Healthcare Providers and Thereby Undermine the Public Health and Welfare.

As discussed above, denying or delaying the treatment of patients with pregnancy complications has serious consequences at the individual level. Beyond that, it also threatens to undermine trust in the healthcare system more broadly, particularly among under-served communities, to the detriment of public health and community wellbeing. Because local governments play an essential role in

promoting and protecting public health and welfare, amici have a strong interest in preventing these harms and, for this additional reason, urge the Court to uphold the district court’s preliminary injunction.

Put simply, forcing physicians to delay or deny medically necessary abortions to patients suffering from serious health conditions would undermine patients’ confidence that healthcare professionals are willing and able to help them. Research shows that patients who have negative medical experiences or feel betrayed by medical institutions are more likely to disengage from healthcare systems and less likely to adhere to medical advice.²⁰ This would exacerbate existing medical skepticism and further erode trust in medical practitioners and institutions—trust that is foundational to effective patient care. Furthermore, even patients who have a high degree of trust in healthcare providers and systems may find their confidence irreparably shaken if physicians withhold necessary medical care or force patients to “get sicker” and endure potentially life-threatening health complications before providing needed care.²¹ For example, in response to newly-effective abortion restrictions, some physicians are delaying abortions for patients

²⁰ Carly Parnitzke Smith, *First, Do No Harm: Institutional Betrayal and Trust in Health Care Organizations*, 10 J. Multidisc. Healthcare 133, 137, 140-42 (2017).

²¹ See Whitney Arey et al., *A Preview of the Dangerous Future of Abortion Bans—Texas Senate Bill 8*, New England J. of Med. (Aug. 4, 2022) (describing a patient’s anger and sadness at having to either “wait[], and ... potentially get sicker,” or fly to another state and risk having a medical emergency in transit).

who present with ruptured membranes prior to fetal viability; in several instances the physicians waited until the patient developed sepsis—a life-threatening condition—before providing care.²²

These dangerous and harmful medical encounters are likely to negatively affect individual patients' and the larger community's relationships with healthcare providers and the healthcare system. Both patients who suffer serious health complications because of physicians' inaction and their loved ones may find it difficult to trust the healthcare system in the future. Indeed, research shows that patients who feel that a relative has received poor or inadequate health care tend to report a loss of trust in their *own* healthcare providers and the healthcare system, and are more likely to avoid seeking medical care.²³ This ripple effect means that negative health repercussions of delaying or denying medically necessary abortions extend far beyond the outcome of those specific incidents and threaten to harm public health by undermining trust in, and engagement with, the health care system.

²² *Id.*; see also Laura Santhanam, *How Abortion Bans Will Likely Lead to More Deadly Infections*, PBS NewsHour (July 27, 2022, 2:13 PM EST), <https://www.pbs.org/newshour/health/how-abortion-bans-will-likely-lead-to-more-deadly-infections> (physician describing a sharp increase in the number of patients experiencing sepsis or hemorrhage during pregnancy).

²³ Nao Oguro et al., *The Impact that Family Members' Health Care Experiences Have on Patients' Trust in Physicians*, BMC Health Servs. Rsch., Oct. 19, 2021, at 2, 9-10.

The harmful consequences of this loss of trust are hard to overstate. Public trust is fundamental to healthcare professionals' ability to treat patients, encourage healthy behaviors, and facilitate positive health outcomes more broadly. Among other things, trust in healthcare professionals is associated with patients engaging in beneficial health behaviors and reporting higher satisfaction with their health care, improvement in symptoms, and better quality of life as it relates to health.²⁴ Conversely, mistrust of healthcare providers contributes to delays in seeking care, which can lead to worse healthcare outcomes.²⁵ Patients who distrust medical providers are also more likely to fail to follow the medical advice they are given.²⁶ Undermining confidence in healthcare professionals, therefore, has serious consequences for the public health.

But the impact on patients and the broader community does not end there. Worsened health outcomes negatively affect many aspects of community wellbeing beyond physical health. Delays in seeking out or receiving medical care can result in more costly and intensive medical interventions. The burden of

²⁴ See Roman Lewandowski et al., *Restoring Patient Trust in Healthcare: Medical Information Impact Case Study in Poland*, BMC Health Serv. Rsch., Aug. 24, 2021, at 2; see also Johanna Birkhäuer et al., *Trust in the Health Care Professional and Health Outcomes: A Meta-Analysis*, Pub. Libr. Sci. ONE, Feb. 7, 2017, at 10.

²⁵ See Thomas A. LaVeist et al., *Mistrust of Health Care Organizations is Associated with Underutilization of Health Services*, 44 Health Servs. Rsch. 2093, 2102-03 (2009).

²⁶ *Id.* at 2100.

increased medical expenses, in turn, can have serious and destabilizing repercussions for families and communities. Some families struggling to pay medical expenses resort to payday lenders or sacrifice necessities like food and clothing to pay for medical care, and medical debt is a leading cause of bankruptcy in the United States.²⁷

Worsened public health outcomes can also negatively affect important areas such as school attendance and participation, familial relationships and stress, career advancement, and worker productivity.²⁸ For example, children's frequent illness and doctor's appointments can interfere with their school attendance while simultaneously limiting their parents' ability go to work and to progress in their careers. Meanwhile, parents struggling with serious health complications may have trouble finding the time or energy to help their children complete homework or to plan family bonding activities, while also managing their own health and potentially strained finances. Each of these has cascading effects on the wellbeing of families and communities in both the short and long term, which further underscores the importance of preserving public health and promoting trust in, and

²⁷ Consumer Financial Protection Bureau, *Medical Debt Burden in the United States*, 29-30 (2022), https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.

²⁸ Catherine Jane Golics et al., *The Impact of Disease on Family Members: A Critical Aspect of Medical Care*, 106 J. Royal Soc. Med. 399, 401-03 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3791092/>.

engagement with, the healthcare system. Reversing the district court's decision would have the opposite effect.

Without the protections of the district court's preliminary injunction, persons in Idaho who are or may become pregnant, and those close to them, will be left in a state of uncertainty about whether healthcare providers will be willing and able to help them if they find themselves rushed to the emergency room with a pregnancy complication that threatens their life or health. Many of those who are inevitably turned away and refused critical, health-preserving care will undoubtedly find their trust in our healthcare system devastated, to the detriment of their own well-being and that of their communities.

Finally, delaying medically necessary healthcare is likely to result in more complicated and expensive care. And increased medical costs, in turn, are likely to limit the funding available for local jurisdictions that offer safety net healthcare services to provide the preventative and primary care services that help produce better health outcomes for the public, or to provide other essential public services. As entities tasked with protecting the public welfare, amici urge the Court to consider how delaying medically necessary care may impair local governments' ability to effectively care for and provide safety net services to their communities.

CONCLUSION

For the reasons set forth above, amici respectfully urge the Court to affirm the district court's preliminary injunction ruling.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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I hereby certify that on September 15, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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