

1 RICHARD B. KATSKEE*
2 AMERICANS UNITED FOR SEPARATION
3 OF CHURCH AND STATE
4 1310 L Street NW, Suite 200
Washington, DC 20005
Tel: (202) 466-3234; Fax: (202) 466-3234
katskee@au.org

5 GENEVIEVE SCOTT*
6 CENTER FOR REPRODUCTIVE RIGHTS
7 199 Water Street, 22nd Floor
New York, NY 10038
Tel: (917) 637-3605; Fax: (917) 637-3666
gscott@reprorights.org

8 JAMIE A. GLIKSBERG*
9 LAMBDA LEGAL DEFENSE AND
10 EDUCATION FUND, INC.
11 105 West Adams, 26th Floor
Chicago, IL 60603-6208
Tel: (312) 663-4413; Fax: (312) 663-4307
jglikberg@lambdalegal.org

JAMES R. WILLIAMS (SBN 271253)
GRETA S. HANSEN (SBN 251471)
LAURA S. TRICE (SBN 284837)
MARY E. HANNA-WEIR (SBN 320011)
SUSAN P. GREENBERG (SBN 318055)
H. LUKE EDWARDS (SBN 313756)
OFFICE OF THE COUNTY COUNSEL,
COUNTY OF SANTA CLARA
70 West Hedding Street, East Wing, 9th Fl.
San José, CA 95110-1770
Tel: (408) 299-5900; Fax: (408) 292-7240
mary.hanna-weir@cco.sccgov.org

LEE H. RUBIN (SBN 141331)
MAYER BROWN LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, CA 94306-2112
Tel: (650) 331-2000; Fax: (650) 331-2060
lrubin@mayerbrown.com

Counsel for Plaintiffs

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13 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

14 COUNTY OF SANTA CLARA, TRUST
15 WOMEN SEATTLE, LOS ANGELES LGBT
16 CENTER, WHITMAN-WALKER CLINIC,
17 INC. d/b/a WHITMAN-WALKER HEALTH,
18 BRADBURY-SULLIVAN LGBT
19 COMMUNITY CENTER, CENTER ON
20 HALSTED, HARTFORD GYN CENTER,
21 MAZZONI CENTER, MEDICAL STUDENTS
22 FOR CHOICE, AGLP: THE ASSOCIATION
23 OF LGBTQ+ PSYCHIATRISTS, AMERICAN
ASSOCIATION OF PHYSICIANS FOR
HUMAN RIGHTS d/b/a GLMA: HEALTH
PROFESSIONALS ADVANCING LGBTQ
EQUALITY, COLLEEN MCNICHOLAS,
ROBERT BOLAN, WARD CARPENTER,
SARAH HENN, and RANDY PUMPHREY,

Plaintiffs,

vs.

25 U.S. DEPARTMENT OF HEALTH AND
26 HUMAN SERVICES and ALEX M. AZAR, II,
27 in his official capacity as SECRETARY OF
HEALTH AND HUMAN SERVICES,

Defendants.

Case No. 5:19-cv-2916

**DECLARATION OF DARREL
CUMMINGS, CHIEF OF STAFF OF
THE LOS ANGELES LGBT CENTER,
IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION**

1 I, Darrel Cummings, hereby state as follows:

2 1. I am currently the Chief of Staff of the Los Angeles LGBT Center (“the Center”), a not-
3 for-profit 501(c)(3) organization based in Los Angeles, California, that provides a variety of
4 services to members of the lesbian, gay, bisexual, and transgender (“LGBT”) communities. I have
5 served in that capacity since 2003, and also previously served as Chief of Staff from 1993 through
6 1999. More broadly, I have been an advocate on LGBT issues since 1979. I am submitting this
7 Declaration in support of Plaintiffs’ motion for a preliminary injunction to prevent the Denial-of-
8 Care Rule from taking effect.
9

10 2. The Center was founded in 1969 and offers programs, services, and global advocacy
11 that span four broad categories: health, social services and housing, culture and education, and
12 leadership and advocacy. The mission of the Center is to fight bigotry and build a world where
13 LGBT people thrive as healthy, equal, and complete members of society. Today the Center’s more
14 than 650 employees provide services for more LGBT people than any other organization in the
15 world, with about 500,000 client visits per year.
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17 3. As the largest provider of services to LGBT people in the world, many of the Center’s
18 patients tell us that they come to the Center seeking culturally competent healthcare due to being
19 denied care or discriminated against based on their real or perceived sexual orientation, gender
20 identity and HIV status. The Center’s client population is disproportionately low-income and
21 experiences high rates of chronic physical and mental conditions, homelessness, unstable housing,
22 trauma and discrimination, and stigmatization in healthcare services. Many of these clients come
23 to the Center from different areas of California, other states, and even other nations to seek services
24 in a safe and affirming environment.
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26 4. The Center is one of the nation’s largest and most experienced providers of LGBT health
27 and mental healthcare. We accept a variety of health insurance plans, including Medi-Cal
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1 (California’s Medicaid program), Medicare, and most private insurance plans. We also provide
2 services to uninsured individuals. We work with these individuals to help them access insurance
3 through Covered California (California’s Affordable Care Act “exchange”), and/or navigate other
4 medical- and drug-assistance programs. Where insurance is not available, our services are offered
5 on a sliding-scale basis, based on ability to pay. We pride ourselves on providing leading-edge
6 healthcare, regardless of individuals’ ability to pay.
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8 5. The Center receives various forms of Health and Human Services funding, including
9 Public Health Service Act funding. Approximately 80 percent of the Center’s funding originates
10 from the federal government, including, but not limited to, funding under the Ryan White
11 Comprehensive AIDS Resources Emergency Act of 1990, direct funding from the Centers for
12 Disease Control and Prevention, discounts under the 340B Drug Discount Program, and Medicaid
13 and Medicare reimbursements. The Center also receives federal funding for research programs,
14 and is currently a participant in multiple federally-funded studies, including through National Heart,
15 Lung, and Blood Institute; National Institute of Allergy and Infectious Diseases; National Institute
16 of Child Health and Human Development; the National Institutes of Health, National Institute of
17 Drug Abuse, and the Patient-Centered Outcomes Research Institute. The Center is, therefore,
18 subject to the substantive requirements of the Denial-of-Care Rule and has a reasonable fear that it
19 could be at risk of sanction and loss of federal funding as a result of the Denial-of-Care Rule.
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22 6. As a federally qualified health center, the Center is required to serve anyone on a
23 nondiscriminatory basis who walks into its doors. The Denial-of-Care Rule’s vague language
24 makes it difficult for the Center to decipher how to proceed in light of contradictions between the
25 Denial-of-Care Rule on the one hand and, on the other hand, nondiscrimination requirements,
26 medical statutes, rules, standards of care, ethics requirements, and accreditation standards. The
27 Denial-of-Care Rule invites chaos within the Center, will consume the Center’s resources, and will
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1 make it more difficult for the Center to provide the same level of premier care to its patients. The
2 Center cannot function in such an environment.

3 7. The Center provides a wide spectrum of healthcare services, including, but not limited
4 to, HIV treatment, testing, and prevention care, as well as treatment for gender dysphoria and
5 mental healthcare. The Center has medical providers who specialize in the care of transgender
6 patients and who provide a full range of primary care services in addition to hormone therapy, pre-
7 and post-surgical care, and trans-sensitive pap smears, pelvic exams, and prostate exams. The
8 Center's broad array of healthcare services are all under one roof, from counseling and therapy to
9 pharmaceutical and nutrition needs.
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11 8. The Denial-of-Care Rule will worsen health disparities between the LGBT community
12 and other communities. With existing health and healthcare disparities in the LGBT community –
13 particularly the shortage of LGBT/HIV culturally competent providers – the Denial-of-Care Rule's
14 broad and vague language and invitation to providers to engage in discrimination will further
15 exacerbate existing barriers to healthcare and result in negative community health outcomes.
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17 9. For example, the Center's providers have observed patients arriving at the Center with
18 acute medical conditions that could have been avoided but-for the patients' reluctance to seek
19 routine and necessary medical care for fear of discrimination and being turned away. A shocking
20 number of LGBT patients fear going to a healthcare provider due to negative past experiences
21 directly related to their sexual orientation or gender identity. The Denial-of-Care Rule will
22 exacerbate those numbers as a result of increased discrimination and denials of healthcare
23 treatment. For similar reasons, LGBT people are less likely to have a primary care provider whom
24 they consider their personal doctor. That means that in times of need, LGBT people are more likely
25 to randomly select a healthcare provider with whom they do not have a relationship, and they are
26 at increased risk of finding a provider who is not LGBT-affirming. With an increase in refusals of
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1 healthcare services as a result of the Denial-of-Care Rule, LGBT people will be far less likely to
2 receive the healthcare treatment that they need because, after being turned away, they are unlikely
3 to seek other care out of fear of repeated rejections.

4 10. This directly affects the Center because there will be an increase in community members
5 seeking referrals to LGBT-affirming services that the Center does not have sufficient resources to
6 provide, an increase in community members experiencing the trauma of discriminatory or
7 unwelcoming healthcare experiences, and worsened community health outcomes among the
8 population that the Center serves. Additionally, the Center will have to expend more resources on
9 its health promotion campaigns to ensure that LGBT patients access necessary preventative
10 screenings and testing (including for cancer, HIV and other STIs) given that the Denial-of-Care
11 Rule will change the healthcare landscape for the LGBT patient population.

12 11. For some patients that the Center serves, especially those who live in regions with
13 limited options for LGBT-affirming healthcare services, finding LGBT-inclusive healthcare
14 options is already a struggle. Additionally, for some medical specialties, there are only a handful
15 of healthcare providers in a patient's region who have the specialty necessary to treat the patient,
16 so a denial of care by even one provider could make it practically impossible for an LGBT patient
17 to receive the specific healthcare service sought. This is even more concerning in regions where
18 patients' only options are religiously-affiliated organizations that could claim religious or moral-
19 based objections to providing any and all care to LGBT patients as a result of the Denial-of-Care
20 Rule, in contradiction to medical ethics and standards of care.

21 12. The Denial-of-Care Rule's overly broad language invites increased discrimination
22 against LGBT people and people living with HIV at other healthcare centers, outside of the Center.
23 The Center's healthcare providers – particularly its counselors, psychiatrists and other behavioral-
24 health staff – have treated many patients who have experienced traumatic stigma and discrimination
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1 based on sexual orientation, gender identity, HIV status, and/or other factors. The stories that
2 patients tell the Center's staff about their discriminatory experiences outside of the Center include:

- 3 a. One transgender patient was unable to find supportive mental-health housing
4 due to discriminatory experiences based on gender identity, which led to the
5 patient being homeless.
6
7 b. Another transgender patient, who developed profuse bleeding after surgery,
8 was denied treatment at an emergency room where they were told by an
9 emergency room doctor: "what do you want me to do about it?" They arrived
10 at the Center in distress three days later, having lost a significant amount of
11 blood.
12
13 c. A transgender patient needed to have a pelvic exam. The Center referred
14 him to a specialist who denied services to him because he was transgender.
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16 d. Patients have stated that their physicians told them that they do not need HIV
17 testing because they are not engaging in same-sex sexual relationships. Not
18 only is that conclusion contrary to medical guidelines, but when patients
19 refuted assumptions about their sexual relationships, they were met with
20 disapproval.
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22 e. Patients have expressed concern about traveling outside of Los Angeles for
23 business because if they are ever in need of emergency medical assistance,
24 they will not know where to go to ensure that they will receive
25 nondiscriminatory, proper healthcare services.
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27 f. One patient recalled that when her late partner was in the hospital, she was
28 there most of the time to care for her. There was a nurse who treated them
kindly and appropriately until the nurse heard them refer to each other by

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“Honey.” The look on the nurse’s face changed and she treated the couple “like trash” after that. The patient remarked that allowing healthcare employees (everyone from those working in food service and housekeeping to physicians and nurses) to express their religious or moral views when providing care to patients results in placing LGBT patients in a “lesser-than” category of patients.

- g. Patients residing at assisted-living facilities have described discrimination and denials of care when their sexual orientation, gender identities, and HIV statuses were revealed. Patients who are transgender have described having to hide their gender identities and transgender status once they are no longer able to care for themselves and are required to find assisted-living arrangements.
- h. Patients have described being intentionally referred to by names and pronouns other than their preferred names while seeking healthcare services elsewhere.
- i. A patient described being given his positive HIV results by way of his provider placing a lab printout on the counter then leaving for 10 minutes and letting the patient read it. The patient was not given any further information, and was instead told to go to our Center.
- j. Patients have reported that their primary care physicians do not feel comfortable prescribing HIV preventatives, such as Truvada for PrEP, even when such medications are appropriate and should be provided according to current medical guidelines and standards of care. Patients also have reported that their physicians shame them for requesting PrEP medications and then

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deny them the medication, which is how they find their way to the Center. For example, when one patient asked his provider about Truvada, his physician questioned him as to why he needed it and proceeded to tell the patient that he would not need the medication if he were more careful. Another patient was denied PrEP altogether and lectured that he did not need PrEP unless he was having sex with sex workers.

k. Patients also have expressed reluctance to use their insurance for PrEP because they are afraid of having the drug documented on their insurance record. These patients fear that a history of using a medically necessary HIV preventative could be used against them in the future by making them targets for discrimination based on sexual orientation, gender identity and/or transgender status, and HIV status, given the current political climate and discrimination in the healthcare context.

l. A significant number of patients come to the Center’s Sexual Health and Education Program for testing and sexual education rather than their primary care physicians because they do not feel comfortable talking about their sexual histories and choices out of fear of being treated negatively, judgmentally, and with bias and discrimination.

m. Multiple patients have stated that they come to the Center to be tested for sexually transmitted infections because the Center does rectal and throat swabs instead of only urine tests. Not all healthcare providers do all three forms of testing even though three-site testing provides the most accurate results for testing and treating sexually transmitted infections. This is especially true for gay men. Someone could test negative for a sexually

1 transmitted infection with a urine test, for example, but test positive with a
2 rectal swab. Patients report that when they specifically asked their outside
3 provider to do rectal swabs, they were judged. When patients are judged by
4 their physicians and/or cannot be out to their physicians about their sexual
5 orientation and/or gender identity out of fear of discrimination, LGBT
6 patients cannot receive the healthcare services that they need, including
7 prophylactic treatments, and may experience delays in medically necessary
8 treatments, resulting in more acute, life-threatening conditions.
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10 13. Many of the Center's patients and LGBT people in general have reported that they are
11 not out to their other medical providers about their sexual orientation and/or gender identities out
12 of fear of discrimination and denial of healthcare. The discriminatory mischaracterization of
13 transgender-affirming care as "sterilization" in the preamble to the Denial-of-Care Rule will result
14 in an increase in the examples of discrimination cited above. For many transgender individuals,
15 gender confirmation surgery is a treatment for gender dysphoria and is not a surgery meant to affect
16 reproduction, just as a hysterectomy on a cancer patient is not intended to affect procreation. While
17 impacts on reproduction may be an incidental effect of some transgender-affirming care, such
18 treatment is *not* "sterilization."
19

20 14. The Denial-of-Care Rule invites further discrimination justified by religious or moral
21 beliefs against the Center's patients and puts the health of LGBT patients at risk. The Rule
22 encourages LGBT patients to attempt to hide their LGBT identities when seeking healthcare
23 services, especially from religiously-affiliated healthcare organizations, in order to avoid
24 discrimination. When patients are unwilling to disclose their sexual orientation and/or gender
25 identity to healthcare providers out of fear of discrimination and being refused treatment, their
26 mental and physical health is critically compromised.
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1 15. The Denial-of-Care Rule also adversely impacts the Center by necessitating the
2 diversion and reallocation of resources in order to provide referrals to patients, including for
3 patients that the Center does not have the resources to treat because of increased demand for the
4 Center's services as a result of the Rule. The Denial-of-Care Rule will cause an increased number
5 of LGBT patients and patients living with HIV to seek the Center's assistance in finding LGBT-
6 affirming healthcare providers. The Center will also have more difficulty finding LGBT-affirming
7 healthcare providers, especially those with niche specialties, given that the Rule emboldens
8 healthcare providers to refuse to treat LGBT patients.
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10 16. The increase in referral requests requires the Center to allocate additional staff time to
11 pre-screen service referrals to ensure that staff are sending patients to LGBT-affirming providers
12 and not to providers who themselves or whose staff would cause additional harm to the Center's
13 patients. As a result of the Denial-of-Care Rule, the Center may need to hire a case-manager to
14 address the community's need for referrals to welcoming providers. The Center's staff and
15 resources have already been spent engaging in advocacy, policy analysis, and services to address
16 the ill-effects of the Denial-of-Care Rule. The Center will also have to divert resources away from
17 other programming to conduct informational sessions about the Denial-of-Care Rule to answer
18 patients' and staff members' questions about how the Rule will affect them and the services that
19 the Center provides.
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22 17. It will be increasingly difficult to determine whether job applicants will be unwilling to
23 perform essential job functions, which is likely to undermine the Center's philosophy of fostering
24 a diverse workforce. The Center's current recruiting process is developed to ascertain whether a
25 job applicant will provide healthcare consistent with the Center's mission to establish a welcoming,
26 nondiscriminatory environment for all patients and staff, without violating the law. Providing care
27 in a non-discriminatory and inclusive manner, putting aside people's individual religious or moral
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1 beliefs, is a core part of the Center’ job criteria for new applicants. If the Center can no longer
2 inquire about whether an applicant will decide which patients to treat on the basis of religious
3 principles that are inconsistent with the Center’s mission, hiring managers will be in a complex
4 position of trying to ascertain whether those job candidates might cause harm to patients while at
5 the same time considering risks and requirements under the Denial-of-Care Rule. The Center
6 cannot alter those job criteria without thwarting its mission.
7

8 18. Furthermore, if the Center is required to get the consent of religious or moral objectors
9 to a proposed accommodation for their religious beliefs, the Center’s operations will be negatively
10 affected, resulting in potential delays in treatment, prevention, and other supportive health services
11 to patients. Under the broad and vague language of the Denial-of-Care Rule, the Center will
12 constantly fear the realistic possibility that any of its staff – from janitorial to cafeteria or security
13 personnel – could discriminate against the Center’s patients on the basis of religious beliefs, causing
14 extreme harm to the Center’s patients and mission. The Center will have no recourse to reassure its
15 patients that the Center is a safe and affirming place for them to seek healthcare, which could cause
16 irreparable damage to the Center’s reputation. Likewise, implementation of the notice provision in
17 the Denial-of-Care Rule that implicitly puts the onus on patients to request an LGBT-affirming
18 healthcare provider who will not have a religious-based objection to treating such patients would
19 result in immediate negative responses from clients and erode patient trust, further thwarting the
20 Center’s mission.
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23 19. In short, the Denial-of-Care Rule makes it difficult, if not impossible, for the Center to
24 continue providing the same level of social, mental, and physical healthcare to its patients. The
25 Center’s mission includes addressing the need for equity in healthcare for all of the Center’s
26 patients and the LGBT community generally. This mission will be frustrated by the Denial-of-Care
27 Rule as there will be a decline in overall LGBT-patient health and public health at large.
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 9, 2019

Respectfully submitted,

/s/ Darrel Cummings
Darrel Cummings