

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JAMIE A. GLIKSBERG\*  
CAMILLA B. TAYLOR\*  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
105 West Adams, 26th Floor  
Chicago, IL 60603-6208  
Tel: (312) 663-4413

*Counsel for Plaintiffs Other Than  
Santa Clara County*

\* Admitted pro hac vice

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*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO,  
Plaintiff,  
  
vs.  
  
ALEX M. AZAR II, et al.,  
Defendants.

STATE OF CALIFORNIA, by and through  
ATTORNEY GENERAL XAVIER BECERRA,  
Plaintiff,  
  
vs.  
  
ALEX M. AZAR, et al.,  
Defendants.

COUNTY OF SANTA CLARA et al,  
Plaintiffs,  
  
vs.  
  
U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, et al.,  
Defendants.

No. C 19-02405 WHA  
*Related to*  
No. C 19-02769 WHA  
No. C 19-02916 WHA

**DECLARATION OF ADRIAN  
SHANKER, FOUNDER AND  
EXECUTIVE DIRECTOR OF  
BRADBURY-SULLIVAN LGBT  
COMMUNITY CENTER, IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT AND IN SUPPORT OF  
THEIR OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS OR, IN THE  
ALTERNATIVE, FOR SUMMARY  
JUDGMENT**

Date: October 30, 2019  
Time: 8:00 AM  
Courtroom: 12  
Judge: Hon. William H. Alsup  
Action Filed: 5/2/2019

1 I, Adrian Shanker, declare as follows:

2 1. Bradbury-Sullivan LGBT Community Center (“Bradbury-Sullivan Center”) is a  
3 501(c)(3) non-profit organization that is based in Allentown, Lehigh County, Pennsylvania, and  
4 incorporated in Pennsylvania. Bradbury-Sullivan Center is a comprehensive community center  
5 dedicated to advancing community and securing the health and well-being of the Lesbian, Gay,  
6 Bisexual, Transgender (LGBT) people of the Greater Lehigh Valley, a historically under-served  
7 region of Pennsylvania for the LGBT community. Bradbury-Sullivan Center provides programs  
8 and services to thousands of community members throughout the year.

9 2. I am the Founder & Executive Director of Bradbury-Sullivan Center. I assumed that  
10 role in 2014 when Pennsylvania Diversity Network restructured into Bradbury-Sullivan Center. I  
11 received a Bachelor’s degree from Muhlenberg College in Religion Studies and Political Science  
12 in 2009 and earned a Graduate Certificate in LGBT Health Policy & Practice from The George  
13 Washington University in 2017. I previously volunteered as Board President of Equality  
14 Pennsylvania, served on the Office of Health Equity Advisory Board for the Pennsylvania  
15 Department of Health, and co-chaired LGBT Healthlink, which was a CDC-funded national  
16 disparity network for LGBT tobacco and cancer disparity work. At Bradbury-Sullivan Center, in  
17 addition to staff management, board development, fundraising, and strategic planning, I administer  
18 data collection for the Pennsylvania LGBT Health Needs Assessment. With Health Programs  
19 employees at Bradbury-Sullivan, I also develop health promotion campaigns to make behavioral,  
20 clinical, and policy changes to improve LGBT health. Since 2017, I have led the successful  
21 community efforts to ban “conversion therapy” in the cities of Allentown, Bethlehem, and Reading,  
22 Pennsylvania. In 2012 and 2018, Philadelphia Gay News named me Person of the Year and in 2019  
23 Lehigh Valley Business named me a Healthcare Hero. I submit this declaration in support of  
24 Plaintiffs’ Motion for Summary Judgment and in support of their opposition to Defendants’ Motion  
25 to Dismiss or, in the alternative, for Summary Judgment.

26 3. Bradbury-Sullivan Center’s programs and services for the LGBT community  
27 include arts and culture, health promotion, youth programs, pride programs, and supportive  
28 services. Youth services include healthy eating, active living, and HIV prevention in an every-day

1 after-school program. Supportive services include providing non-judgmental HIV/STI testing,  
2 Affordable Care Act open enrollment events, medical-marijuana enrollment assistance, and support  
3 groups, as well as hosting a free legal clinic. Bradbury-Sullivan Center also provides referrals to  
4 LGBT-welcoming healthcare providers, including providers engaged in services for transgender  
5 community members and family-planning services.

6 4. In addition to obtaining services from Bradbury-Sullivan Center, patrons of  
7 Bradbury-Sullivan Center often access healthcare services from other organizations, including  
8 religiously affiliated organizations. Bradbury-Sullivan Center works with patrons who have  
9 experienced discriminatory treatment when accessing healthcare services from such organizations  
10 and it advocates on behalf of those patrons by providing referrals to LGBT-welcoming agencies,  
11 training agencies to provide LGBT-welcoming services, and, when necessary, communicating with  
12 the agencies to inform them of their legal obligations to serve LGBT people. The Denial-of-Care  
13 Rule has major effects on Bradbury-Sullivan Center's advocacy and ability to continue such  
14 services given that the Denial-of-Care Rule invites healthcare providers to refuse to provide care to  
15 LGBT patients on the basis of religious or moral objections to LGBT patients' sex, relationship  
16 status, familial status, gender and sexual identities, healthcare needs, and medical decisions.

17 5. Bradbury-Sullivan Center services a region of Pennsylvania with limited options for  
18 LGBT-inclusive healthcare services. Finding LGBT-affirming healthcare options is already a  
19 struggle for the LGBT community in the region. LGBT patients experience both geographic  
20 barriers to healthcare and barriers to accessing LGBT-affirming healthcare. For some medical  
21 specialties, there often is only one or very few healthcare providers in the region who have the  
22 specialty necessary to treat a patient, so a denial of care from a provider could make it practically  
23 impossible for a patient to receive any specialty care at all. This is especially concerning given that  
24 some of the region's healthcare providers are religiously-affiliated organizations that could claim  
25 religious-based objections to providing any and all care to LGBT patients, invoking the Denial-of-  
26 Care Rule to claim an exemption from existing nondiscrimination laws, relevant medical ethical  
27 rules, and standards of care. As a result, the Denial-of-Care Rule will worsen health disparities  
28

1 affecting the LGBT community and exacerbate the difficulties that members of the LGBT  
2 community have in finding and accessing necessary and respectful healthcare.

3 6. Bradbury-Sullivan Center patrons are already experiencing negative effects from  
4 religious discrimination in the provision of healthcare, compromising their health and well-being.

5 For example:

6 a. We heard from a community member whose family member was a patient  
7 in an inpatient-care setting and was forced to participate in a so-called  
8 “conversion therapy” support group. When the patient complained about  
9 such requirements, he faced harassment and retaliation.

10 b. Another community member visited Bradbury-Sullivan Center for HIV  
11 testing after experiencing judgmental treatment from his primary healthcare  
12 provider. He told our staff that he did not feel comfortable receiving the  
13 service from his original healthcare professional as a result of the judgmental  
14 treatment.

15 c. Additionally, a program participant in one of our transgender support groups  
16 shared with a staff member that her doctor made negative, religious-based  
17 comments to her three years ago and as a result she avoided medical care for  
18 those three years. She went back for a physical examination this year and  
19 the doctor refused to touch her during her physical.

20 7. Bradbury-Sullivan Center also assists patrons who contact the Center because they  
21 are having difficulty finding LGBT-affirming healthcare services. Bradbury-Sullivan Center  
22 recently received an increase in referral requests. As a result of issuance of the Denial-of-Care Rule,  
23 and the inevitable increase in denials of care and discrimination that it will elicit, Bradbury-Sullivan  
24 Center may need to hire a case-manager to address the community’s need for referrals to welcoming  
25 providers. Facing the Rule’s imminent implementation, Bradbury-Sullivan Center has already  
26 needed to invest additional staff time to strengthen its referral process through the creation of a  
27 supportive services referral guide. It is increasingly difficult for Bradbury-Sullivan Center to find  
28 LGBT-affirming healthcare providers for certain specialties in particular, and the Denial-of-Care

1 Rule will further diminish the number of specialists available by emboldening additional providers  
2 to refuse healthcare treatment to LGBTQ patients, without even requiring the providers to inform  
3 prospective patients of the reason they are being turned away, let alone requiring them to give  
4 referrals or otherwise take steps to ensure that patients get the medically necessary healthcare that  
5 they need. This harms the community members that Bradbury-Sullivan Center serves and results  
6 in a major drain on its resources that need to be diverted from other programming.

7 8. Bradbury-Sullivan Center spends a significant amount of resources documenting  
8 health disparities in the LGBT community. Data gathered from that work confirmed that only about  
9 17% of LGBT Pennsylvanians in 2018 had a provider whom they considered to be their personal  
10 physician. That means that in times of need, LGBT people are more likely to randomly select a  
11 healthcare provider with whom they do not have a relationship, putting them at increased risk of  
12 finding a provider who is not LGBT-welcoming. With an increase in refusals of care as a result of  
13 the Denial-of-Care Rule, LGBT people will be far less likely to receive the healthcare treatment  
14 that they need because, after being turned away, they are unlikely to seek other care out of fear of  
15 repeated rejections. Data from 2018 also indicated that over 50% of LGB and 75% of the  
16 transgender community fear going to a healthcare provider due to negative past experiences directly  
17 related to the patients' sexual orientation or gender identities.

18 9. The Denial-of-Care Rule will worsen those numbers as a result of increased refusals  
19 of healthcare providers to provide care to the LGBT community. This directly affects the Bradbury-  
20 Sullivan Center because it will have an increase in community members seeking referrals to LGBT-  
21 affirming healthcare providers, an increase in community members experiencing the trauma of  
22 discriminatory or unwelcoming healthcare experiences, and worsened community health outcomes  
23 among the population served by Bradbury-Sullivan Center.

24 10. Bradbury-Sullivan Center's research into health disparities facing the LGBT  
25 community reveals that approximately one in four members of the community in our region  
26 experience a negative reaction from a healthcare provider when they come out as LGBT. More than  
27 half of respondents report fear of a negative reaction by a healthcare provider if they come out.  
28 Indeed, approximately three quarters of all transgender respondents fear such a negative reaction.

1 Our research also identifies pervasive health disparities between LGBT people and the majority  
2 population with respect to tobacco use, cancer, HIV, obesity, mental health, access to care, and  
3 more, with LGBT people consistently experiencing worsened health outcomes. In other words,  
4 LGBT people, who are disproportionately likely to need a wide range of medical care, already have  
5 reason to fear, and often do fear, negative consequences of disclosing to healthcare providers their  
6 sexual orientation, history of sexual conduct, gender identity, transgender status, history of gender-  
7 confirming medical treatment, and related medical histories.

8 11. By inviting discrimination against LGBT people based on their LGBT status and  
9 related medical histories, the Denial-of-Care Rule encourages LGBT people to remain closeted to  
10 the extent possible when seeking medical care. Bradbury-Sullivan Center's research demonstrates  
11 that more than a quarter of LGBT respondents are not out to *any* of their healthcare providers.  
12 Fewer than half are out to all of them. The Denial-of-Care Rule undoubtedly will exacerbate those  
13 numbers.

14 12. However, remaining closeted to a healthcare provider can result in significant  
15 adverse health consequences. When patients are unwilling to disclose their sexual orientation  
16 and/or gender identity to healthcare providers out of fear of discrimination and being refused  
17 treatment, their mental and physical health is critically compromised.

18 13. Bradbury-Sullivan Center will have to expend more resources on its health  
19 promotion campaigns to ensure that LGBT people have access to preventative screenings for  
20 cancer, testing services for HIV and other STIs, and tobacco-cessation services given that the  
21 Denial-of-Care Rule will drastically change the healthcare landscape for the LGBT patient  
22 population. This is especially true for the transgender community because existing data predict that  
23 the transgender community will be especially afraid to seek out such care out of fear of  
24 mistreatment or rejection as a result of the Denial-of-Care Rule. There are many other new services,  
25 including, but not limited to, education and community outreach programs, that Bradbury-Sullivan  
26 Center anticipates having to initiate as a result of the Denial-of-Care Rule. For example, Bradbury-  
27 Sullivan Center intends to increase community-education efforts about the importance of having a  
28

1 primary healthcare provider to ensure that LGBTQ patients have a healthcare provider whom they  
2 can trust so that they do not avoid seeking necessary care.

3 14. Bradbury-Sullivan Center also works with independent clinics to help them  
4 implement non-discriminatory policies and practices. Bradbury-Sullivan Center anticipates having  
5 to make clinical and structural policy changes at the organizations with which it collaborates, as a  
6 result of the Denial-of-Care Rule. In turn, the Bradbury-Sullivan Center will have to work harder  
7 to ensure that these clinics maintain and establish clear policies that prevent discrimination against  
8 the LGBTQ community, including having the correct signage that will signal to LGBTQ people  
9 that they are still welcome and will not be mistreated in such facilities in spite of the Denial-of-  
10 Care Rule.

11 15. Bradbury-Sullivan Center has a dedicated team of employees who focus on fostering  
12 a welcoming, nondiscriminatory atmosphere for patrons to access supportive services. Many  
13 employees of Bradbury-Sullivan Center could be negatively impacted by the Denial-of-Care Rule  
14 in the form of increased demand on their time and resources by patrons, a diminished number of  
15 affirming resources to provide, and the need to develop new resources and training materials from  
16 scratch.

17 16. Bradbury-Sullivan Center receives pass-through funding from HHS through a grant  
18 agreement with Pennsylvania Department of Health for Bradbury-Sullivan Center's youth program.  
19 Bradbury-Sullivan Center's state funding for this program comes from the federal Maternal &  
20 Child Health Block Grant. Bradbury-Sullivan Center, therefore, has a reasonable fear that it could  
21 be sanctioned and lose federal funding if subject to a complaint under the Denial-of-Care Rule in  
22 the course of Bradbury-Sullivan Center's efforts to ensure the best possible services for youth  
23 program participants.

24 As a result of the Denial-of-Care Rule, Bradbury-Sullivan Center will be required to  
25 redirect additional staff and resources from providing our own services to assisting patrons in  
26 finding healthcare providers in the region who will serve LGBT patients in a nondiscriminatory  
27 manner. Bradbury-Sullivan Center's staff and resources already have been diverted from other  
28 program activities to engage in advocacy, policy analysis, and creation of resources to address the

1 ill-effects of the Denial-of-Care Rule.

2 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
3 and correct.

4 Executed on September 5, 2019, in Allentown, Pennsylvania.

5

6

7



8

Adrian Shanker  
Founder and Executive Director

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28