Nos. 20-37 and 20-38

IN THE

Supreme Court of the United States

NORRIS COCHRAN, ACTING SECRETARY OF HEALTH AND HUMAN SERVICES, *et al.*,

Petitioners,

v.

CHARLES GRESHAM, *et al.*,

Respondents.

ARKANSAS,

Petitioner,

v.

CHARLES GRESHAM, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL WOMEN'S LAW CENTER, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, AND 50 ADDITIONAL ORGANIZATIONS AS *AMICI CURIAE* SUPPORTING RESPONDENTS GRESHAM *ET AL.*

JUDITH R. NEMSICK
Counsel of Record
CAITLIN L. STACHON
SARAH SYED
HOLLAND & KNIGHT LLP
31 West 52nd Street,
12th Floor
New York, New York 10019
(212) 513-3200
judith.nemsick@hkland.com

Counsel for Amici Curiae

(Additional Counsel Listed on Inside Cover)

301706

Fatima Goss Graves
Gretchen Borchelt
Michelle Banker
Dorianne Mason
Amy Matsui
Sunu P. Chandy
Lauren Gorodetsky
National Women's Law Center
11 Dupont Circle, NW,
Suite 800
Washington, D.C. 20036
(202) 588-5180

Counsel for National Women's Law Center

Damon Hewitt
Jon Greenbaum
Dorian Spence
Maryum Jordan
Natasha Chabria
Lawyers' Committee For Civil Rights Under Law
1500 K Street NW,
Suite 900
Washington, DC 20005

Counsel for Lawyers' Committee For Civil Rights Under Law

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICI CURIAE* 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 5

I. HHS Arbitrarily and Capriciously Failed to Consider the Loss of Medicaid Coverage to the Impacted Groups, Particularly Women of Color. 5

II. The Impacted Groups, Especially Women of Color, Disproportionately Rely on Medicaid Coverage, Which Benefits Their Health and Economic Stability......................... 7

III. Work Requirements Will Result in Loss in Coverage For the Impacted Groups, Particularly Among Women of Color, Threatening Their Health and Economic Security. 22

CONCLUSION 33

APPENDIX 1a

TABLE OF AUTHORITIES

Page

Cases

Bostock v. Clayton County,
140 S. Ct. 1731 (2020) 26

Dep't of Homeland Sec. v. Regents of the Univ. of Cal.,
140 S. Ct. 1891 (2020) 6

FCC v. Fox Television Stations, Inc.,
556 U.S. 502 (2009) 5-6

Gresham v. Azar,
363 F. Supp. 3d 165 (D.D.C. 2019), *aff'd*, 950 F.3d 93 (D.C. Cir. 2020) 3

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,
463 U.S. 29 (1983) 6, 7

Perez v. Mortg. Bankers Ass'n,
575 U.S. 92 (2015) 6

Philbrick v. Azar,
397 F. Supp. 3d 11 (D.D.C. 2019), *aff'd,* No. 19-5293, 2020 WL 2621222 (D.C. Cir. May 20, 2020)... 3, 5

Statutes and Other Authorities

42 U.S.C. § 1315... 3

42 U.S.C. § 1315(a) 6

42 U.S.C. § 1396-1 .... 2, 4, 6

42 U.S.C. § 1396a(a)(19) 3

AARP, *Caregiving in the U.S.* (May 2020).............. 10

Adam Searing & Donna Cohen Ross, Georgetown U. Health Pol'y Inst., *Medicaid Expansion Fills Gaps in Maternal Health Coverage Leading to Healthier Mothers and Babies* (May 2019), https://bit.ly/374ycE7 14

Adriana Kugler, *Does Increased Access to Medicaid Stimulate Job Mobility?*, Econofact (July 31, 2017), https://bit.ly/2NjbeSJ 15

Alice Ollstein, *Trump Admin Poised To Give Rural Whites A Carve-Out On Medicaid Work Rules*, Talking Points Memo (May 14, 2018), https://bit.ly/3qgmBsV.. 31

Am. Cancer Soc'y, *Breast Cancer Facts & Figures 2019-2020* (2019), https://bit.ly/3d8Q7gA........... 14

Amanda Fins, *National Snapshot: Poverty Among Women & Families, 2020*, Nat'l Women's Law Ctr. (Dec. 2020), https://bit.ly/3tQJohj 8, 9

Angela Hanks et al., Ctr. For Am. Progress, *Systematic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap* (Feb. 2018), https://ampr.gs/3rNLeO7........ 18

Anna Beavis et al., *Hysterectomy-Corrected Cervical Cancer Mortality Rates Reveal a Larger Racial Disparity in the United States*, 123 CANCER 1044 (2017), https://bit.ly/3rLDuMA............ 14

Ariel Kalil et al., *Sanctions and Material Hardship Under TANF*, SOC. SERV. REV., vol. 76, no. 4 (2002) 31

Ark. Dep't Health, Off. of Minority Health & Health Disparities & Epidemiology Branch, *Disparities in Diabetes Mellitus Mortality Among Blacks in Arkansas* (2018), https://bit.ly/3asNlks 21

Ark. Dep't Workforce Servs., *Employment Status of the Civilian Non-Institutional Population by Age and Race,* Demographic Data, https://bit.ly/3dgoxhH (last visited Feb. 8, 2021) .. 18

Asha DuMonthier et al., *The Status of Black Women in the United States,* Inst. for Women's Pol'y Res. (June 7, 2017), https://bit.ly/3baOn3P 28

Benjamin D. Sommers et al., *Medicaid Work Requirements—Results from the First Year in Arkansas*, 381 New Eng. J. Med. 1073 (2019)........ 23

Cancer Action Network, Am. Cancer Soc'y, *Medicaid: Ensuring Access to Affordable Health Care Coverage for Lower Income Cancer Patients and Survivors* (Jan. 15, 2020), https://bit.ly/2NJ6TZi 15

Chintan B. Bhatt & Consuelo M. Beck-Sagué, *Medicaid Expansion and Infant Mortality in the United States*, 108 AM. J. PUBLIC HEALTH 565 (2018), https://bit.ly/2HuXX5c 14

Christian E. Weller, *African Americans Face Systematic Obstacles to Getting Good Jobs*, Ctr. Am. Progress (Dec. 2019), https://ampr.gs/3dKPg5Y 19, 29

Claire Cain Miller, *When Schools Closed, Americans Turned to Their Usual Backup Plan: Mothers*, N.Y. Times (Nov. 17, 2020), https://nyti.ms/3qiAc31 10

Claire Ewing-Nelson, *All of the Jobs Lost in December Were Women's Jobs*, Nat'l Women's Law Ctr., https://bit.ly/3aFml1y 12

Claire Ewing-Nelson, *Another 275,000 Women Left the Labor Force in January,* Nat'l Women's Law Ctr. (Feb. 2021), https://bit.ly/3pgbZJl 10, 11

Claire Ewing-Nelson, *Part-Time Workers Are Paid Less, Have Less Access to Benefits—and Most Are Women,* Nat'l Women's Law Ctr. (Feb. 2020), https://bit.ly/3abGxb6......................... 12, 25

CLASP, *The Struggles of Low-Wage Work* (May 2018), https://bit.ly/3jJRuDE 9, 19

Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, Ctr. Am. Progress (Apr. 2020), https://ampr.gs/2Zelj5S 18, 29

Ctrs. Disease Control & Prevention, *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States, 2011* (Sept. 5, 2014), https://bit.ly/3qt9QLY 27

Ctrs. for Disease Control & Prevention, *Hospitalization and Death by Race/Ethnicity*, https://bit.ly/3btqMLR (last updated Feb. 12, 2021) 20

Ctrs. for Medicare & Medicaid Servs., Arkansas Waiver Approval (Mar. 5, 2018), https://bit.ly/2ZeIgGh 24

Ctrs. for Medicare & Medicaid Servs., *Medicaid Facts and Figures* (Jan. 30, 2020), https://go.cms.gov/3tUn0nt 7

Ctrs. for Medicare & Medicaid Servs., N.H. Waiver Approval (Nov. 30, 2018), https://bit.ly/3aYjsaU 24

Danyelle Solomon et. al., *Systemic Inequality and Economic Opportunity*, Ctr. Am. Progress (Aug. 7, 2019), https://ampr.gs/3psVfij 18

David Cooper, Econ. Pol'y Inst., *Workers of Color Are Far More Likely to Be Paid Poverty-Level Wages Than White Workers* (Jan. 2018), https://bit.ly/2Ns5u9x 19

David R. Williams & Ronald Wyatt, *Racial Bias in Health Care and Health: Challenges and Opportunities*, 314 JAMA 555 (2015) 21

Derrick Darby & Richard E. Levy, *Postracial Remedies*, 50 U. MICH. J. L. REFORM 387 (2016) 20, 31

Diana Boesch & Shilpa Phadke, *When Women Lose All the Jobs,* Ctr. Am. Progress (Feb. 2020), https://ampr.gs/3u59XQ8 11

Ed Kilgore, *3 States Are Pushing Medicaid Reforms That Discriminate Against Black People,* Intelligencer (May 14, 2018), https://nym.ag/3jJ7PZq 31

Erica L. Eliason, *Adoption of Medicaid Expansion is Associated with Lower Maternal Mortality*, 20 Women's Health Issues 1049 (Feb. 25, 2020), https://bit.ly/3pgx7PF.............................. 14

Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94 § 506, 133 Stat. 2534 (2020) 13

Haley Stolp & Jared Fox, *Increasing Receipt of Women's Preventive Services*, 24 J. Women's Health 875 (2015), https://bit.ly/2M78h7w 15

Hannah Katch et al., *Taking Medicaid Coverage Away From People Not Meeting Work Requirements Will Reduce Low-Income Families' Access to Care and Worsen Health Outcomes,* Ctr. on Budget & Pol'y Priorities (Aug. 13, 2018), https://bit.ly/3tPDqxc 23, 29

Ian Hill et al., *New Hampshire's Experiences with Medicaid Work Requirements: New Strategies, Similar Results*, Urban Inst. v–vi (Feb. 10, 2020), https://urbn.is/3qujaPz............................. 23

Jaboa Lake, *The Pandemic Has Exacerbated Housing Insecurity for Renters of Color*, Ctr. Am. Progress (Oct. 2020), https://ampr.gs/2ZmE6Mv 19

Jacqueline C. Wiltshire et al., *Medical Debt and Related Financial Consequences Among Older African American and White Adults*, 106 Am. J. Pub. Health 1086 (2016) 20

Jamila Taylor et al., *Eliminating Racial Disparities in Maternal and Infant Mortality,* Ctr. Am. Progress (May 2019), https://ampr.gs/3afHPlq .. 13

Jasmine Tucker & Julie Vogtman, *When Hard Work Is Not Enough: Women in Low-Paid Jobs* Nat'l Women's Law Ctr. (2020), https://bit.ly/3a8BKHt 9

Jesse Cross-Call, *Medicaid Expansion Has Helped Narrow Racial Disparities in Health Coverage and Access to Care,* Ctr. Budget & Pol'y Priorities, (Oct. 2020), https://bit.ly/37qiqnh 22

Julie Vogtman & Karen Schulman, *Set Up to Fail: When Low-Wage Work Jeopardizes Parents' and Children's Success,* Nat'l Women's Law Ctr. (2016), https://bit.ly/3tSmNBc............... 10, 25

Justin M. Le Blanc et al., *Association of Medicaid Expansion Under the Affordable Care Act with Breast Cancer Stage at Diagnosis*, 155 JAMA Surg. 752 (2020), https://bit.ly/2ZtgZzR 15

Kaiser Family Found., *10 Things to Know about Medicaid: Setting the Facts Straight* (Mar. 6, 2019), https://bit.ly/3aaBxTO................................ 7

Kaiser Family Found., *Distribution of the Nonelderly with Medicaid by Race/Ethnicity*, https://bit.ly/3s0kpq9... 16

Kaiser Family Found., *Distribution of Nonelderly Adults with Medicaid by Sex* (2019), https://bit.ly/3bb1hz5... 8

Kaiser Family Found., *Medicaid's Role for Women* (Mar. 2019), https://bit.ly/2Z6Cqqg................. 7, 15

Kaiser Family Found., *Population Distribution by Race/Ethnicity,* https://bit.ly/37IT8Rt (last visited Feb. 12, 2021) 17

Kaiser Family Found., *Poverty Rate by Race/Ethnicity*, https://bit.ly/3aZwtB3 (last visited Feb. 12, 2021) 17

Kaiser Family Found., *Women's Coverage, Access, and Affordability: Key Findings from the 2017 Kaiser Women's Health Survey* (March 23, 2018), https://bit.ly/3tOZjfW 12

Kaiser Family Found., *Women's Health Insurance Coverage* (Jan. 12, 2021), https://bit.ly/2Z8b1V3.. 12

Karen Westra & John Routley, *Arizona Cash Assistance Exit Study: First Quarter 1998 Cohort*, Ariz. Dep't of Econ. Sec. 16 (Jan. 2000), https://bit.ly/3u5uaFh.. 31

Katherine Richard, Ctr. Glob. Pol'y Sols., *The Wealth Gap for Women of Color* (Oct. 2014), https://bit.ly/3jE8ICo 10

Kellan Baker et al., *The Medicaid Program and LGBT Communities: Overview and Policy Recommendations,* Ctr. Am. Progress (Aug. 9, 2016), https://ampr.gs/37m9Eq7............. 16, 17, 26

Kentucky HEALTH Waiver Application § 6, https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ky/ky-health-pa3.pdf.......... 31

Kim Parker & Cary Funk, *Gender Discrimination Comes in Many Forms for Today's Working Women,* Pew Res. Ctr. (Dec. 14, 2017), https://pewrsr.ch/3u5Hb1z 27

Kim Parker et al., *About Half of Lower-Income Americans Report Household Job or Wage Loss Due to COVID-19*, Pew Res. Ctr. (Apr. 21, 2020), https://pewrsr.ch/2Nftug3 19

Lisa Gillespie, *Northern Ky. Expected To Be First Area Affected By New Medicaid Work / Training Requirement*, WKMS (Apr. 5, 2018), https://bit.ly/3d7wqGb 31

M.V. Lee Badgett et al., *LGBT Poverty in the United States,* Williams Inst. (Oct. 2019), https://bit.ly/3aTL15a 9

Madeline Guth et al., *Effects of the ACA Medicaid Expansion on Racial Disparities in Health and Health Care,* Kaiser Family Found. (Sept. 2020), https://bit.ly/2NjswiP 21

Madeline Guth et al., *The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review,* Kaiser Family Found. (Mar. 2020), https://bit.ly/3qba5ek 13, 21, 22, 28

Maya Raghu, *Employment Protections for Victims of Domestic Violence in The Impact of Domestic Violence on Your Legal Practice* (Jane Yin Zhi, ed., Am. Bar Ass'n Commission on Domestic & Sexual Violence, 3rd ed., 2018) 28

Michael Hendryx & Juhua Luo, *Increased Cancer Screening for Low-income Adults Under the Affordable Care Act Medicaid Expansion*, 56 Medical Care 944 (2018) 14, 15

Movement Advancement Project et al., *A Broken Bargain for LGBTQ Workers of Color* 5 (Nov. 2013), https://bit.ly/3ah6WEi 17

N.H. Emp't Sec., *Employment Status of the Civilian Population by Gender, Race, and Ethnicity, New Hampshire and Counties* (Jan. 2021), https://bit.ly/3aq5wra 18

N.H. Rev. Stat. Ann. § 126-AA:2(III)(a)(11) 24

N.H. Rev. Stat. Ann. § 126-AA:2(III)(b)(4) 27

N.H. Rev. Stat. Ann. § 126-AA:2(III)(d)(3) 25

N.H. Rev. Stat. Ann. § 126-AA:2(III)(d)(4) 25

N.H. Rev. Stat. Ann. § 126-AA:2(III)(d)(6) 25

NAACP, *Criminal Justice Fact Sheet*, https://bit.ly/3qgo0Qx (last visited Feb. 15, 2021) 30

Nancy Pindus & Robin Koralek, *South Carolina Family Independence Program Process Evaluation*, The Urban Inst. (Dec. 1, 2000), https://urbn.is/3udBDlZ 31, 32

Nat'l Women's Law Ctr., *Affordable Care Act Repeal and Changes to Medicaid Threaten Health and Economic Security of 2.3 Million Working Women Who Recently Gained Medicaid Coverage* (Feb. 2017), https://bit.ly/2N0bLsS 10

Nat'l Women's Law Ctr., *Affordable Care Act Repeal and Changes to Medicaid Threaten the Health and Economic Security of 3.9 Million Women Who Recently Gained Medicaid Coverage* (Feb. 2017), https://bit.ly/2ZkwrhR 13

Nat'l Women's Law Ctr., *Coming Forward: Key Trends and Data from the Times Up Legal Defense Fund* 4 (Oct. 2020), https://bit.ly/3jX4vdu .. 26

Nat'l Women's Law Ctr., *Medicaid Is Vital for Women's Jobs in Every Community* (June 2017), https://bit.ly/3abutXl 15, 28

Nat'l Women's Law Ctr., *Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women* (Aug. 2018), https://bit.ly/3rSaVNE... 27

Nat'l Women's Law Ctr., *The Wage Gap: The Who, How, Why, and What to Do* (Oct. 2020), https://bit.ly/2MVr9qo 9, 26

Nat'l Women's Law Ctr. calculations based on U.S. Census Bureau, 2015-2019 American Community Survey (ACS), 5-year estimates, using IPUMS-USA, https://usa.ipums.org/usa/.. 17

Nat'l Women's Law Ctr. calculations based on U.S. Census Bureau, 2019 American Community Survey (ACS), 1-year estimate, using IPUMS-USA, https://usa.ipums.org/usa/.............. 8

Nat'l Women's Law Ctr., *The Stealth Attack on Women's Health: Medicaid Work Requirements Would Reduce Access to Care for Women Without Increasing Employment* (Jan. 2018), https://bit.ly/3qbemyA 9, 24

Natalie Kean, *Medicaid Work Requirement: The Impact on Family Caregivers and Older Adults*, Justice in Aging (Nov. 2018) 25

National Statistics, Nat'l Coalition Against Domestic Violence, https://bit.ly/3dhC5t5 (last visited Feb. 16. 2021) 27

Nusaiba Mizan, *Black and Latina women carried the brunt of job loss in December,* PolitiFact (Jan. 15, 2021), https://bit.ly/3ukayNS............... 12

Off. of the Assistant Sec.'y for Plan. & Evaluation, HHS, *ASPE Issue Brief: Medicaid Expansion Impacts on Insurance Coverage and Access to Care* (Jan. 18, 2017), https://bit.ly/2LOfWHG.... 14

Patient Protection and Affordable Care Act of 2010, § 1396a(a)(10)(A)(i)(VIII)............................ 2

Patient Protection and Affordable Care Act of 2010, § 18001 2

Paul Fronstin & Stephen A. Woodbury, *How Many Americans Have Lost Jobs with Employer Health Coverage During the Pandemic?,* The Commonwealth Fund (Oct. 7, 2020), https://bit.ly/2ZbGlCh.. 11

Poverty USA, *The Population of Poverty USA,* https://bit.ly/2ZfrRBa (last visited Feb. 12, 2021)... 17

Rachel Garfield et al.,*Work Among Medicaid Adults: Implications of Economic Downturn and Work Requirements,* Kaiser Family Found. (Feb. 11, 2021), https://bit.ly/3s0MT3d.... 4

Robert Wood Johnson Found., *Medicaid's Impact on Health Care Access, Outcomes and State Economies* (Feb. 1, 2019), https://rwjf.ws/373U8PN 15

Robin Rudowitz et al., *February State Data for Medicaid Work Requirements in Arkansas,* Kaiser Family Found. (March 2019), https://bit.ly/3dBrSrA 5, 22

Samantha Artiga et al., *Changes in Health Coverage by Race and Ethnicity since Implementation of the ACA, 2013-2017*, Kaiser Family Found. (Feb. 2019), https://bit.ly/3kgdd6K......... 22

Samantha Artiga et al., *Changes in Health Coverage by Race and Ethnicity Since the ACA, 2010-2018*, Kaiser Family Found. (Mar. 2020), https://bit.ly/3ufMOKS 19, 22, 32

Sarah M. Peitzmeier et al., *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates*, Am. J. Pub. Health (Sept. 2020), https://bit.ly/3dgDIYd... 28

Sexual Assault and the LGBTQ Community, Human Rights Campaign, https://bit.ly/3qo2R6S (last visited Feb. 16, 2021). 28

Signe-Mary McKernan et al., *Past-due medical debt a problem, especially for black Americans*, Urban Inst. (Mar. 2017), https://urbn.is/3qzCVp4 20

Social Security Act of 1935 § 1901 2

Supreme Court Rule 37.3(a)...................................... 1

Supreme Court Rule 37.6 1

Tam D. Vuong et al., *Absenteeism Due to Functional Limitations Caused by Seven Common Chronic Diseases in US Workers*, 57 J. Occupational & Envtl. Med. 779 (2015).......................... 20

U.S. Census Bureau, *QuickFacts New Hampshire* (last visited Feb. 17, 2021), https://www.census.gov/quickfacts/NH 16

U.S. Dep't of Labor, *Families First Coronavirus Response Act Questions and Answers*, https://bit.ly/3ud2CxP 10

Uterine Cancer: Statistics, Cancer.Net (Sept. 2020), https://bit.ly/3rLDuMA............................. 14

Wendy Sawyer, *Visualizing the Racial Disparities in Mass Incarceration*, Prison Pol'y Initiative (July 27, 2020), https://bit.ly/3s1lCNT 30

Women of Color Network, Inc., *Domestic Violence in Communities of Color,* https://bit.ly/2LXKF5d (last visited Feb. 16, 2021) 27

INTEREST OF THE *AMICI CURIAE*[1]

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonpartisan, nonprofit organization that was formed in 1963 to enlist the private bar's leadership and resources in combating racial discrimination and vindicating the civil rights of African-Americans and other racial minorities. The Lawyers' Committee's principal mission is to secure equal justice for all through rule of law and the organization frequently participates as *amicus curiae* to protect the interests of racial and ethnic minorities. The Lawyers' Committee has a strong interest in eliminating systemic and structural barriers to health care coverage and to that end has served as *amicus curiae* in relevant cases.

The National Women's Law Center ("NWLC") is a nonprofit legal advocacy organization dedicated to the advancement and protection of the legal rights and opportunities of women and all who are harmed by sex discrimination. Since 1972, NWLC has focused on issues of key importance to women and their families, with a particular emphasis on the needs of low-income women, women of color, and others who face multiple and intersecting forms of discrimination. NWLC has advocated specifically on issues affecting women's health care—including protections under Medicaid—

[1] Pursuant to Rule 37.6, counsel for *amici* represents that it authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.3(a), counsel for *amici* represent that all parties have consented to the filing of this brief.

and has participated as counsel or *amicus curiae* in cases related to such issues.

This brief is submitted on behalf of the Lawyer's Committee, NWLC, and 50 additional non-profit organizations listed in the Appendix to this brief. *Amici* respectfully submit their perspectives on the disproportionate impact of the Medicaid waiver demonstration projects in the States of Arkansas and New Hampshire on women and communities of color, including those who identify as lesbian, gay, bisexual, transgender, or queer ("LGBTQ"), and people who live at the intersection of two or more of these identities (collectively the "Impacted Groups").

SUMMARY OF THE ARGUMENT

Medicaid's express statutory purpose is to provide "medical assistance" to individuals "whose income and resources are insufficient to meet the costs of necessary medical services."[2] Plain and simple. Any Medicaid program that detracts from this core purpose is a violation of statutory authority and cannot stand. Through Medicaid coverage, millions of vulnerable low-income individuals benefit from access to necessary health care.

In line with Medicaid's objectives, the Patient Protection and Affordable Care Act of 2010 ("ACA")[3] extended coverage to additional low-income, nonelderly adults who otherwise would not qualify for Medicaid (the "expansion population").[4] States that elect to cover the expansion population must comply with Medicaid's requirements and provide services "in a

---

[2] Social Security Act of 1935 § 1901, 42 U.S.C. § 1396-1.
[3] *Id.* at § 18001 *et seq.*
[4] *See id.* at § 1396a(a)(10)(A)(i)(VIII).

manner consistent with simplicity of administration and the best interests of the recipients."[5] Due to this expansion, thousands more low-income individuals qualified for Medicaid coverage in the States of Arkansas and New Hampshire.[6] The Impacted Groups, in particular, have benefited from this expansion. They disproportionately rely on Medicaid coverage to obtain critical health services for themselves and their families, which enables them to maintain their health and economic stability.

This progress, however, is in jeopardy. Both Arkansas and New Hampshire have received approval from the former Secretary of the Department of Health and Human Services (the "Secretary" or "HHS"), to test "demonstration projects"[7] in their respective states known as the Arkansas Works Amendments ("AWA") and the New Hampshire Granite Advantage ("Granite Advantage"). Among other changes, both projects condition Medicaid eligibility for most non-disabled adults upon satisfying a minimum number of hours of employment or other community activities, with certain exemptions: for AWA, adults ages 19 to 49 must satisfy 80 monthly hours; for Granite Advantage the mandate is even "more exacting," requiring adults ages 19 to 64 to satisfy 100 monthly hours.[8]

---

[5] 42 U.S.C. § 1396a(a)(19).

[6] *See Gresham v. Azar*, 363 F. Supp. 3d 165, 171 (D.D.C. 2019), *aff'd*, 950 F.3d 93 (D.C. Cir. 2020); *Philbrick v. Azar,* 397 F. Supp. 3d 11, 18 (D.D.C. 2019), *aff'd,* No. 19-5293, 2020 WL 2621222 (D.C. Cir. May 20, 2020) (summary affirmance).

[7] *See* 42 U.S.C. § 1315.

[8] *Philbrick,* 397 F. Supp. 3d at 15.

Before this Court is the question of whether the Secretary, in approving the state demonstration projects, arbitrarily and capriciously failed to consider how they would affect health care coverage. In considering whether these projects furthered Medicaid's objectives, the Secretary was required to determine the impacts such projects would have on the very people whom Medicaid serves. Yet the agency woefully ignored the harmful consequences these projects would have on people who disproportionately rely on Medicaid for their health coverage—the Impacted Groups, and in particular, women of color.

In this brief, *amici* explain that the demonstration projects will only serve to undermine, not promote, the objectives of Medicaid by decreasing access to "medical assistance" and "other services" that current beneficiaries depend on "for independence [and] self-care."[9] The programs are punitive in nature and will create unnecessary hurdles to health care coverage for all Medicaid beneficiaries. The work requirements appear to be based on the false premise that Medicaid beneficiaries choose not to work and are taking advantage of the program's benefits. This is a distortion of reality as studies show that most nonelderly adults enrolled in Medicaid are working.[10] Nonetheless, substantial barriers exist to satisfying the work requirements, particularly for the Impacted Groups. Complex documentation and administrative processes present a real risk that eligible individuals will lose coverage. Women and communities of color are overrepresented

---

[9] *See* 42 U.S.C. § 1396-1.

[10] Rachel Garfield et al., *Work Among Medicaid Adults: Implications of Economic Downturn and Work Requirements,* Kaiser Family Found. ("KFF") (Feb. 11, 2021), https://bit.ly/3s0MT3d.

in the low-wage and part-time workforces, in which hours are unpredictable and unstable, and perform work that does not count towards hours requirements, such as caregiving. The Impacted Groups also face several barriers to entering the workforce that will prevent individuals from complying.

Ultimately, both programs' burdensome work requirements and reporting obligations will result in devastating coverage losses, particularly among the Impacted Groups. Indeed, when AWA was in effect, over 18,000 beneficiaries in Arkansas lost coverage for noncompliance. Commenters anticipated that losses from Granite Advantage would match or exceed AWA, given its more stringent requirements.[11] Inevitably, this loss of coverage will, in turn, exacerbate existing health and economic disparities experienced by these Groups—disparities that are even more pronounced due to the COVID-19 pandemic. The agency's wholesale failure to consider these consequences renders the approval of the demonstration waivers arbitrary and capricious. Accordingly, *amici* urge this Court to affirm the decisions below.

ARGUMENT

I. HHS Arbitrarily and Capriciously Failed to Consider the Loss of Medicaid Coverage on the Impacted Groups, Particularly Women of Color.

The Administrative Procedure Act "sets forth the full extent of judicial authority to review executive agency action for procedural correctness." *FCC v. Fox*

---

[11] *See* Robin Rudowitz et al., *February State Data for Medicaid Work Requirements in Arkansas,* KFF 1 (March 2019), https://bit.ly/3dBrSrA; *Philbrick*, 397 F. Supp. 3d at 24.

Television Stations, Inc., 556 U.S. 502, 513 (2009). Under the APA, agency action must be set aside as "arbitrary and capricious" if it "entirely failed to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Where an agency's policy change upsets serious reliance interests, the APA demands a "more substantial justification" for the action. *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 106 (2015); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S.Ct. 1891, 1913–14 (2020).

The Social Security Act makes plain that in approving demonstration projects, the Secretary must consider whether the project "is likely to assist in promoting the objectives of" Medicaid.[12] And as the court below properly held, Medicaid's primary objective is to "furnish . . . medical assistance" for those in need.[13] By statutory command it was incumbent upon the Secretary to consider whether the demonstration projects would undermine, rather than further, Medicaid's objectives by resulting in loss of coverage for the very people whom Medicaid serves. Yet the Secretary gave *no* consideration to the impact the projects would have on those who disproportionately rely on Medicaid for health coverage—namely the Impacted Groups. Nor did the agency provide the more substantial justification required here, as individuals depend on Medicaid for their health and livelihoods and thus have substantial reliance interests in accessing Medicaid as Congress intended, without arbitrary and unlawful conditions of eligibility. *See Perez*, 575 U.S. at 106.

---

[12] 42 U.S.C. § 1315(a).

[13] 42 U.S.C. § 1396-1.

As *amici* explain below, the imposition of work requirements and concurrent reporting obligations will cause the Impacted Groups to lose coverage, which in turn will exacerbate existing health and economic disparities. The Secretary's wholesale failure to consider this critical "aspect of the problem" renders the approvals arbitrary and capricious. *State Farm*, 463 U.S. at 43.

II. The Impacted Groups, Especially Women of Color, Disproportionately Rely on Medicaid Coverage, Which Benefits Their Health and Economic Stability.

Medicaid is a cornerstone of the U.S. health care system.[14] Today, nearly 65 million people rely on Medicaid coverage for their health care at some point throughout the year.[15] Without Medicaid coverage, such individuals would have to either incur medical expenses beyond their means or forgo critical care. Importantly, approximately 60 percent of Medicaid beneficiaries of working age are employed or work in some capacity.[16] Of those who do not work for pay, the majority either care for family members, have a serious illness or disability, or attend school.[17]

Due to various, and interacting, factors—including systemic discrimination resulting in overrepresentation in the low-wage workforce—a disproportionately higher number of people who identify as members of

---

[14] KFF, *10 Things to Know about Medicaid: Setting the Facts Straight* (Mar. 6, 2019), https://bit.ly/3aaBxTO.

[15] Ctrs. for Medicare & Medicaid Servs. ("CMS"), *Medicaid Facts and Figures* (Jan. 30, 2020), https://go.cms.gov/3tUn0nt.

[16] KFF, *Medicaid's Role for Women* 3 (Mar. 2019), https://bit.ly/2Z6Cqqg.

[17] *Id.*

the Impacted Groups are enrolled in Medicaid. This coverage is critical to their health and economic stability.

1. The majority of adult Medicaid beneficiaries are women, and women of color make up well over half of women on Medicaid.[18] Among non-elderly adult Medicaid enrollees nationwide, 58% are female, versus only 42% male.[19] Similar ratios exist in Arkansas and in New Hampshire.[20] As of 2019, approximately 16 million women ages 18–64 had health insurance through Medicaid,[21] including 9 million women of color and 7.3 million working women.[22]

These statistics are not surprising. Women in all racial and ethnic groups are more likely than white, non-Hispanic men to live in poverty.[23] In 2019, 18% of Black women, 18% of Native women, 15% of Latinx women, and 8% of white women lived in poverty, versus 6% of white men.[24] Women who identify as lesbian, bisexual, and transgender also experience higher rates of poverty than both cis-gendered, straight men and

---

[18] NWLC calculations based on U.S. Census Bureau, 2019 American Community Survey (ACS), 1-year estimate, using IPUMS-USA, https://usa.ipums.org/usa/. ACS survey respondents self-identify their sex, race, and whether they are of Hispanic, Latino, or Spanish origin. Women of color are all those who did not self-identify as white, non-Hispanic.

[19] KFF, *Distribution of Nonelderly Adults with Medicaid by Sex* (2019), https://bit.ly/3bb1hz5.

[20] *Id.*

[21] *Id.*

[22] NWLC calculations based on U.S. Census Bureau, 2019 American Community Survey (ACS), 1-year estimate, using IPUMS-USA, https://usa.ipums.org/usa/.

[23] Amanda Fins, *National Snapshot: Poverty Among Women & Families, 2020*, ("*National Snapshot*"), NWLC, 1 (Dec. 2020), https://bit.ly/3tQJohj.

[24] *Id.* at 1–2.

cis-gendered, gay men.[25] Women also have slightly higher rates of disability than men,[26] and the poverty rate for women with disabilities is exceedingly high.[27]

Women are also overrepresented in Medicaid because they represent a larger share of the low-wage workforce than men.[28] In 2018, women made up almost two-thirds of workers in the 40 lowest-paying jobs, which typically pay less than $12 per hour, even though women comprise just under half of the workforce in the United States.[29] Based on the most recent year of data, women who work full-time, year-round in those jobs typically make only 82% of what men in the same jobs make.[30] Not only do lower wages contribute to higher poverty rates for women, but frequently low-paid jobs fail to provide employer-sponsored health coverage.[31] As a result, many women working such jobs must turn to Medicaid for health coverage. Indeed, as a result of Medicaid expansion, between 2013 and 2015 more than 2.3 million working women ages

---

[25] M.V. Lee Badgett et al., *LGBT Poverty in the United States,* Williams Inst., 3 (Oct. 2019), https://bit.ly/3aTL15a.
[26] NWLC, *The Stealth Attack on Women's Health: Medicaid Work Requirements Would Reduce Access to Care for Women Without Increasing Employment,* 3 (Jan. 2018), https://bit.ly/3qbemyA.
[27] Fins, *National Snapshot supra*, at 2.
[28] Jasmine Tucker & Julie Vogtman, *When Hard Work Is Not Enough: Women in Low-Paid Jobs* NWLC, 3 (2020) https://bit.ly/3a8BKHt.
[29] *Id.*
[30] NWLC, *The Wage Gap: The Who, How, Why, and What to Do* 2 (Oct. 2020), https://bit.ly/2MVr9qo.
[31] Tucker & Vogtman, NWLC, *supra*, at 7; CLASP, *The Struggles of Low-Wage Work* 2 (May 2018), https://bit.ly/3jJRuDE.

18-64 gained Medicaid coverage, an increase of 54% nationally.[32]

Childbearing and caregiving responsibilities place further constraints on economic stability, wages, labor-force participation, and occupational status.[33] Women disproportionately bear responsibility for caring for children, as well as other family members who are older, ill, or have disabilities,[34] and are hampered by lack of access to high-quality, affordable child and dependent care that covers their hours of work.[35] The COVID-19 pandemic has only exacerbated these disparities, as child care providers struggle to remain open because of reduced enrollment and increased costs,[36] schools operate remotely, and the federal requirement that employers provide emergency paid leave has expired.[37] As a result, women have borne the brunt of both caregiving obligations and job losses over the past year: although women comprised 47% of pre-

---

[32] NWLC, *Affordable Care Act Repeal and Changes to Medicaid Threaten Health and Economic Security of 2.3 Million Working Women Who Recently Gained Medicaid Coverage* 1 (Feb. 2017), https://bit.ly/2N0bLsS.

[33] *See* Katherine Richard, Ctr. Glob. Pol'y Sols., *The Wealth Gap for Women of Color* 7 (Oct. 2014), https://bit.ly/3jE8ICo.

[34] Claire Cain Miller, *When Schools Closed, Americans Turned to Their Usual Backup Plan: Mothers*, N.Y. Times (Nov. 17, 2020), https://nyti.ms/3qiAc31; AARP, *Caregiving in the U.S.* 10 (May 2020), https://bit.ly/3bBZxz5.

[35] *See* Julie Vogtman & Karen Schulman, *Set Up to Fail: When Low-Wage Work Jeopardizes Parents' and Children's Success,* NWLC (2016), https://bit.ly/3tSmNBc.

[36] Claire Ewing-Nelson, *Another 275,000 Women Left the Labor Force in January, ("Women Left the Labor Force")* NWLC 1 (Feb. 2021), https://bit.ly/3pgbZJl (as of January, "nearly 1 in 6 child care jobs lost since the start of the pandemic have not returned.").

[37] *See* U.S. Dep't of Labor, *Families First Coronavirus Response Act Questions and Answers* #104, https://bit.ly/3ud2CxP.

pandemic employment, they accounted for 55% of total job losses and 53% of jobs lost that offered health insurance.[38] Overall, women have lost a net of 5.4 million jobs, nearly 1 million more job losses than men.[39] As a result, over 2.3 million women have left the labor force since the beginning of the pandemic versus 1.8 million men, resulting in women's lowest labor force participation rate since 1988.[40]

All these factors are compounded for women of color, who are substantially overrepresented in low-paying jobs such as child care workers, home health aides, restaurant servers, and housekeepers.[41] In 2018, Latina and Native women made up a share of the low-paid workforce that was twice as large as their share of the workforce overall; for Black women that ratio was 1.5 and for Asian American and Pacific Islander women 1.3, versus 1.1 for white women.[42] Low-paying jobs have a particularly harsh impact on women of color as they are more likely to be the sole or primary supporters of their households.[43] These disparities are only likely to intensify in response to the economic crisis caused by the COVID-19 pandemic, which has also fallen hardest on women of color.[44] Women accounted for *all* job losses in December

---

[38] Paul Fronstin & Stephen A. Woodbury, *How Many Americans Have Lost Jobs with Employer Health Coverage During the Pandemic?,* The Commonwealth Fund (Oct. 7, 2020), https://bit.ly/2ZbGlCh.

[39] Diana Boesch & Shilpa Phadke, *When Women Lose All the Jobs,* Ctr. Am. Progress ("CAP"), 1 (Feb. 2020), https://ampr.gs/3u59XQ8.

[40] Ewing-Nelson, *Women Left the Labor Force*, *supra* at 1.

[41] Tucker & Vogtman, *supra*, at 3-4.

[42] *Id.* at 3.

[43] *Id.* at 6.

[44] *See* Ewing-Nelson, *Women Left the Labor Force*, *supra*, at 1, 3.

2020,[45] and the data shows Black women and Latinas saw their employment levels drop in December while white women experienced a net increase in jobs that month.[46] 154,000 Black women left the labor force entirely in December alone.[47] Moreover, women of color in particular have been pushed into involuntary part-time work due to COVID-19,[48] which increases reliance on Medicaid because part-time workers are nearly four times less likely to have employer-sponsored health coverage than full-time workers.[49]

Women's reliance on Medicaid cannot be overstated. Following passage of the ACA, states saw a substantial increase in women Medicaid beneficiaries and a significant drop in uninsured non-elderly women.[50] Indeed, from 2013-2015, after Medicaid expansion was implemented in Arkansas, the state witnessed a 60% increase in women enrolled in Medicaid,

---

[45] Claire Ewing-Nelson, *All of the Jobs Lost in December Were Women's Jobs*, NWLC, https://bit.ly/3aFml1y.

[46] Nusaiba Mizan, *Black and Latina women carried the brunt of job loss in December,* PolitiFact (Jan. 15, 2021), https://bit.ly/3ukayNS.

[47] Ewing-Nelson, *All of the Jobs Lost in December Were Women's Jobs*, *supra*, at 1.

[48] *Id.* at 3.

[49] Claire Ewing-Nelson, *Part-Time Workers Are Paid Less, Have Less Access to Benefits—and Most Are Women,* NWLC, 5 (Feb. 2020), https://bit.ly/3abGxb6.

[50] Nationally, approximately 11% of nonelderly women were uninsured in 2019, KFF, *Women's Health Insurance Coverage* (Jan. 12, 2021), https://bit.ly/2Z8b1V3, a decline from a rate of 18% in 2013, KFF, *Women's Coverage, Access, and Affordability: Key Findings from the 2017 Kaiser Women's Health Survey* (March 23, 2018), https://bit.ly/3tOZjfW.

with the addition of roughly 69,500 women.[51] New Hampshire experienced a 34% increase during that period, including approximately 11,310 women beneficiaries.[52]

This has undisputedly benefited women by providing them and their families access to necessary health care services. The overwhelming weight of research shows that the expansion program has increased access to, and utilization of, care and has decreased reliance on emergency rooms as a source of low-acuity care.[53] This has, in turn, helped to improve health outcomes.

Medicaid expansion notably has helped to combat the existing maternal mortality crisis by improving coverage before and after pregnancy. Coverage disparities and cost barriers drive the devastating rates of death from pregnancy and childbirth in the U.S. among Black and Native women.[54] States that expanded Medicaid, however, have experienced lower rates of death of pregnant women than those declining

---

[51] NWLC, *Affordable Care Act Repeal and Changes to Medicaid Threaten the Health and Economic Security of 3.9 Million Women Who Recently Gained Medicaid Coverage* 3 (Feb. 2017), https://bit.ly/2ZkwrhR.

[52] *Id.*

[53] Madeline Guth et al., *The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review,* KFF, (Mar. 2020), https://bit.ly/3qba5ek. Although Medicaid covers a range of services women need, federal law restricts federal Medicaid coverage of abortion except if the pregnancy is the result of rape or incest, or if the woman's life is in danger. *See* Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94 § 506, 507, 133 Stat. 2534 (2020).

[54] Jamila Taylor et al., *Eliminating Racial Disparities in Maternal and Infant Mortality,* CAP (May 2019), https://ampr.gs/3afHPlq.

Medicaid expansion, particularly for non-Hispanic Black women.[55] Moreover, mean infant mortality also declined in Medicaid expansion states, and for Black infants, this decline was more than twice as high in Medicaid expansion than it was in non-Medicaid-expansion states.[56]

Medicaid coverage—including Medicaid expansion—also helps combat cancer mortality rates among women of color.[57] Mortality rates of Black women from cervical cancer, breast cancer and endometrial cancer—all diseases that are both preventable and treatable in early stages—are 200%, 40% and 58% higher, respectively, than white women.[58] Lack of access to adequate coverage contributes to these mortality rates because women who lack coverage are more likely to

---

[55] Erica L. Eliason, *Adoption of Medicaid Expansion is Associated with Lower Maternal Mortality*, 20 Women's Health Issues 1049, 1049 (Feb. 25, 2020), https://bit.ly/3pgx7PF; Adam Searing & Donna Cohen Ross, Georgetown U. Health Pol'y Inst., *Medicaid Expansion Fills Gaps in Maternal Health Coverage Leading to Healthier Mothers and Babies*, at 7 (May 2019), https://bit.ly/374ycE7.

[56] Chintan B. Bhatt & Consuelo M. Beck-Sagué, *Medicaid Expansion and Infant Mortality in the United States*, 108 AM. J. PUBLIC HEALTH 565, 565-567 (2018), https://bit.ly/2HuXX5c.

[57] Michael Hendryx & Juhua Luo, *Increased Cancer Screening for Low-income Adults Under the Affordable Care Act Medicaid Expansion*, 56 Medical Care 944, 944 (2018); Off. of the Assistant Sec.'y for Plan. & Evaluation, HHS, *ASPE Issue Brief: Medicaid Expansion Impacts on Insurance Coverage and Access to Care*, at 8, 15 (Jan. 18, 2017), https://bit.ly/2LOfWHG.

[58] Anna Beavis et al., *Hysterectomy-Corrected Cervical Cancer Mortality Rates Reveal a Larger Racial Disparity in the United States*, 123 CANCER 1044, 1047-48 (2017); Am. Cancer Soc'y, *Breast Cancer Facts & Figures 2019-2020* (2019), https://bit.ly/3d8Q7gA; Uterine Cancer: Statistics, Cancer.Net (Sept. 2020), https://bit.ly/3rLDuMA.

forgo screenings, follow-up care, and completion of therapy.[59] Medicaid expansion helps to address these disparities by requiring states to cover preventive services for breast and cervical cancers, and providing comprehensive coverage for those with a cancer diagnosis.[60] As a result of Medicaid expansion, women are receiving more preventive services, such as mammograms and Pap tests,[61] leading to earlier-stage diagnoses and decreases in mortality rates.[62]

At the same time, Medicaid has also played a critically important role in advancing women's economic security, allowing women to address health concerns without incurring medical debt and bankruptcy.[63] By providing health coverage that is not tied to employment, Medicaid allows women the flexibility to change jobs, engage in job training, or make career changes that promise higher wages or better opportunities.[64] And Medicaid's coverage of birth control allows women

---

[59] Cancer Action Network, Am. Cancer Soc'y, *Medicaid: Ensuring Access to Affordable Health Care Coverage for Lower Income Cancer Patients and Survivors* (Jan. 15, 2020), https://bit.ly/2NJ6TZi.
[60] KFF, *Medicaid's Role for Women*, *supra*.
[61] Haley Stolp & Jared Fox, *Increasing Receipt of Women's Preventive Services*, 24 J. Women's Health 875, 877 (2015), https://bit.ly/2M78h7w.
[62] Hendryx & Luo, *supra*, at 944-45; Justin M. Le Blanc et al., *Association of Medicaid Expansion Under the Affordable Care Act with Breast Cancer Stage at Diagnosis*, 155 JAMA Surg. 752 (2020), https://bit.ly/2ZtgZzR.
[63] *See* NWLC, *Medicaid Is Vital for Women's Jobs in Every Community* (June 2017), https://bit.ly/3abutXl.
[64] *See* Adriana Kugler, *Does Increased Access to Medicaid Stimulate Job Mobility?*, Econofact (July 31, 2017), https://bit.ly/2NjbeSJ; Robert Wood Johnson Found., *Medicaid's Impact on Health Care Access, Outcomes and State Economies* (Feb. 1, 2019), https://rwjf.ws/373U8PN.

to determine whether and when to start a family, expanding their educational and career opportunities.

Accordingly, women represent a significant class of Medicaid beneficiaries at risk of losing vital health coverage in Arkansas and New Hampshire, and the Secretary was required to consider this risk when deciding whether to approve the states' work requirements.

2. In addition to women, communities of color are disproportionately represented among nonelderly Medicaid beneficiaries. Nearly 60 percent of Medicaid enrollees are people of color.[65] Although people of color comprise a smaller percentage of Medicaid enrollees in New Hampshire (18%) and Arkansas (39%), people of color are still disproportionately represented in Medicaid in those states, as they only account for just over 10% and 28% of the overall populations, respectively.[66] Medicaid is also significant to LGBTQ people of color: in 2014, Medicaid covered 29% of insured low- and middle-income LGBT Latinx individuals and 37% of insured low- and middle-income Black individuals.[67] The program plays a critical role in communities of color because they experience higher rates of poverty, unemployment, and underemployment, all of which have been exacerbated by the COVID-19 pandemic.

---

[65] KFF, *Distribution of the Nonelderly with Medicaid by Race/Ethnicity*, *supra* (in 2019 58.9% of adult nonelderly Medicaid enrollees were people of color).

[66] *Id.*; U.S. Census Bureau, *QuickFacts New Hampshire*, https://www.census.gov/quickfacts/NH (last visited Feb. 17, 2021); *id.* at Arkansas, https://www.census.gov/quickfacts/AR.

[67] Kellan Baker et al., *The Medicaid Program and LGBT Communities: Overview and Policy Recommendations,* CAP, 5 (Aug. 9, 2016), https://ampr.gs/37m9Eq7.

Due to deep-rooted, systemic racial discrimination, racial minorities bear the brunt of poverty in America: Black, Native, and Latinx people are about twice as likely to live in poverty as white people.[68] This national pattern is evident in the population of both Arkansas and New Hampshire.[69] For example, in New Hampshire, Black people comprise 1.60% of the state's total population, but 3.7% of those living in poverty.[70] In Arkansas, Black people comprise 15.4% of the total population, but 25.9% of those living in poverty.[71] LGBTQ people of color face an intersectional risk of poverty, as they are more likely than non-LGBTQ people to be living in poverty.[72] Black same-sex couples, for example, have poverty rates at least twice the rate of Black opposite-sex married couples.[73]

People of color face prejudice and discrimination in the labor market and workplace that not only increases reliance upon Medicaid, but also, as discussed *infra*, Part III, makes it harder for them to satisfy onerous work requirements. Communities of color face higher unemployment rates and are more likely to face

---

[68] Poverty USA, *The Population of Poverty USA*, https://bit.ly/2ZfrRBa (last visited Feb. 12, 2021).

[69] *See*, *e.g.*, KFF, *Poverty Rate by Race/Ethnicity*, https://bit.ly/3aZwtB3 (last visited Feb. 12, 2021); KFF, *Population Distribution by Race/Ethnicity*, https://bit.ly/37IT8Rt (last visited Feb. 12, 2021).

[70] NWLC calculations based on U.S. Census Bureau, 2015-2019 American Community Survey (ACS), 5-year estimates, using IPUMS-USA, https://usa.ipums.org/usa/. ACS survey respondents self-identify their sex and race.

[71] *Id.*

[72] Baker, *supra*, at 4.

[73] Movement Advancement Project et al., *A Broken Bargain for LGBTQ Workers of Color* 5 (Nov. 2013), https://bit.ly/3ah6WEi.

job instability.[74] In Arkansas, for example, the 2019 unemployment rate for the Black population was 6.5%—double the rate for the white population.[75] In New Hampshire, from 2015-2019, those identified as one racial minority faced a 7.1% unemployment rate and those identified as two or more races faced 10% unemployment, compared to 5.6% among the white population.[76] Latinx residents faced an unemployment rate of 10.8% during that period.[77]

Systemic discrimination also limits the quality and type of employment available to people of color.[78] Like women, people of color are overrepresented in the lowest-paid jobs. Black, Asian, and Latinx populations comprise 58% of agricultural workers, 70% of maids and housekeeping cleaners, and 74% of baggage porters, bellhops, and concierges,[79] but only 36% of the U.S. workforce.[80] And the average median wage for

---

[74] *See* Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, CAP (Apr. 2020), https://ampr.gs/2Zelj5S.

[75] Ark. Dep't Workforce Servs., *Employment Status of the Civilian Non-Institutional Population by Age and Race,* Demographic Data, https://bit.ly/3dgoxhH (last visited Feb. 8, 2021).

[76] N.H. Emp't Sec., *Employment Status of the Civilian Population by Gender, Race, and Ethnicity, New Hampshire and Counties* 1 (Jan. 2021), https://bit.ly/3aq5wra.

[77] *Id.*

[78] *See, e.g.*, Angela Hanks et al., CAP, *Systematic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap* (Feb. 2018), https://ampr.gs/3rNLeO7 ("Persistent labor market discrimination and segregation also force [B]lacks into fewer and less advantageous employment opportunities than their white counterparts.").

[79] Danyelle Solomon et. al., *Systemic Inequality and Economic Opportunity*, CAP (Aug. 7, 2019), https://ampr.gs/3psVfij.

[80] *Id.*

each of these jobs falls short of the median U.S. wage.[81] People of color are also more likely to be forced into part time work.[82] Consequently, workers of color are far more likely to be paid poverty-level wages than white workers[83] and to lack employer-sponsored health coverage.[84] For example, from July 2019 to September 2019, the median weekly earnings for full-time Black employees was $727 compared to whites who made $943.[85] Further, in 2018, only 55.4% of Black respondents had private health insurance versus 74.8% of white respondents.[86]

COVID-19 has only exacerbated inequities in employment for people of color. Beginning in April 2020, 32% of Black and 41% of Latinx adults lost their jobs due to the pandemic, compared with a 24% drop for white adults.[87] This is because workers of color are overrepresented in the low-wage jobs that are most at-risk of layoffs during the pandemic.[88] Communities of

---

[81] *Id.*

[82] CLASP, *supra*, at 1.

[83] David Cooper, Econ. Pol'y Inst., *Workers of Color Are Far More Likely to Be Paid Poverty-Level Wages Than White Workers* (Jan. 2018), https://bit.ly/2Ns5u9x.

[84] Samantha Artiga et al., *Changes in Health Coverage by Race and Ethnicity Since the ACA, 2010-2018*, KFF (Mar. 2020), https://bit.ly/3ufMOKS.

[85] Christian E. Weller, *African Americans Face Systematic Obstacles to Getting Good Jobs*, CAP, 6 (Dec. 2019), https://ampr.gs/3dKPg5Y.

[86] *Id.*

[87] Jaboa Lake, *The Pandemic Has Exacerbated Housing Insecurity for Renters of Color*, CAP (Oct. 2020), https://ampr.gs/2ZmE6Mv; Kim Parker et al., *About Half of Lower-Income Americans Report Household Job or Wage Loss Due to COVID-19*, Pew Res. Ctr. (Apr. 21, 2020), https://pewrsr.ch/2Nftug3.

[88] Lake, *supra*.

color are also grappling with higher rates of COVID-19 cases, hospitalizations, and deaths.[89] This destruction leaves families and communities at financial risk as breadwinners lose their income due to COVID-related illness or death.

Medicaid is critical to improving the health and economic security of communities of color. Like employment discrimination, racial health disparities are a significant strand in the tapestry of racial injustice of the U.S.—one that is inextricably intertwined with other historical and contemporary inequities.[90] These health disparities, in turn, fuel economic disparities, as chronic illness can increase absenteeism and interfere with employment and income.[91] Moreover, Black people in particular have disproportionately high medical debt, which can lead to financial instability or bankruptcy.[92]

Due to multiple, interconnecting factors, including the economic disparities already discussed, systemic racism, and discrimination, people of color have higher uninsured rates than whites, creating barriers to care

---

[89] Ctrs. for Disease Control & Prevention, *Hospitalization and Death by Race/Ethnicity*, https://bit.ly/3btqMLR (last updated Feb. 12, 2021).

[90] *See, e.g.,* Crossley, *Black Health Matters*, *supra*, at 53; Darby & Levy, *supra*, at 398-407.

[91] Tam D. Vuong et al., *Absenteeism Due to Functional Limitations Caused by Seven Common Chronic Diseases in US Workers*, 57 J. Occupational & Envtl. Med. 779–784 (2015).

[92] Signe-Mary McKernan et al., *Past-due medical debt a problem, especially for black Americans*, Urban Inst. (Mar. 2017), https://urbn.is/3qzCVp4; Jacqueline C. Wiltshire et al., *Medical Debt and Related Financial Consequences Among Older African American and White Adults*, 106 Am. J. Pub. Health 1086 (2016).

that result in worse health outcomes.[93] Indeed, there are pervasive and long-standing differences in group health status and outcomes between communities of color and their white counterparts.[94] For example, in Arkansas, racial and ethnic minorities do worse than whites on a range of health outcome measures, including rates of diabetes, cancer, and heart disease.[95] Data collected from 2011-2015 in Arkansas revealed that diabetes, hypertension and kidney disease killed Blacks at twice the rate of whites,[96] and that Blacks had higher cancer and HIV mortality rates than whites.[97]

Yet the vast majority of studies have found that Medicaid expansion has helped to narrow, although not eliminate, racial disparities in uninsured rates.[98] The gap in uninsured rates between Black and white adults decreased 51% in expansion states versus 33% in nonexpansion states; for Hispanics the gap decreased by 45% in expansion states versus 27% in non-

---

[93] Madeline Guth et al., *Effects of the ACA Medicaid Expansion on Racial Disparities in Health and Health Care,* KFF (Sept. 2020), https://bit.ly/2NjswiP.

[94] David R. Williams & Ronald Wyatt, *Racial Bias in Health Care and Health: Challenges and Opportunities*, 314 JAMA 555, 555 (2015).

[95] Ark. Dep't Health, Off. of Minority Health & Health Disparities & Epidemiology Branch, *Disparities in Diabetes Mellitus Mortality Among Blacks in Arkansas* 1 (2018), https://bit.ly/3asNlks.

[96] *Id.*

[97] *Id*.

[98] Guth et al., *Effects of the ACA Medicaid Expansion on Racial Disparities in Health and Health Care*, *supra*.

expansion states.[99] Uninsured rates dropped across racial and ethnic groups for which data is available in Arkansas and New Hampshire from 2013-17.[100] Beyond improving racial coverage disparities, research also shows that Medicaid expansion has improved access to care, use of care, and health outcomes across racial and ethnic groups.[101] The research likewise shows that Medicaid expansion is associated with economic gains for communities of color, as expansion is linked with gains in employment, student status, and volunteerism.[102] As with women, the Secretary was required to consider the loss of coverage to people of color.

III. Work Requirements Will Result in Loss of Coverage For the Impacted Groups, Particularly Among Women of Color, Threatening Their Health and Economic Security.

Work requirements like those imposed under AWA and Granite Advantage will push beneficiaries out of the program, causing a significant decrease in health coverage. While AWA was in effect, Arkansas disenrolled 18,000 beneficiaries for failure to comply.[103] And in New Hampshire, after one month of implementation, only 8,000 of 25,000 enrollees without an ex-

---

[99] Jesse Cross-Call, *Medicaid Expansion Has Helped Narrow Racial Disparities in Health Coverage and Access to Care,* Ctr. Budget & Pol'y Priorities, (Oct. 2020), https://bit.ly/37qiqnh.
[100] Samantha Artiga et al., *Changes in Health Coverage by Race and Ethnicity since Implementation of the ACA, 2013-2017*, KFF, 8 (Feb. 2019), https://bit.ly/3kgdd6K.
[101] Guth et al., *Effects of the ACA Medicaid Expansion on Racial Disparities in Health and Health Care*, *supra*.
[102] *Id.*
[103] *See* Rudowitz, *February State Data*, *supra*.

emption satisfied the work requirements, and an estimated 17,000 enrollees (approximately one-third of total enrollment) were slated to lose coverage had the project not been suspended and then enjoined.[104]

To maintain Medicaid coverage under these state programs, beneficiaries must document their exemption status, obtain and retain employment, or fulfill community engagement activities and report completed hours monthly. Potential barriers to compliance—particularly limited or no internet access and fluctuating work hours—could lead to a loss of coverage. As has already been found in one study, the imposition of work requirements on AWA beneficiaries "substantially exacerbated administrative hurdles to maintaining coverage" as the program was plagued with confusion and a lack of awareness by its participants.[105] Granite Advantage beneficiaries reported similar hurdles, specifically noting deficiencies in the reporting mechanisms, a confusing exemption system, and general lack of community education on the new program.[106]

The projects pose a particular risk to women of color and others in the Impacted Groups, who are more

---

[104] Ian Hill et al., *New Hampshire's Experiences with Medicaid Work Requirements: New Strategies, Similar Results*, Urban Inst. v–vi (Feb. 10, 2020), https://urbn.is/3qujaPz.

[105] Benjamin D. Sommers et al., *Medicaid Work Requirements—Results from the First Year in Arkansas*, 381 New Eng. J. Med. 1073, 1080 (2019); Hannah Katch et al., *Taking Medicaid Coverage Away From People Not Meeting Work Requirements Will Reduce Low-Income Families' Access to Care and Worsen Health Outcomes,* Ctr. on Budget & Pol'y Priorities (Aug. 13, 2018), https://bit.ly/3tPDqxc.

[106] Hill et al., *supra*, at vii–viii.

likely to encounter obstacles to satisfying the work requirements and less likely to be exempt than their white and male counterparts. The work requirements in AWA and Granite Advantage threaten to erode the progress made by expanding coverage through the ACA, thereby undermining the objective of the Medicaid program.

1. Because women make up a disproportionate share of the nonelderly Medicaid beneficiaries in Arkansas and New Hampshire, they will plainly be disproportionately harmed by the work requirements. But beyond their overrepresentation, women, and especially women of color, face unique barriers to employment that will make satisfying the work requirements particularly challenging.[107] As discussed *supra* Part II.1, such factors include caregiving responsibilities that do not count towards the hours requirements and overrepresentation in the low-wage and part-time workforces. They also include workplace discrimination and harassment and intimate partner violence.

Medicaid work requirements often discount or ignore caregiving responsibilities, which are disproportionately borne by women. Arkansas does not count unpaid caregiving obligations towards the hours requirements,[108] and New Hampshire's waiver as approved does so only with respect to non-dependents with disabling health or developmental conditions.[109]

---

[107] NWLC, *The Stealth Attack on Women's Health*, *supra*, at 2.

[108] CMS, Arkansas Waiver Approval, at 29 (Mar. 5, 2018), https://bit.ly/2ZeIgGh.

[109] CMS, N.H. Waiver Approval, at 25 (Nov. 30, 2018), https://bit.ly/3aYjsaU. New Hampshire subsequently repealed this provision by statute. N.H. Rev. Stat. Ann. § 126-AA:2(III)(a)(11).

Even though women with caregiving responsibilities may qualify for caregiving exemptions, those exemptions are nuanced and do not cover the full scope of caregiving responsibilities that could prevent women from complying with the hours requirements: for example, in New Hampshire, under the waiver as approved by the Secretary, parents of most school-age children over age six are not exempt.[110] Moreover, vague and undefined terms in the caregivers' exemptions such as "incapacitated" or "dependent" create uncertainty about the exemption's applicability.[111] At least some caregivers eligible for an exemption will nonetheless lose coverage due to the administrative burdens already discussed of navigating and reporting under the work requirements.[112] These obstacles undermine women's access to the medical care they need.

Additionally, as discussed *supra*, Part II.1, women, and particularly women of color, are overrepresented in the part time and low-wage workforces, which are characterized by unstable and unpredictable schedules over which low-paid workers have little control.[113] This makes satisfying work requirements challenging

---

[110] N.H. Waiver Approval at 24. New Hampshire subsequently changed this by statute to parents of children ages 12 and under and made other changes to the scope of its caregiving exemptions, compounding confusion regarding the exemptions' application. N.H. Rev. Stat. Ann. § 126-AA:2(III)(d)(3), (4) & (6).

[111] *See* Natalie Kean, *Medicaid Work Requirement: The Impact on Family Caregivers and Older Adults*, Justice in Aging, 8-9 (Nov. 2018), https://bit.ly/3d4m0qJ. Arkansas exempts beneficiaries "caring for an incapacitated person" or "liv[ing] in a home with his or her minor dependent child age 17 or younger." Arkansas Waiver Approval at 28.

[112] *Id.*

[113] *See* Vogtman & Schulman, *supra*, at 5-8; Ewing-Nelson, *Part-Time Workers Are Paid Less, supra*.

even without compounding factors like caregiving. The economic consequences of the pandemic discussed *supra* likely will persist beyond the public health emergency, causing women of color in particular to experience greater difficulty meeting the monthly hour requirements.

Additionally, stereotypes, discrimination, and harassment in the workplace create barriers to women's employment, and in turn barriers to satisfying work requirements. Numerous studies show that women, especially women with children, are less likely to be hired than men and are offered lower wages when hired. [114] Moreover, sexual harassment—and retaliation for reporting such harassment—remains a widespread problem and a substantial barrier to women's workforce participation.[115] Discrimination and harassment also are major barriers to satisfying workplace requirements for LGBTQ individuals. Studies show that 43% of gay workers and 90% of transgender workers have experienced discrimination and harassment in the workplace, which often pushes them into unemployment or low-paid jobs that do not offer benefits such as health insurance.[116] These obstacles are

---

[114] NWLC, *The Wage Gap*, *supra*, at 3.

[115] NWLC, *Coming Forward: Key Trends and Data from the Times Up Legal Defense Fund* 4 (Oct. 2020), https://bit.ly/3jX4vdu.

[116] Baker, *supra*, at 6. To be sure, this Court's decision in *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020), was an important development for making clear that LGBTQ workers across the nation enjoy protections under our federal civil rights laws. However, as with other areas of existing civil rights protections, discrimination persists even with these forms of legal protections, including through attempts by some entities to raise religious objections to complying with such requirements.

compounded for those living at the intersection of discrimination based upon sex (including sexual orientation and gender identity), race, and ethnicity. Black women, in particular, are disproportionately likely to experience discrimination and sexual harassment at work and to face discipline, termination, threats, or other retaliatory actions for speaking out.[117]

Finally, women suffering intimate partner violence (IPV) may be prevented from maintaining the consistent employment necessary to fulfill minimum hours obligations, or from timely providing the requisite "verifi[cation]" of their circumstances to secure a good cause exemption.[118] Women experience severe IPV, sexual violence, and stalking more frequently than men.[119] Women of color experience the highest rates of IPV. Over half of Native women and more than four in ten Black women surveyed reported having experienced physical violence by an intimate partner during their lifetimes.[120] Black women also experience

---

[117] NWLC, *Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women* 6–9 (Aug. 2018), https://bit.ly/3rSaVNE; Kim Parker & Cary Funk, *Gender Discrimination Comes in Many Forms for Today's Working Women,* Pew Res. Ctr. (Dec. 14, 2017), https://pewrsr.ch/3u5Hb1z.

[118] Arkansas Waiver Approval, *supra*, at 30–31; N.H. Waiver Approval, *supra*, at 26–27; N.H. Rev. Stat. Ann. § 126-AA:2(III)(b)(4).

[119] *National Statistics*, Nat'l Coalition Against Domestic Violence, https://bit.ly/3dhC5t5 (last visited Feb. 16. 2021).

[120] Women of Color Network, Inc., *Domestic Violence in Communities of Color*, https://bit.ly/2LXKF5d (last visited Feb. 16, 2021); Ctrs. Disease Control & Prevention, *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States, 2011* (Sept. 5, 2014), https://bit.ly/3qt9QLY.

significantly higher rates of psychological abuse and sexual violence.[121] LBT women are also disproportionately impacted. 44% of lesbians and 61% of bisexual women experience rape, physical violence, or stalking by an intimate partner, compared to 35% of straight women.[122] Transgender individuals were 2.2 times more likely to experience physical IPV and 2.5 times more likely to experience sexual IPV than cisgender individuals.[123] Studies show that women who experience IPV, sexual assault, and stalking may be forced to miss work, leave their jobs, or be fired.[124] Such inconsistent employment may prevent women from fulfilling minimum work requirements, resulting in a loss of Medicaid coverage at a time access to care is dire.

In contrast to the states' assumptions, Medicaid has served to help women find and maintain employment.[125] Studies have linked Medicaid expansion to increased employment and a significant decrease in involuntary part-time work.[126] To erect any additional

---

[121] Asha DuMonthier et al., *The Status of Black Women in the United States,* Inst. for Women's Pol'y Res. 120-21 (June 7, 2017), https://bit.ly/3baOn3P.

[122] *Sexual Assault and the LGBTQ Community*, Human Rights Campaign, https://bit.ly/3qo2R6S (last visited Feb. 16, 2021).

[123] Sarah M. Peitzmeier et al., *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates*, Am. J. Pub. Health (Sept. 2020), https://bit.ly/3dgDIYd.

[124] Maya Raghu, *Employment Protections for Victims of Domestic Violence in The Impact of Domestic Violence on Your Legal Practice* (Jane Yin Zhi, ed., Am. Bar Ass'n Commission on Domestic & Sexual Violence, 3rd ed., 2018).

[125] NWLC, *Medicaid Is Vital for Women's Jobs in Every Community*, *supra*.

[126] Guth, *The Effects of Medicaid Expansion under the ACA*, *supra*.

obstacles to women's continued access to health care is directly at odds with the purpose of Medicaid, will lead to lapses in coverage, and will further entrench health and economic disparities.

3. Communities of color will be significantly and disproportionately impacted by the Medicaid work requirements in AWA and Granite Advantage. As with women, this is not only because of their overrepresentation in the general Medicaid population, but also because of the myriad barriers to workforce participation faced by communities of color. *See supra* Part II.2. Communities of color are disadvantaged by work requirement exemptions that favor white Medicaid beneficiaries and discretionary implementation features that invite further inequity. The likelihood of massive coverage loss, particularly among people of color, conflicts directly with Medicaid's purpose and will further exacerbate racial health and economic disparities.[127]

As discussed at length in Part II.2, communities of color face pervasive and systemic discrimination in both the labor market and workplace that limits opportunities for full-time employment, which has only been exacerbated by the COVID-19 pandemic.[128] For Black people, employment disparities are in part attributable to the fact that they face greater financial barriers to obtaining a college education and are thus less likely to attend and graduate from college compared to whites.[129] Employment barriers even apply to

---

[127] Katch et al., *supra*.
[128] Maxwell & Solomon, *supra*.
[129] Weller, *supra*.

Black college graduates who face a 40% higher unemployment rate compared to white college graduates.[130]

Employment rates also reflect the disparate impact of mass incarceration on communities of color. Systemic racism pervades every facet of the criminal legal system including policing, prosecutorial decisions, sentencing, and reentry.[131] Black people are incarcerated at more than five times the rate of white people, and the imprisonment rate for Black women is twice that of white women.[132] Physical imprisonment itself affects employment, and a criminal record diminishes future employment prospects.[133]

Work requirement exemptions may also disproportionately favor white Medicaid beneficiaries. Discretionary features of the projects' implementation process are rife with the potential for increasing racial health disparities; in fact, the limited implementation steps Kentucky took provide one such example. Kentucky's demonstration project authorized the state to exempt entire counties from the work requirements if the county has high unemployment rates, limited

---

[130] *Id.*

[131] Wendy Sawyer, *Visualizing the Racial Disparities in Mass Incarceration*, Prison Pol'y Initiative (July 27, 2020), https://bit.ly/3s1lCNT.

[132] NAACP, *Criminal Justice Fact Sheet*, https://bit.ly/3qgo0Qx (last visited Feb. 15, 2021); Derrick Darby & Richard E. Levy, *Postracial Remedies*, 50 U. MICH. J. L. REFORM 387, 401 (2016).

[133] Darby & Levy, *supra*, at 402.

economy, lack of educational opportunities, or inadequate public transportation.[134] In Kentucky, each exempt county had a population that is 90% white, while the project's roll-out was to commence in a region that included the county with the highest concentration of Black residents.[135] While county exemptions are aimed at addressing a genuine problem—very real roadblocks to employment—the result was a disproportionate application of the work requirements along race lines.

Indeed, work requirements employed in other social service programs have revealed the danger of implementation biases and have resulted in demonstrable prejudice.[136] For example, the Urban Institute found that Black and Latinx TANF recipients were

---

[134] Kentucky HEALTH Waiver Application § 6, p. 39, https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ky/ky-health-pa3.pdf.

[135] Ed Kilgore, *3 States Are Pushing Medicaid Reforms That Discriminate Against Black People,* Intelligencer (May 14, 2018), https://nym.ag/3jJ7PZq; Alice Ollstein, *Trump Admin Poised To Give Rural Whites A Carve-Out On Medicaid Work Rules*, Talking Points Memo (May 14, 2018), https://bit.ly/3qgmBsV; *see also* Lisa Gillespie, *Northern Ky. Expected To Be First Area Affected By New Medicaid Work/Training Requirement*, WKMS (Apr. 5, 2018), https://bit.ly/3d7wqGb.

[136] *See, e.g.*, Ariel Kalil et al., *Sanctions and Material Hardship Under TANF*, SOC. SERV. REV., vol. 76, no. 4, at 655 (2002) ("We find that limited education and being African American predict sanctioning when we control for a wide range of other personal and demographic characteristics."); Nancy Pindus & Robin Koralek, *South Carolina Family Independence Program Process Evaluation,* The Urban Inst. 12 (Dec. 1, 2000), https://urbn.is/3udBDlZ; Karen Westra & John Routley, *Arizona Cash Assistance Exit Study: First Quarter 1998 Cohort,* Ariz. Dep't of Econ. Sec. 16 (Jan. 2000), https://bit.ly/3u5uaFh.

more likely to be sanctioned for noncompliance with program rules than white recipients with similar work histories and that caseworker bias can affect sanctioning outcomes.[137] Because the Medicaid work requirements allow for similar discretion in the application of sanctions for non-compliance, Granite Advantage and the AWA are vulnerable to the same biases.

As with women, the inevitable result of the states' Medicaid work requirements will be an enormous loss of coverage that will undo the progress New Hampshire and Arkansas have made in reducing their uninsured rates and combatting racial health and economic disparities.[138] *See supra* Part II.2. The Secretary should have considered these consequences before approving the waivers.

---

[137] Pindus & Koralek, *supra*, at 12.

[138] Artiga, *Changes in Health Coverage by Race and Ethnicity since Implementation of the ACA*, *supra*.

CONCLUSION

The Secretary's failure to consider how approval of the demonstration projects would affect health coverage for Medicaid recipients renders the approvals arbitrary and capricious. The disproportionate rates that the Impacted Groups, and in particular women of color, rely on Medicaid for health coverage makes these approvals particularly harmful for these communities. The decision below should be affirmed.

Respectfully submitted,

JUDITH R. NEMSICK
Counsel of Record
CAITLIN L. STACHON
SARAH SYED
HOLLAND & KNIGHT LLP
31 WEST 52ND STREET
NEW YORK, NEW YORK 10019
judy.nemsick@hklaw.com
(212) 513-3200

Counsel for Amici Curiae

February 24, 2021

FATIMA GOSS GRAVES
GRETCHEN BORCHELT
MICHELLE BANKER
DORIANNE MASON
SUNU P. CHANDY
AMY MATSUI
LAUREN GORODETSKY
NATIONAL WOMEN'S LAW CENTER
11 Dupont Circle NW
Suite 800
Washington, DC 20036
Counsel for National Women's Law Center

DAMON HEWITT
JON GREENBAUM
DORIAN SPENCE
MARYUM JORDAN
NATASHA CHABRIA
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street NW
Suite 900
Washington, DC 20005
Counsel for Lawyers' Committee for Civil Rights Under Law

APPENDIX

1. American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME)
2. American Federation of Teachers, AFL-CIO
3. American Medical Association
4. Atlanta Women for Equality
5. Bold Futures NM
6. California Women Lawyers
7. Center for Reproductive Rights
8. Civil Liberties & Public Policy
9. Clearinghouse on Women's Issues
10. Disability Rights Advocates
11. Feminist Women's Health Center
12. Gender Justice
13. GLBTQ Legal Advocates & Defenders
14. Human Rights Campaign
15. Institute for Women's Policy Research
16. Kentucky Association of Sexual Assault Programs
17. KWH Law Center for Social Justice and Change
18. Lawyering Project
19. League of Women Voters of the United States
20. Legal Aid at Work
21. Legal Voice

22. Lift Louisiana
23. Medical Students for Choice
24. NARAL Pro-Choice America
25. National Asian Pacific American Women's Forum
26. National Association of Social Workers (NASW)
27. National Center for Lesbian Rights
28. National Employment Law Project
29. National Immigration Law Center
30. National LGBTQ Task Force
31. National Network to End Domestic Violence
32. National Organization for Women Foundation
33. National Partnership for Women & Families
34. National Urban League
35. National Women's Health Network
36. New Hampshire Medical Society
37. People For the American Way Foundation
38. Planned Parenthood Federation of America
39. Religious Coalition for Reproductive Choice
40. Reproaction Education Fund
41. Reproductive Health Access Project
42. Service Employees International Union (SEIU)
43. Shriver Center on Poverty Law

44. SisterReach
45. The Women's Law Center of Maryland
46. Women Lawyers Association of Los Angeles
47. Women Lawyers On Guard Inc.
48. Women's Bar Association of the District of Columbia
49. Women's Law Project
50. WV FREE