

UNITED STATES DISTRICT COURT
DISTRICT COURT OF MASSACHUSETTS

**BOSTON ALLIANCE OF GAY,
LESBIAN, BISEXUAL AND
TRANSGENDER YOUTH, ET
AL.**

Plaintiffs,

v.

**UNITED STATES
DEPARTMENT OF HEALTH
AND HUMAN SERVICES, ET
AL.**

Defendants.

Motion for Leave to File Amicus
Brief

Civil Action No. 1:20-CV-11297-
PBS

Hon. Patti B. Saris

ROB BONTA
Attorney General of California
KATHLEEN BOERGERS
NELI PALMA
Supervising Deputy Attorneys
General
HEIDI L. LEHRMAN
Deputy Attorney General
Attorneys for State of California

ANDREA JOY CAMPBELL
Attorney General of Massachusetts
AMANDA HAINSWORTH
KIMBERLY PARR
Assistant Attorneys General
DAVID KRAVITZ
Deputy State Solicitor
*Attorneys for Commonwealth of
Massachusetts*

LETITIA JAMES
Attorney General of New York
BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
Attorneys for State of New York

Amici States California, Massachusetts, New York, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia respectfully move the Court for leave to file an amici curiae brief in this matter, attached hereto as Exhibit 1. In particular, Amici States seek leave to file a brief in support of Plaintiffs' motion for summary judgment. In this action, Plaintiffs seek declaratory and injunctive relief vacating a regulation issued pursuant to the Patient Protection and Affordable Care Act (ACA) by Defendant U.S. Department of Health and Human Services (HHS), 85 Fed. Reg. 37,160 (June 19, 2020) (2020 Rule) under the Administrative Procedure Act (APA).

Amici States have a strong interest in supporting Plaintiffs' motion for summary judgment. Specifically, Amici States are responsible for protecting the health and welfare of their residents. When Congress enacted the ACA, it included Section 1557 (42 U.S.C. § 18116), a landmark civil rights provision that prohibits health programs and activities receiving federal financial assistance from discriminating against individuals on the basis of race, color, national origin, sex, age, or disability. In 2016, when the U.S. Department of Health & Human Services issued a final rule implementing Section 1557, it stressed the importance of comprehensive anti-

discrimination protections and noted that discrimination within the healthcare system contributes to poor health outcomes, exacerbates existing health disparities, and leads to ineffective distribution of healthcare resources. Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31,376 (May 18, 2016) (codified at 45 C.F.R. pt. 92) (2016 Rule).

Amici States are leading advocates for the Affordable Care Act and nondiscrimination in the provision of health care, including those protecting underserved populations, such as individuals with disabilities, women, and LGBTQ individuals. Amici seek to provide perspective on the application of federal nondiscrimination standards and the resulting harms if the 2020 final rule is permitted to stand. The 2020 final rule dismantles protections against discrimination intended by Section 1557 of the ACA, leading to decreased access to valuable preventive services that Amici States' citizens rely on. Amici's proposed brief supports Plaintiffs' argument and discusses the 2020 rule's unsupported and unjustified contradiction with the factual findings in the record that support the prior administrative policy behind the 2016 rule.

Plaintiffs consent to the filing of Amici States' amicus brief. Defendants take no position on the motion but note for the Court that each of the Amici States are plaintiffs in a separate challenge to the same rule in the

United States District Court for the Southern District of New York that has been stayed pending issuance of the new rule pursuant to the States' consent.

Dated: March 26, 2024

Respectfully submitted,

ANDREA JOY CAMPBELL

Attorney General of Massachusetts

LETITIA JAMES

Attorney General of New York

By: /s/ Kimberly Parr

AMANDA HAINSWORTH

KIMBERLY PARR, BBO No. 679806

Assistant Attorneys General

DAVID KRAVITZ

Deputy State Solicitor

Office of the Massachusetts

Attorney General

One Ashburton Place

Boston, MA 02108

(617) 963-2489

Kimberly.Parr@mass.gov

*Attorneys for Commonwealth of
Massachusetts*

By: /s/ Judith N. Vale

BARBARA D. UNDERWOOD

Solicitor General

JUDITH N. VALE

Deputy Solicitor General

Attorneys for State of New York

ROB BONTA

Attorney General of California

By: /s/ Kathleen Boergers

KATHLEEN BOERGERS

Supervising Deputy Attorney

General

HEIDI L. LEHRMAN

Deputy Attorney General

Attorneys for State of California

[ADDITIONAL COUNSEL LISTED ON SUBSEQUENT PAGE]

ADDITIONAL COUNSEL

PHILIP J. WEISER
Attorney General
State of Colorado
1300 Broadway
Denver, CO 80203

WILLIAM TONG
Attorney General
State of Connecticut
165 Capitol Avenue
Hartford, CT 06106

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 North French Street
Wilmington, DE 19801

BRIAN L. SCHWALB
Attorney General
District of Columbia
400 6th Street, NW, Suite 8100
Washington, D.C. 20001

ANNE E. LOPEZ
Attorney General
State of Hawai'i
425 Queen Street
Honolulu, HI 96813

KWAME RAOUL
Attorney General
State of Illinois
100 West Randolph Street
Chicago, IL 60601

AARON M. FREY
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Place
Baltimore, MD 21202

DANA NESSEL
Attorney General
State of Michigan
P.O. Box 30212
Lansing, MI 48909

KEITH ELLISON
Attorney General
State of Minnesota
102 State Capitol, 75 Rev. Dr.
Martin Luther King Jr. Blvd.
St. Paul, MN 55155

MATTHEW J. PLATKIN
Attorney General
State of New Jersey
25 Market Street
Trenton, NJ 08625

RAÚL TORREZ
Attorney General
State of New Mexico
408 Galisteo Street
Santa Fe, NM 87504

ELLEN ROSENBLUM
Attorney General
State of Oregon
1162 Court Street N.E.
Salem, OR 97301

PETER F. NERONHA
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

CHARITY R. CLARK
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

ROBERT W. FERGUSON
Attorney General
State of Washington
P.O. Box 40100
Olympia, WA 98504

CERTIFICATE OF SERVICE

I certify that this document, filed through the Court's ECF system, will be sent electronically to registered participants and that copies will be sent to non-registered participants by email on March 26, 2024.

/s/ Kimberly Parr

Kimberly Parr, BBO No. 679806

Assistant Attorney General

Office of the Massachusetts Attorney General

Dated: March 26, 2024