

No. 23-12155

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AUGUST DEKKER, *et al.*,

Plaintiffs-Appellees

v.

SECRETARY, FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION,
et al.,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

UNOPPOSED MOTION OF THE UNITED STATES TO PARTICIPATE IN ORAL
ARGUMENT AS AMICUS CURIAE

SAMUEL R. BAGENSTOS
General Counsel

KRISTEN CLARKE
Assistant Attorney General

AARON D. SCHUHAM
Associate General Counsel

BONNIE I. ROBIN-VERGEER
ANNA M. BALDWIN
Attorneys

CARY LACHEEN
STEPHEN M. RICHMOND
Attorneys
Department of Health & Human Services
200 Independence Ave., SW
Washington, D.C. 20201

Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-4278

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rules 26.1-1 to 26.1-3 and 28-1(b), counsel for amicus curiae United States hereby certifies that in addition to those identified by appellants and plaintiffs-appellees, the following individuals have an interest in the outcome of this case:

1. Bagenstos, Samuel R., U.S. Department of Health and Human Services, counsel for United States;
2. Baldwin, Anna M., U.S. Department of Justice, Civil Rights Division, counsel for United States;
3. Clarke, Kristen, U.S. Department of Justice, Civil Rights Division, counsel for United States;
4. LaCheen, Cary, U.S. Department of Health and Human Services, counsel for United States;
5. Richmond, Stephen M., U.S. Department of Health and Human Services, counsel for United States;
6. Robin-Vergeer, Bonnie I., U.S. Department of Justice, Civil Rights Division, counsel for United States;

7. Schuham, Aaron D., U.S. Department of Health and Human Services,
counsel for United States.

s/ Anna M. Baldwin
ANNA M. BALDWIN
Attorney

Date: October 31, 2024

Pursuant to Federal Rule of Appellate Procedure 29(a)(8), the United States respectfully seeks permission to participate in oral argument in this case. The United States' reasons in support of this motion are as follows:

1. On December 4, 2023, the United States filed a brief as amicus curiae in support of plaintiff-appellant.

2. This Court has scheduled oral argument for November 22, 2024.

3. This case challenges a Florida administrative rule and state statute that, in 2022, withdrew Medicaid coverage for certain medical care for all transgender, Medicaid-eligible Floridians, both adults and adolescents. Following a bench trial, the district court granted a permanent injunction, holding that these exclusions violate the Medicaid statute's comparability requirement, 42 U.S.C. 1396a(a)(10)(B)(i), as well as its requirement that States cover early and periodic screening, diagnostic, and treatment services for certain Medicaid-eligible beneficiaries under age 21, 42 U.S.C. 1396a(a)(10)(A), 1396a(a)(43)(C), 1396d(a)(4)(B), and 1396d(r). The district court also held that the exclusions violate Section 1557 of the Affordable Care Act (ACA), 42 U.S.C. 18116, and the Equal Protection Clause. In its amicus brief, the United States argued that this Court should affirm the judgment that the challenged coverage exclusions violate the Medicaid statute, as well as Section 1557 of the ACA.

4. The United States has a strong interest in States' compliance with Medicaid's requirements. Congress directed the Secretary of Health and Human Services (HHS) to issue regulations implementing the Medicaid program, 42 U.S.C. 1395hh, and within HHS, the Centers for Medicare & Medicaid Services (CMS) oversees States' compliance with Medicaid requirements. 42 C.F.R. 430.15(b). The United States also protects the rights of individuals seeking nondiscriminatory access to health programs and activities under Section 1557, 42 U.S.C. 18116. Congress authorized the Secretary of HHS to promulgate regulations implementing Section 1557's nondiscrimination requirements. 42 U.S.C. 18116(c). And the Department of Justice coordinates and implements federal laws that protect individuals from discrimination on the basis of sex in a wide range of federally funded programs, including health coverage. Exec. Order No. 12,250, § 1-201, 3 C.F.R. 298 (1980 comp.).

5. The United States believes that its participation at argument will be helpful to this Court in correctly applying the requirements of the Medicaid statute and Section 1557 to this case.

6. Counsel for plaintiffs-appellants consents to the United States' participation and has agreed to cede a portion of their argument time to the United States. Therefore, the United States' participation at oral argument would not affect the overall time allotted for this case.

7. Counsel for defendants-appellees do not oppose the United States' motion.

WHEREFORE, for the reasons stated above, the United States respectfully requests leave to participate in oral argument.

Respectfully submitted,

SAMUEL R. BAGENSTOS
General Counsel

KRISTEN CLARKE
Assistant Attorney General

AARON D. SCHUHAM
Associate General Counsel

s/ Anna M. Baldwin
BONNIE I. ROBIN-VERGEER
ANNA M. BALDWIN

CARY LACHEEN
STEPHEN M. RICHMOND
Attorneys
Department of Health & Human Services
200 Independence Ave., SW
Washington, D.C. 20201

Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-4278

CERTIFICATE OF COMPLIANCE

I certify that the attached UNOPPOSED MOTION OF THE UNITED STATES TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE:

(1) complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f), it contains 444 words; and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365, in 14-point Times New Roman font.

s/ Anna M. Baldwin
Anna M. Baldwin
Attorney

Date: October 31, 2024

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2024, I electronically filed the foregoing UNOPPOSED MOTION OF THE UNITED STATES TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Anna M. Baldwin
ANNA M. BALDWIN
Attorney