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April 21, 2020

Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814
Sent via email

Dear Governor Newsom:

We wish you and your family health and wellness as you grapple with the COVID-19 virus firsthand. We write to lift-up key concerns pertaining to issues of equity, which are too often cast aside during emergencies. We believe that under your leadership, California can lead the nation in protecting public health while upholding our shared values throughout the response.

Increasing transparency regarding COVID-19 testing, hospitalizations, positive cases and deaths in California

We appreciate California's initial efforts to release data on race and ethnicity and understand that the state is working to sift through its data.¹ We appreciate that the state recognizes the importance of this information, for both healthcare purposes and to inform other public policy discussions. We request that the state bolster its initial effort and collect and provide critical aggregate demographic data associated with COVID-19 testing, positive cases, hospitalizations and deaths broken down by race, ethnicity, gender, gender identity, primary language, disability status, housing status, socioeconomic status and whether or not the person was an essential worker (broken down by industry) while respecting personal privacy and consistent with the California Constitution and other privacy laws.² Additionally, distributions of resources such as testing and equipment during this crisis must be based on need determined by a consistent, fair, and transparent process, not economic or any other social status. If need will be determined by testing, the state must ensure that test kits are equitably distributed, considering the ability of people with limited English proficiency to advocate for themselves. It is important for the state to lead this data collection and dissemination effort in a comprehensive manner as counties and cities are trying to collect this information with no model to replicate from your office.

¹ State Officials Announce Latest COVID-19 Facts, California Department of Public Health, April 19, 2020, available at <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-058.aspx>; California releases limited racial breakdown of coronavirus patients and deaths, Los Angeles Times, April 8, 2020, <https://www.latimes.com/california/story/2020-04-08/california-releases-limited-racial-breakdown-of-coronavirus-patients-deaths>.

² We along with other concerned organizations are happy to discuss ways to ensure that this data is collected in a way that respects privacy and does not overstep these goals.

The state recently issued guidance that California requires equal access to health care services.³ This guidance specifically outlined that discrimination based on legally protected categories violates California law. In addition, the California guidance supports federal guidance that a person's "worth" should not be a determining factor for treatment. At this point, California has not made enough data widely available to ensure transparency and accountability for its guidance. San Diego County has already started tracking more data like race and ethnicity, but the Los Angeles Times reported that unequal testing in white and wealthy areas likely skews data that is currently readily available in California.⁴ Without comprehensive information, it is hard to grasp the extent of the problem.

Impact of COVID-19 on Black People

Recently, we have seen experts⁵ from around the country sound the alarm⁶ about how the response to COVID-19 is revealing biases in our healthcare system and the need for agencies to track and share data that will allow for informed responses. As you may have seen, last week Senator Elizabeth Warren and Congresswoman Ayanna Pressley called on the federal Department of Health and Human Services to focus on racial equity in its COVID-19 response by requesting that state and local governments collect data to make it possible to discern whether there are racial disparities in access to COVID-19 testing in communities nationwide.⁷ Recent reporting from the New York Times also highlights the need to understand the impact of COVID-19 on communities of color before it is too late.⁸ Finally, UN human rights experts in a statement urged governments to commit to racial equity and racial equality because of the threat posed by structural racial discrimination and the potential for it to exacerbate inequality in access to health care and treatment.⁹

While we know that anyone can contract the virus, we also know that the impacts on communities of color and other vulnerable populations may be severe. We've already begun to

³ March 30, 2020 State of California Guidance Relating to Non-Discrimination in Medical Treatment for Novel Coronavirus 2019 (COVID-19) available at <https://www.dhcs.ca.gov/Documents/COVID-19/Joint-Bulletin-Medical-Treatment-for-COVID-19-033020.pdf>.

⁴ Coronavirus in San Diego County, April 7, 2020, https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/2019-nCoV/status.html; "As coronavirus deaths surge, missing racial data worry L.A. County officials" LA Times, Apr. 6, 2020, <https://www.latimes.com/california/story/2020-04-06/missing-racial-data-coronavirus-deaths-worries-los-angeles-county-officials>.

⁵ AAMA/Civil Rights Orgs Ask for Release of Disaggregated COVID19 Data, African American Mayors Association, <https://www.ourmayors.org/Resources/COVID-19-Resources/Black-Mayors-Ask-CDC-to-Disaggregate-COVID-19-Testing-Cases-and-Health-Outcome-Data-According-to-Race-Ethnicity-and-Gender>.

⁶ The Coronavirus Doesn't Discriminate, But U.S. Health Care Showing Familiar Biases, NPR, April 2, 2020, <https://www.npr.org/sections/health-shots/2020/04/02/825730141/the-coronavirus-doesnt-discriminate-but-u-s-health-care-showing-familiar-biases>.

⁷ Rep. Pressley, Lawmakers Urge HHS to Address Racial Disparities in Access to Testing and Treatment during the Coronavirus Pandemic, March 30, 2020, <https://pressley.house.gov/media/press-releases/rep-pressley-lawmakers-urge-hhs-address-racial-disparities-access-testing-and>.

⁸ <https://www.nytimes.com/2020/04/01/opinion/coronavirus-black-people.html>

⁹ Statement on COVID-19: Racial equity and racial equality must guide State action, United Nations Human Rights, April 6, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25768&LangID=E>.

learn about these disparities¹⁰ in other parts of the country. Milwaukee's Black community has been hit particularly hard, leading the numbers of deaths in the state.¹¹ This trend can be seen across the country for Black people. In Michigan, Black people comprise the largest number of known COVID cases and have the largest percentage of deaths from the virus.¹² In Chicago, Black non-Latinx people comprise over half of the known cases of individuals who tested positive.¹³ Black people have the highest numbers in other parts of Cook County as well.¹⁴ Black people comprise 38% of laboratory-confirmed cases in North Carolina.¹⁵ Black people comprise 70% of deaths in Louisiana.¹⁶

Because of the impact that systemic racism has on those who can access healthcare, it is important to share the data the state is currently collecting, along with any gaps in that data, to better understand whether this is happening across the state. For example, it is well-documented that Black people's symptoms are minimized and often are undertreated for their issues.¹⁷ Structurally, this country has made it more challenging for Black people to access systems that will allow for them to social distance in ways that white communities enjoy. For example, Black people across the country and in California are disproportionately represented in prisons and jails.¹⁸

Impact of COVID-19 on Native Americans

Another population that is exceptionally vulnerable to COVID 19 are Native Americans.¹⁹ The current crisis is a painful history of disease weaponized against Tribal communities. Indigenous communities have been disproportionately impacted by past epidemics and outbreaks; the 1918 flu struck American Indians four times harder than the general

¹⁰ Early Data Shows African Americans Have Contracted and Died of Coronavirus at an Alarming Rate, ProPublica, April 3, 2020, <https://www.propublica.org/article/early-data-shows-african-americans-have-contracted-and-died-of-coronavirus-at-an-alarming-rate>.

¹¹ Coronavirus Disease (COVID-19), MILWAUKEE COUNTY WISCONSIN (Apr. 3, 2020), <https://county.milwaukee.gov/EN/COVID-19>.

¹² Coronavirus Michigan Data, MICHIGAN.GOV (Apr. 5, 2020), https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html.

¹³ Chicago: Latest Data, CHICAGO DEPARTMENT OF PUBLIC HEALTH (Apr. 5, 2020), <https://www.chicago.gov/city/en/sites/covid-19/home/latest-data.html>.

¹⁴ Suburban Cook County: COVID-19 Surveillance Data, COOK COUNTY DEPARTMENT OF PUBLIC HEALTH (Apr. 5, 2020), <https://ccdphcd.shinyapps.io/covid19/>.

¹⁵ COVID-19 North Carolina Dashboard, NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES (Apr. 3, 2020), <https://www.ncdhhs.gov/covid-19-case-count-nc#by-race-ethnicity>.

¹⁶ Coronavirus (COVID), Louisiana Department of Health, <http://ldh.la.gov/coronavirus/>.

¹⁷ Kelly M. Hoffman, Sophie Trawalter, Jordan R. Axt, M. Norman Oliver, Racial bias in pain assessment and treatment recommendations, and false beliefs about biological differences between blacks and whites, Apr. 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4843483/>.

¹⁸ Ashley Nellis, The Color of Justice: Racial and Ethnic Disparity in State Prisons, The Sentencing Project, June 14, 2016, <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

¹⁹ The coronavirus is exacerbating vulnerabilities Native communities already face, VOX, March 25, 2020, <https://www.vox.com/2020/3/25/21192669/coronavirus-native-americans-indians>; Native American Communities And COVID-19: How Foundations Can Help, Health Affairs, March 31, 2020, <https://www.healthaffairs.org/doi/10.1377/hblog20200331.659944/full/>; Tribal Nations — Highly Vulnerable to COVID-19 — Need More Federal Relief, Center on Budget and Policy Priorities, April 1, 2020, <https://www.cbpp.org/blog/tribal-nations-highly-vulnerable-to-covid-19-need-more-federal-relief>.

population,²⁰ and in this century, the death rate for Native Americans who contracted the H1N1 flu was four times that of all other racial and ethnic groups combined.²¹ The same conditions that put Indigenous people at higher risk in previous outbreaks and epidemics exist today, in urban communities and on reservations and rancherias.²² Native Americans experience higher rates of underlying conditions that increase risk of severe illness and death, including heart disease, asthma and hypertension, are underinsured, and face other barriers to accessing healthcare including distance and transportation.²³ There are significantly higher rates of overcrowding and lack of infrastructure – including electricity and running water – in Indian Country, increasing risk of spread. Delayed funding and an under-funded federal response put Tribal communities at greater risk,²⁴ as Tribes did not have access to protective equipment or tests.²⁵

While the majority of Native Americans in California depend on the same hospitals and medical providers as their non-Native counterparts, approximately a quarter of California's Indian population relies on Tribal or urban Indian health clinics, which have been dramatically underfunded for many decades.²⁶ The California Indian Health Service is reporting on testing outcomes for Native Americans who receive services at HIS facilities throughout the state.²⁷ Additional barriers, including long-standing distrust of the federal and state governments and lack of culturally-appropriate healthcare services – increase risk factors.²⁸ The Navajo Nation, for example, has been devastated by the disease; as of April 7, 2020, 384 cases were reported for a population of around 300,000.²⁹ While reservations and rancherias in California are much

²⁰ Indian Country, where residents suffer disproportionately from disease, is bracing for coronavirus, Washington Post, April 4, 2020, <https://www.washingtonpost.com/climate-environment/2020/04/04/native-american-coronavirus/>.

²¹ Coronavirus Cases Spike In Navajo Nation, Where Water Service Is Often Scarce, NPR, March 26, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/03/26/822037719/coronavirus-cases-spike-in-navajo-nation-where-water-service-is-often-scarce>.

²² Indian Country faces higher risks, lack of resources in COVID-19 fight, ABC News, April 3, 2020, <https://abcnews.go.com/Politics/indian-country-faces-higher-risks-lack-resources-covid/story?id=69957760>

²³ LA Times, <https://www.latimes.com/world-nation/story/2020-03-29/no-running-water-no-electricity-in-navajo-nation-coronavirus-creates-worry-and-confusion-as-cases-surge>

²⁴ We've been here forever. We'll be here forever': Indian Country takes action to address coronavirus pandemic, Indianz.com, March 23, 2020, <https://www.indianz.com/News/2020/03/23/weve-been-here-forever-well-be-here-fore.asp>.

²⁵ 'Timing is critical': Native Americans warn virus may overwhelm underfunded health services, The Guardian, March 20, 2020, <https://www.theguardian.com/us-news/2020/mar/20/coronavirus-outbreak-us-native-americans-health-services>; "Why are Fresno-area Native American clinics sending staff home during coronavirus pandemic?", Fresno Bee, April 2, 2020, <https://www.fresnobee.com/news/coronavirus/article241685511.html>.

²⁶ Coronavirus Exposes Public Health Inequities in Indigenous Communities, The Takeaway, April 2, 2020, <https://www.wnycstudios.org/podcasts/takeaway/segments/coronavirus-exposes-public-health-inequities-indigenous-communities>; ²⁶ 'Timing is critical': Native Americans warn virus may overwhelm underfunded health services, The Guardian, March 20, 2020, <https://www.theguardian.com/us-news/2020/mar/20/coronavirus-outbreak-us-native-americans-health-services>; Indian Health Services- About Us, <https://www.ihs.gov/california/index.cfm/about-us/?mobileFormat=0>.

²⁷ CRIHB COVID-19 RESPONSE, California Rural Indian Health Board, <https://crihb.org/prevention-and-education/public-health/>.

²⁸ Indian Country faces higher risks, lack of resources in COVID-19 fight, ABC News, April 3, 2020, <https://abcnews.go.com/Politics/indian-country-faces-higher-risks-lack-resources-covid/story?id=69957760>.

²⁹ A School on Navajo Nation Stayed Open. Then People Started Showing Symptoms, ProPublica, April 7, 2020, <https://www.propublica.org/article/a-school-on-navajo-nation-stayed-open-then-people-started-showing-symptoms>.

smaller, in size and population, than the Navajo Nation, many share the conditions of geographic remoteness and inadequate infrastructure that put their residents at greater risk. Data on Native Americans are often not reported or underreported, complicating policy responses.³⁰ California is home to the largest number of Native Americans in the country, and there are over 100 federally recognized Tribes and over 40 additional Tribes seeking recognition.

Impact of COVID-19 on Unhoused Californians

While we appreciate that the state is sifting through data regarding race and possibly ethnicity, there has been no public disclosure of data regarding unhoused people. Because unhoused people are likely unable to shelter-in-place in a manner that reflects the full CDC guidance, COVID-19 will inevitably spread in higher rates for unhoused people. Currently, the city of Boston is experiencing a “significant surge” in Coronavirus cases amongst the city’s unhoused residents, with more than 200 confirmed cases representing a positive test rate of almost one third.³¹ The CDC has noted the particular vulnerability unhoused persons face in the context of COVID-19 and has put forth “interim guidance for homeless service providers to plan and respond to coronavirus.”³² Just before Coronavirus hit the United States, you proposed using more than \$1 billion to alleviate housing insecurity for California’s roughly 151,000 unhoused residents.³³ In addition, Congress has provided emergency funding for homelessness assistance during this crisis.³⁴ And last week, the State committed to partner with FEMA for unhoused Californians to reside in emergency shelters, including making use of “15,000 hotel/motel rooms.”³⁵

The virus unsurprisingly is spreading amongst California’s unhoused population. Last Thursday, Barbara Ferrer, director of the Los Angeles County Department of Public Health, announced “nine confirmed cases of coronavirus among Los Angeles’ homeless population.”³⁶ This represented almost a 100% increase in just a single day, and the county announced it was aware of at least two shelters with confirmed positive Coronavirus cases.³⁷ These issues intersect with racial disparities as well since Black individuals comprise nearly 40 percent of unhoused

³⁰ Why Don’t We Know Who the Coronavirus Victims Are?, *The Atlantic*, April 1, 2020, <https://www.theatlantic.com/ideas/archive/2020/04/stop-looking-away-race-covid-19-victims/609250/>.

³¹ Lynn Jolicœur, *Boston’s Homeless Population Experiencing ‘Significant Surge’ In Coronavirus Cases*, WBUR (Apr. 6, 2020), <https://www.wbur.org/commonhealth/2020/04/06/bostons-homeless-surge-in-cases>.

³² *Interim guidance for homeless service providers to plan and respond to coronavirus disease 2019 (COVID-2019)*, CENTER FOR DISEASE CONTROL (Mar. 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.

³³ Erin Baldassari, *California Gov. Newsom Lays Out Framework To Address Homelessness*, NPR (Feb. 21, 2020), <https://www.npr.org/2020/02/21/808016586/calif-gov-newsom-lays-out-framework-to-address-homelessness>.

³⁴ *Congressional Leaders Agree to Coronavirus Response Package with Funding for Homelessness and Housing*, NATIONAL LOW INCOME HOUSING COALITION (Mar. 25, 2020), <https://nlihc.org/resource/congressional-leaders-agree-coronavirus-response-package-funding-homelessness-and-housing>.

³⁵ Tal Axelrod, *Newsom announces partnership with FEMA to find shelter for most vulnerable homeless populations*, THE HILL (Apr. 3, 2020), <https://thehill.com/homenews/state-watch/491083-newsom-announces-partnership-with-fema-to-identify-shelter-for-most>.

³⁶ Benjamin Oreskes, *Coronavirus spreads in Los Angeles’ homeless community*, LOS ANGELES TIMES (Apr. 2, 2020), <https://www.latimes.com/california/story/2020-04-02/coronavirus-in-l-a-homeless-community-spreads-to-9-confirmed-cases>.

³⁷ *Id.*

people in the United States.³⁸ As Coronavirus continues to spread amongst the state's unhoused residents, access to reliable data on its impact on the unhoused will be critical in the protection efforts you announced last week.

Impact of COVID-19 on Essential Workers

Similarly, given the unique role the state's essential workers are playing in responding to the virus, and the vulnerabilities associated with continuing to work despite a statewide shelter in place order, information on Coronavirus' impact on essential workers will be critical as well. New York's experience with its essential workforce is illustrative; at the beginning of this week, the Metropolitan Transit Authority announced twenty-two deaths and 1,092 positive tests from Coronavirus, with an additional 5,430 employees self-isolating at home.³⁹

In California, over 100 categories of workers were deemed essential employees by the State Public Health Officer, thus exempting these individuals from Executive Order N-33-20 directing all state residents to remain at home.⁴⁰ The Public Policy Institute of California estimates that these categories represent anywhere from one third to one half of the state's workers.⁴¹ For example, there are an estimated 558,00 personal care aides, 295,000 registered nurses, and 195,000 farmworkers in the state.⁴² Farmworkers, for example, are essential workers, but have faced a mask shortage issue in California.⁴³ In addition to the need for masks to help protect against valley fever, harmful pesticides that are sprayed, and other clear dangers, this will surely put them at higher risk of contracting COVID.⁴⁴

Accurate, up-to-date testing, hospitalization, and fatality data is necessary regarding these Californians as well in order to reliably gauge the impact of the Coronavirus on this population.

Impact of COVID-19 on People with Disabilities

Moreover, people with disabilities are among those at the greatest risk during this crisis because of several factors including: being more likely to have underlying health conditions, being economically disadvantaged, being dependent on others for care, or simply because people with disabilities are disproportionally placed in institutions, incarcerated, or homeless. Understanding the impact of COVID-19 on essential workers can also help to inform responses.

³⁸ See U.S. Department of Housing and Urban Development, 2019 Annual Homeless Assessment Report to Congress, 10 (2020) available at <https://files.hudexchange.info/resources/documents/2019-AHAR-Part-1.pdf>.

³⁹ Harry Howard, *Twenty-two New York bus and subway workers have died from coronavirus and another 1,092 are infected - but the city is STILL running severely reduced and overcrowded services*, DAILY MAIL (Apr. 6, 2020), https://www.dailymail.co.uk/news/article-8191239/Twenty-two-New-York-bus-subway-workers-died-coronavirus-1-092-infected.html?fbclid=IwAR2Rv_ZhPE-sHXtyBCk4wRUVzt0t9tCDbKsfy9SOun-bpk600IWYMY7Io.

⁴⁰ KTVU Staff, *The complete list of California's essential workers*, KTVU (Mar. 23, 2020), <https://www.ktvu.com/news/the-complete-list-of-californias-essential-workers>.

⁴¹ Sarah Bohn, Marisol Cuellar Mejia, & Julien Lafortune, *Essential Workers and COVID-19*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Mar. 31, 2020), <https://www.ppic.org/blog/essential-workers-and-covid-19/>.

⁴² *Id.*

⁴³ California farmworkers face new perils from mask shortage as growers try to roll out other protections, *The Californian*, March 26, 2020, <https://www.thecalifornian.com/story/news/2020/03/26/california-farmworkers-need-face-masks-but-cant-find-them-amid-covid-19-fear-coronavirus/4957564002/>.

⁴⁴ *Id.*

Impact of COVID-19 regarding Language Barriers

According to ProPublica, even in normal times, those who have language barriers or non-English speakers experience worse health outcomes for a range of procedures.⁴⁵ This is being exacerbated across the country and many healthcare providers are concerned that this will leave patients who do not speak English in a much worse position.⁴⁶ Currently, the state is not publicly tracking this information despite the large number of residents who speak languages other than English.

Environmental Racism and COVID-19

Here in California, environmental racism correlates with regions in the state that have the most reported cases of the virus.⁴⁷ Indeed, you recently alluded to the fact that you also understand the regional disparities that exist.⁴⁸ The most recent CalEnviroScreen⁴⁹ demonstrates that these areas nearly mirror the places where there are high rates of COVID.⁵⁰ According to the data, Black and Latinx people are the highest risk of environmental hazards across the state.⁵¹ Native individuals also reside in areas that have disproportionately high rates of pollution.⁵² Without proper data, it is impossible to ensure that there is not a disproportionate effect for people of color.

It's crucial that our state government do everything in its power to ensure equitable access to testing and treatment during this pandemic. We cannot manage what we do not measure.

Impact of COVID-19 on Lesbian, Gay, Bisexual, Transgender, and Queer People, Particularly Those Who Are Transgender, Gender Non-Conforming and Intersex

Lesbian, gay, bisexual, transgender, and queer ("LGBTQ") people, particularly those who are transgender, gender non-conforming or intersex ("TGI"), have experienced systemic bias and discrimination that increase susceptibility to severe harm from COVID-19 and warrant data collection to assess the specific effects of the pandemic on LGBTQ Californians.

⁴⁵ Hospitals Have Left Many COVID-19 Patients Who Don't Speak English Alone, Confused and Without Proper Care, ProPublica, March 31, 2020, <https://www.propublica.org/article/hospitals-have-left-many-covid19-patients-who-dont-speak-english-alone-confused-and-without-proper-care>.

⁴⁶ *Id.*

⁴⁷ California COVID by the Numbers, California Department of Public Health, April 7, 2020, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>.

⁴⁸ California still sifting through racial data to determine coronavirus impacts, Politico, April 7, 2020, <https://www.politico.com/states/california/story/2020/04/07/california-still-sifting-through-racial-data-to-determine-coronavirus-impacts-1273538>.

⁴⁹ CalEnviroScreen 3.0, Office of Environmental Health Hazard Assessment California Environmental Protection Agency, June 2018, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

⁵⁰ Statewide case statistics, California Department of Public Health, April 7, 2020, https://public.tableau.com/views/COVID-19PublicDashboard/Covid-19Public?:embed=y&:display_count=no&:showVizHome=no.

⁵¹ Analysis of Race/Ethnicity, Age, and CalEnviroScreen 3.0 Scores, Office of Environmental Health Hazard Assessment California Environmental Protection Agency, June 2018, <https://oehha.ca.gov/media/downloads/calenviroscreen/document-calenviroscreen/raceageces3analysis.pdf>.

⁵² Analysis of Race/Ethnicity, Age, and CalEnviroScreen 3.0 Scores, Office of Environmental Health Hazard Assessment California Environmental Protection Agency, June 2018, <https://oehha.ca.gov/media/downloads/calenviroscreen/document-calenviroscreen/raceageces3analysis.pdf>.

Societal marginalization, family rejection, and implicit as well as overt bias cause LGBTQ people to experience higher levels of depression, post-traumatic stress disorder, and other mental health problems, as well as suicidality, self-harm, and substance abuse, beginning in adolescence.⁵³ These patterns may result in LGBTQ people being less likely to seek, or to successfully obtain, testing and treatment for COVID-19 symptoms. Relatedly, LGBTQ Americans were experiencing higher levels of social isolation even before the pandemic and associated social distancing measures,⁵⁴ and older LGBTQ people⁵⁵ are especially likely to experience challenges accessing resources and support during this time.

LGBTQ people also suffer the cumulative impacts of longstanding difficulty accessing appropriate health care. Many LGBTQ people have experienced outright denial of care based on their identity, discriminatory treatment or harassment, or lack of cultural competence on the part of a health care provider to whom they turned for diagnosis and treatment.⁵⁶ Some religiously-affiliated health care institutions maintain policies or practices of outright discrimination against LGBTQ people.⁵⁷ Community anxiety about these issues and how they may compound the effects of the COVID-19 crisis has intensified in response to the involvement of Samaritan's Purse, a religiously-affiliated group that maintains an overt policy of excluding volunteers who identify as LGBTQ, in New York City's pandemic response.⁵⁸

People who are LGBTQ are also disproportionately affected by physical health conditions that likely increase their susceptibility to harm from COVID-19. Gay and bisexual men and transgender women, particularly those of color, are disproportionately likely to be living with HIV,⁵⁹ which as a serious underlying health condition heightens the probability that an individual

⁵³ Hudeisa Hafeez *et al.*, "Health Care Disparities Among Lesbian, Gay, Bisexual, and Transgender Youth: A Literature Review." *Cureus* vol. 9,4 e1184. April 20, 2017, <https://doi:10.7759/cureus.1184>.

⁵⁴ See Hafeez, *supra*.

⁵⁵ Charlie Whittington *et al.*, Human Rights Campaign Foundation, *The Lives and Livelihoods of Many in the LGBTQ Community Are At Risk Amidst COVID-19 Crisis*, 20 March 2020, <https://assets2.hrc.org/files/assets/resources/COVID19-IssueBrief-032020-FINAL.pdf>.

⁵⁶ Shabab Ahmed Mirza and Caitlin Rooney, Center for American Progress, *Discrimination Prevents LGBT People from Accessing Health Care*, January 18, 2018, <https://www.americanprogress.org/issues/lgbtq-rights/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>; Human Rights Watch, "You Don't Want Second Best": Anti-LGBT Discrimination in U.S. Health Care, July 23, 2018, <https://www.hrw.org/report/2018/07/23/you-dont-want-second-best/anti-lgbt-discrimination-us-health-care>.

⁵⁷ Movement Advancement Project and National Center for Transgender Equality, *Religious Refusals in Healthcare: A Prescription for Disaster*, March 2018, <https://www.lgbtmap.org/file/Healthcare-Religious-Exemptions.pdf>; Evan Minton, "A Hospital Refused To Provide Me Medically Necessary Surgery Because I am Transgender," February 27, 2020, <https://www.aclu.org/news/lgbt-rights/a-hospital-refused-to-provide-medically-necessary-surgery-because-i-am-transgender/>.

⁵⁸ Bil Browning, "Viciously Anti-LGBTQ Group Runs Central Park Tent Hospital & Forces Volunteers to Reject Gay Rights," *LGBTQ Nation*, March 31, 2020, <https://www.lgbtqnation.com/2020/03/viciously-anti-lgbtq-group-runs-central-park-tent-hospital-forces-volunteers-reject-gay-rights/>; John Riley, "Gay Activist Claims He Was Rejected by Samaritan's Purse Field Hospital for COVID-19 Patients," *Metro Weekly*, April 7, 2020, <https://www.metroweekly.com/2020/04/activist-posing-as-doctor-claims-he-was-rejected-by-samaritans-purse-field-hospital-for-covid-19-patients/>.

⁵⁹ Centers for Disease Control & Prevention, *HIV and Gay and Bisexual Men*, <https://www.cdc.gov/hiv/group/msm/index.html> (accessed April 9, 2020) (noting especially high rates of HIV diagnoses among Black and Latino men who have sex with men); Centers for Disease Control & Prevention, *HIV*

will experience severe illness from COVID-19.⁶⁰ In addition, 37% of LGBTQ Americans report that they smoke cigarettes daily, compared to 27% of other Americans, sparking questions about the potential extent of lung damage from COVID-19 in this community.

In addition, LGBTQ people are systemically economically disadvantaged in ways that may heighten the adverse impacts of COVID-19 on this community. A recent nationwide study found that 17% of LGBTQ people and 23% of LGBTQ people of color lacked any health insurance coverage, compared to 12% of non-LGBTQ Americans.⁶¹ Nationally, 22% of LGBTQ people are living in poverty, compared to 16% of non-LGBTQ Americans.⁶² LGBTQ people are disproportionately unhoused.⁶³ LGBTQ people are also more likely to work in the industries most impacted by the COVID-19 crisis, including health care, food service, retail, and education.⁶⁴

Of particular note and concern, TGI people experience significant barriers in society that have only been exacerbated by COVID-19. As transgender-led advocacy organizations have pointed out in previous correspondence on this topic, due to pervasive and well-documented discrimination in California⁶⁵ and throughout the country, TGI people are especially likely to experience homelessness,⁶⁶ economic instability,⁶⁷ and barriers to accessing health care,⁶⁸ and these challenges are heightened for Black and Brown transgender communities. Though there is little doubt that TGI Californians are disproportionately vulnerable to acquiring COVID-19 and suffering associated harms, without data on gender identity, it will be impossible to assess how they are being impacted, and in turn to craft an appropriate response for their needs.

and Transgender People, <https://www.cdc.gov/hiv/group/gender/transgender/index.html> (accessed April 9, 2020) (noting that especially high percentages of Black and Latina transgender women are living with HIV).

⁶⁰ Centers for Disease Control & Prevention, *What to Know About HIV and COVID-19*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/hiv.html> (accessed April 9, 2020).

⁶¹ Whittington *et al.*, *supra*.

⁶² *Id.*; see also M.V. Lee Badgett *et al.*, UCLA Williams Institute, *LGBT Poverty in the United States*, <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-in-the-united-states/> (accessed April 9, 2020) The poverty rate for cisgender bisexual women is 29%, and the rate for transgender people is also 29%. The poverty rate for Hispanic transgender people is 48%, and the poverty rate for Black LGBQ people is 30.8% relative to 25.3% for Black straight people.

⁶³ National Coalition for the Homeless, *LGBT Homelessness*, <https://nationalhomeless.org/issues/lgbt/> (accessed April 9, 2020).

⁶⁴ Whittington *et al.*, *supra*. 40% of LGBTQ Americans work in one of these sectors compared to 22% of non-LGBTQ people.

⁶⁵ 2015 U.S. Transgender Survey- California State Report (“USTS CA Report”), National Center for Transgender Equality, <https://www.transequality.org/sites/default/files/docs/usts/USTSCAStateReport%281017%29.pdf>.

⁶⁶ *Id.* at 2. 11% of transgender survey respondents in California reported experiencing homelessness in the past year, while 30% reported they had been homeless at some time in their lives.

⁶⁷ National Center for Transgender Equality, “Employment,” <https://transequality.org/issues/employment> (accessed April 9, 2020); USTS CA Report, *supra*, at p. 2. 26% of transgender survey respondents in California who had held or sought a job in the past year reported being fired, denied a promotion, or not hired because of their transgender status, while 22% of California respondents who had held a job in the past year reported other adverse gender-related experiences at work. 15% of respondents were unemployed, and 33% were living in poverty.

⁶⁸ USTS CA Report, *supra*, at p. 3. 33% of transgender survey respondents in California reported having a negative experience while trying to access health care in the preceding year alone, while 25% reported having a problem with insurance coverage for the health care they needed. See also Joshua D. Safer, *et al.*, “Barriers to healthcare for transgender individuals.” *Current opinion in endocrinology, diabetes, and obesity* vol. 23,2 (2016): 168-71. doi:10.1097/MED.0000000000000227; Annie Snow, *et al.*, “Barriers to Mental Health Care for Transgender and Gender-Nonconforming Adults: A Systematic Literature Review,” *Health & Social Work*, Volume 44, Issue 3, August 2019, Pages 149–155, <https://doi.org/10.1093/hsw/hlz016>.

It is important to collect data on both sexual orientation and gender identity in order to understand the impacts of the COVID-19 crisis on LGBTQ Californians and to tailor existing and future policies and programs to the needs of TGI and LGBTQ communities where appropriate.

Ensuring an equitable response to COVID-19 in California

Another key equity issue pertains to the distribution of personal protective equipment, ventilators, and other key equipment needed for critically ill patients across the state. Given the potential for a lack of adequate resources, it is important for the state to focus on equity when determining which hospitals obtain equipment. Distributions must be based on need determined by a consistent, fair, and transparent process, not economic or any other social status. To the extent that need will be determined by testing, the state must ensure that test kits are equitably distributed, considering the ability of people with limited English proficiency to advocate for themselves. Additionally, the state must ensure that it is updating and receiving input from the most impacted communities and community-based organizations regarding its data and analysis of the data regularly. We understand the state is updating communities and receiving input for other critical issues like voting, this should mirror those efforts.

We seek information relevant to the State's plans for distributing equipment. Please provide us with any directives, guidance, or other records pertaining to how any and all state departments⁶⁹ that are monitoring COVID data will make determinations about which hospitals, regions, or people will receive personal protective equipment and ventilators. If necessary, please consider this a public records request. We urge you to gather this information consistent with the California Constitution and other privacy laws.⁷⁰

If you have questions or seek to discuss these matters, please contact Abre' Conner at aconner@aclunc.org or Maya Ingram at mingram@acluca.org.

Thank you for your tireless work to respond to this crisis and for your assistance in helping us and the public better understand the State's response to this crisis. We look forward to your response.

Sincerely,

Abre' Conner, Staff Attorney
ACLU Foundation of Northern California

⁶⁹ Departments is defined here as the Office of the California Surgeon General, California Health and Human Services, California Department of Health Care Services, Covered California, Department of Managed Health Care, California Department of Insurance, California Department of Public Health, California Department of Social Services or any other entities that are involved with data collection and responses for the State of California.

⁷⁰ Any data collected should be anonymized and aggregated to a minimum grouping size to preserve anonymity and privacy. Further, to the extent it is necessary, such data should only be shared with and permitted access to by federal agencies whose primary mission is to protect people from public health crises, and all measures should be taken to prevent the access of such data by any other federal agencies.

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