20-50264

United States Court of Appeals for the Fifth Circuit

IN RE: GREG ABBOTT, in his official capacity as Governor of Texas; KEN PAXTON, in his official capacity as Attorney General of Texas; PHIL WILSON, in his official capacity as Acting Executive Commissioner of the Texas Health and Human Services Commission; STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board; and KATHERINE A. THOMAS, in her official capacity as Executive Director of the Texas Board of Nursing,

Petitioners.

On Petition for a Writ of Mandamus to the United States District Court for the Western District of Texas, Austin Division

BRIEF FOR THE STATES OF NEW YORK, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS, MAINE, MASSACHUSETTS, MINNESOTA, NEVADA, NEW MEXICO, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA, WASHINGTON, AND THE DISTRICT OF COLUMBIA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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Dated: April 2, 2020

CERTIFICATE OF INTERESTED PERSONS
Supplemental Statement of Interested Parties Pursuant to Local Rule 29.2

No. 20-50264

IN RE: GREG ABBOTT, in his official capacity as Governor of Texas; KEN PAXTON, in his official capacity as Attorney General of Texas; PHIL WILSON, in his official capacity as Acting Executive Commissioner of the Texas Health and Human Services Commission; STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board; and KATHERINE A. THOMAS, in her official capacity as Executive Director of the Texas Board of Nursing,

Petitioners.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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INTEREST OF AMICI

Amici are the States of New York, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Massachusetts, Minnesota, Nevada, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia. Amici agree with respondents here that time-sensitive reproductive health care is an essential medical service that should be available to women during the ongoing public health emergency.

Petitioners are wrong in claiming that to respond effectively to the current crisis they must prohibit all abortions prior to fetal viability unless a doctor has made an individualized determination that the abortion is necessary to preserve a woman's life or health. Such a prohibition blocks the exercise of a woman's constitutional right to access abortion while failing to preserve personal protective equipment (PPE), maintain hospital capacity, and prevent COVID-19 transmission.

Many of the abortions prohibited by petitioners do not require PPE, and nearly all do not use hospital resources. From a transmission standpoint, reproductive health clinics staffed by medically knowledgeable personnel who have experience with hygiene protocols are less likely to

contribute to the spread of infectious diseases than many other establishments that petitioners have allowed to continue face-to-face operations during the current crisis. In addition, petitioners' curtailment of abortions will inevitably cause some women to seek those services in other States, thereby increasing the potential for transmission of COVID-19 and for burdening petitioners' hospital facilities and PPE supplies.

A public health crisis should not be used as an excuse to deny women an "ability to control their reproductive lives" and thereby to diminish "[t]he ability of women to participate equally in the economic and social life of the Nation." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992). The harms that petitioners' policies will inflict on women who are prevented from obtaining timely abortions will persist long past the current emergency, and substantially outweigh any at-most incremental advancement of petitioners' asserted interests.

The outcome of this litigation is of significant concern to the amici States in ways that go beyond their general commitment to safeguarding the constitutional right to reproductive self-determination recognized and reaffirmed by the Supreme Court over decades. The current public health emergency has prevented some students, workers, and caregivers

from returning home to the amici States from Texas and other States that similarly have sought to deny access to pre-viability abortions. Amici have an interest in ensuring that those residents can continue to obtain time-sensitive reproductive care. Amici likewise have an interest in the continuing ability of their duly licensed physicians to provide abortion services in other States when those physicians are licensed and otherwise qualified to do so. That reciprocity is of particular importance during a public health emergency, when hard-hit States might otherwise face a shortage of medical providers. For example, New York, which is nearing the peak of its projected COVID-19 hospitalizations, is currently receiving assistance from dual-licensed physicians from other States, on the understanding that those physicians will eventually receive similar assistance from New York colleagues.[1]

Finally, amici have a substantial interest in maintaining the well-settled undue-burden standard that governs review of abortion bans and

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[1] William Feuer et al., *New York Gov. Cuomo Issues Nationwide Call for Doctors and Nurses as State Battles Worst Coronavirus Outbreak in US*, CNBC (Mar. 30, 2020) (internet). (For sources available on the internet, full URLs are available in the Table of Authorities.)

restrictions, and was correctly applied by the district court. A decision of this Court refusing to apply that standard would contravene binding precedent, and trigger burdensome, expensive, and time-sensitive litigation that should be avoidable in a system that respects the rule of law.

POINT I

THE AMICI STATES' EXPERIENCES SHOW THAT MANAGING THE CURRENT PUBLIC HEALTH CRISIS DOES NOT REQUIRE PROHIBITIONS ON ABORTION ACCESS.

The experiences of the amici States demonstrate that the present public health crisis can be addressed effectively without denying access to abortion services. Amici's experiences show that most pre-viability abortions do not use PPE or hospital services, and thus restricting such abortions does not appreciably preserve those resources. In addition, because abortions cannot readily be postponed for weeks or months, and also effectuate the constitutional right to choose to terminate a pregnancy prior to fetal viability, abortions are on a different footing from the types of medical services that can be considered "nonessential." Finally, as amici's experiences establish, there are a range of strategies that States can pursue to slow the transmission of COVID-19 and

alleviate any potential shortages of PPE and hospital beds while still permitting women to receive time-sensitive abortion services.

a. Amici's experiences confirm that most abortions can be effectuated in ways that minimize the use of PPE and hospital resources, and the risks of COVID-19 transmission. The ban at issue here prohibits abortion procedures that are non-surgical, including medication abortions that occur only early in the pregnancy and involve the receipt of medication from the provider with the pregnancy termination occurring at home. (App. 129-130.) Non-surgical abortions do not require the use of hospital beds and the receipt of medication for a medication abortion does not require the use of any PPE. (App. 73.) Abortions involving a medical procedure do use some PPE, though not N95 masks, which are particularly needed to treat COVID-19 patients. (App. 74.)

By allowing timely access to reproductive health services, amici have increased the availability of medication abortions, which can only be performed in the early stages of pregnancy. This has averted more complicated procedures that would have entailed more provider-patient interactions and greater use of PPE. To decrease the transmission risks of reproductive health care, clinics in the amici States have increased the

use of telehealth to conduct assessments, which reduces travel and the number of in-person interactions required.[2]

b. Petitioners' arguments fail to recognize that abortions are on a different footing from the types of medical services that can be considered "nonessential." Abortion access effectuates the constitutional right to choose to terminate a pregnancy prior to fetal viability. Moreover, abortions cannot be postponed for weeks or months without increasing the risks associated with termination, or foreclosing termination altogether.

As a number of the amici States have clarified in their emergency orders or through public guidance, the time-sensitive nature of abortions distinguishes that care from services that can be deferred without patient harm during the current public health crisis. For example, Minnesota has explained that abortions do not qualify as a non-essential procedure "that can be delayed without undue risk to the current or future health of a

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[2] *See* California Health & Human Servs. Agency, Dep't of Health Care Servs., Update to Information on Coronavirus (COVID-19 for Family PACT 2 (Mar. 26, 2020) (internet).

patient."[3] And New Mexico and Washington have also expressly noted that abortions are not among the procedures that qualify as nonessential because abortions cannot be delayed for three months without harm or adverse effects for patient health outcomes.[4]

Others of the amici States have recognized that their requirements to delay nonessential procedures do not apply to time-sensitive abortion care.[5] Oregon, for example, has recognized that abortions are not among the elective and non-urgent procedures that may be delayed without posing a risk of "irreversible harm," including to the patient's physical or

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[3] *See* Minnesota Office of the Governor, Emergency Exec. Order No. 20-09 (Mar. 19, 2020) (internet); New Jersey Office of the Governor, Exec. Order No. 109, at 4 (Mar. 23, 2020) (internet); Minnesota Dep't of Health, FAQ: Executive Order Delaying Elective Medical Procedures (Mar. 25, 2020) (internet).

[4] New Mexico Dep't of Health, Public Health Emergency Order imposing Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; Providing Guidance on those Restrictions; and Requiring a Report from Certain Health Care Providers (Mar. 24, 2020) (internet); Washington Office of the Governor, Proclamation No. 20-24 (Mar. 19, 2020) (internet).

[5] They have done so by not taking steps to curtail abortion services and allowing abortion providers to continue to operate as essential services, and through this brief.

mental health.[6] Illinois and the District of Columbia have recognized that their definition of elective procedures, as services that are not urgent or emergent,[7] does not prohibit abortions. And New York, California, and Vermont have recognized that abortion services are not precluded by their States' requirement that all elective surgeries and procedures be cancelled or rescheduled.[8]

c. As amici's experiences show, there are a range of strategies that States can pursue to slow the transmission of COVID-19 and alleviate any potential shortages of PPE and hospital beds while still permitting women to receive time-sensitive abortion services. New York, which has had the highest number of confirmed cases of COVID-19 and related

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[6] Oregon Office of the Governor, Exec. Order No. 20-10 (Mar. 19, 2020) (internet).

[7] Illinois Dep't of Pub. Health, COVID-19 – Elective Surgical Procedure Guidance (internet) (last visited Apr. 2, 2020); D.C. Health, Recommendations on Limitations of Elective and Non-Urgent Medical and Dental Procedures (Mar. 17, 2020) (internet).

[8] New York Office of the Governor, Exec. Order No. 202.10 (Mar. 23, 2020) (internet), California Dep't of Pub. Health, *Stay home except for essential needs*, California Coronavirus (COVID-19) Response (Mar. 31, 2020) (internet); Vermont Office of the Governor, Exec. Order No. 01-20, add. 3 (Mar. 20, 2020) (internet).

hospitalizations,[9] has taken a multi-step approach to increasing the State's hospital capacity and supply of PPE. New York has approved requests to add more beds to existing facilities, and to create inpatient and examination space in tents, trailers and other temporary structures.[10] Temporary hospital sites are being erected with the assistance of the Army Corps of Engineers at existing non-hospital locations like convention centers.[11] Specialized field hospitals are being built in parks.[12]

New York has also developed a statewide public-private hospital plan allowing hospitals nearing capacity to easily transfer patients to

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[9] *Coronavirus in the U.S. Latest Map and Case Count*, N.Y. Times (internet) (last visited Apr. 2, 2020).

[10] *See* New York Dep't of Health, DHDTC DAL 20-09, Emergency Approvals for COVID-19 (REVISED) (Mar. 19, 2020) (internet).

[11] S*ee* Press Briefing, Governor Andrew M. Cuomo, Amid Ongoing COVID-19 Pandemic, Governor Cuomo Announces Completion of First 1,000-Bed Temporary Hospital at Jacob K. Javits Convention Center (Mar. 27, 2020) (internet).

[12] Anastasia Tsioulcas, *Central Park And Home Of Tennis' U.S. Open To House Hospital Beds For New York*, National Public Radio (Mar. 30, 2020) (internet).

facilities where space is available.[13] The plan addresses the need for PPE by creating a statewide command center and central inventory system that allows public and private hospitals to share supplies, which ensures that the purchasing and distribution of supplies is done strategically and efficiently on a state-wide basis.[14] In addition, New York has made funding available for businesses like clothing companies and distilleries to produce COVID-19 related supplies, and has created channels for companies to contact the State if they can immediately sell or produce PPE, are willing to contract with the State to repurpose their production to produce new supplies of PPE, or possess PPE they can donate.[15]

California has issued specific guidance containing specific recommendations on how "[t]o limit the numbers of exposed health care

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[13] Press Briefing, Governor Andrew M. Cuomo, Amid Ongoing COVID-19 Pandemic, Governor Cuomo Announces Statewide Public-private Hospital Plan to Fight COVID-19 Governor's Press Briefing (Mar. 30, 2020) (internet).

[14] *Id.*

[15] Empire State Development, New York State Needs Your Help Sourcing COVID-19 Products (internet) (last visited Apr. 2, 2020).

workers and conserve PPE supplies."[16] And it has instructed its health care facilities to enact their existing "surge plans" to "create overflow space for screening, triage, isolation, and transfer/discharge, including conversion of outpatient space for inpatient use and using non-patient areas for patient care."[17]

In Colorado, the Governor's Expert Emergency Epidemic Committee is evaluating strategies designed to maximize the use of a limited supply of PPE, and to put in place alternate care sites that will take pressure off of hospital settings.[18] Connecticut has established a PPE logistics center that monitors the need for PPE in health care facilities and serves as the receiving and distribution point for all PPE acquired by the state government.[19] In addition, Connecticut is

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[16] California Dep't of Pub. Health, *COVID-19 Health Care System Mitigation Playbook* 14 (Mar. 2020) (internet).

[17] *Id.* at 9.

[18] John Aguilar, *Colorado Readies Guidelines for Prioritizing Coronavirus Patient Care in Case of Hospital Overload*, Times-Call (Apr. 1, 2020) (internet).

[19] Press Release, Connecticut Governor Ned Lamont, Governor Lamont Provides Update on Connecticut's Coronavirus Response Efforts (Mar. 20, 2020) (internet); Press Release, Connecticut Governor Ned

increasing hospital bed availability by adding overflow locations and mobile hospitals, and by establishing COVID-19 only nursing homes for the care of less acute COVID-19 patients.[20]

Delaware has required all hospitals, nursing and residential facilities, and ambulatory health care services to comply with state-level guidance regarding the use of PPE,[21] in order to optimize the use of N95 respirators, facemasks, isolation gowns, and eye protection.[22] Hawaii is increasing hospital capacity through repurposing space in hospitals, contracting with hotels to use them for additional hospital space, and

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Lamont, Governor Lamont Provides Update on Connecticut's Coronavirus Response Efforts (Apr. 1, 2020) (internet).

[20] Dave Altimari, *State releases plan to move sick nursing home patients to COVID-19 facilities*, Hartford Courant (Apr. 1, 2020) (internet).

[21] *See* Delaware Office of the Governor, Eighth Modification: State of Emergency Declaration (Mar. 30, 2020) (internet).[22] Delaware Dep't of Health & Soc. Servs., Health Alert Notifications 2020 (internet) (see DHAN #427 (N95 respirators), DHAN #426 (facemasks), DHAN #425 (isolation gowns), and DHAN #424 (eye protection)).

[22] Delaware Dep't of Health & Soc. Servs., Health Alert Notifications 2020 (internet) (see DHAN #427 (N95 respirators), DHAN #426 (facemasks), DHAN #425 (isolation gowns), and DHAN #424 (eye protection)).

developing plans to construct additional spaces in existing government facilities.[23]

In Illinois. the Illinois National Guard and the U.S. Army Corps of Engineers are converting a convention center into a field hospital that will offer up to 3,000 beds for COVID-19 patients. The State is also creating temporary bed capacity for COVID-19 patients at two formerly closed hospitals.[24]

Massachusetts is obtaining PPE through new avenues and allocating it according to CDC prioritization and use guidelines.[25] To increase beds for COVID-19 patients, Massachusetts is permitting

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[23] Allyson Blair, *State Takes Inventory of Hospital Beds and Eyes Alternative Facilities*, Hawaii News Now (Mar. 26, 2020) (internet).

[24] Illinois Office of the Governor, *Governor Pritzker and Mayor Lightfoot Announce Plans For 3,000-Bed Alternate care Setting at McCormick Place to Treat COVID-19 Patients*, Illinois.gov (Mar. 30, 2020) (internet).

[25] Massachusetts Dep't of Pub. Health & Mass. Emergency Mgmt. Agency, *Guidance on Optimization of PPE in the Commonwealth of Massachusetts* (Mar. 22, 2020).

hospitals to use alternative acute inpatient care space for such patients.[26] Finally, to enlarge the State's available medical staff, Massachusetts has ordered hospitals to implement expedited credentialing procedures and exchange of clinical staff between facilities,[27] and has further ordered that out-of-state-licensed and formerly licensed medical professionals can obtain licenses in Massachusetts during the pendency of the crisis.[28]

Minnesota has required business, nonprofits, and non-hospital health care facilities to inventory their PPE and other crucial medical devices, and either donate those to a local coordinating entity, or be subject to a request to donate or sell those for use by critical health care

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[26] Mem. from Elizabeth Kelley, Dir., Mass. Bureau of Health Care Safety & Quality, to Mass. Licensed Hospital Chief Exec. Officers (Mar. 22, 2020).

[27] Massachusetts Dep't of Pub. Health, *Order of the Commissioner of Public Health Implementing Emergency Credentialing and Licensed Staff Transfer Procedures for Medical Facilities in the Commonwealth* (Mar. 17, 2020) (internet). Nevada Office of the Governor, Declaration of Emergency Directive No. 011 (Apr. 1, 2020) (internet) (allowing credentialing of out-of-state medical professionals); New Mexico Office of the Governor, Exec. Order No. 2020-004 (Mar. 11, 2020) (internet).

[28] Mass. Dep't of Pub. Health, *Order of the Commissioner of Public Health Maximizing Health Care Provider Availability* (March 29, 2020) (internet).

workers.[29] New Mexico has similarly required the inventorying of PPE in the State and imposed limits on its distribution. And New Mexico is increasing hospital capacity as well.[30]

Rhode Island has expanded efforts to secure PPE, and is working to set up field hospitals to add an additional 2,000 hospital beds ahead of a future surge in acute infections.[31] Oregon has developed a mobile hospital space and facilitated an agreement among the major hospitals in the Portland area to work as a unified system under centralized coordination to ensure that PPE and hospital beds are available where and when needed.[32] Virginia has prepared for a need to increase hospital

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[29] Minnesota Office of the Governor, Emergency Exec. Order No. 20-16 (Mar. 23, 2020) (internet).

[30] New Mexico Dep't of Health, Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19 (Mar. 24, 2020) (internet).

[31] Associated Press, *Rhode Island Counts 10 Total Virus Deaths, Nearly 600 Cases*, U.S. News (Apr. 1, 2020) (internet).

[32] Oregon Health Auth., *Oregon reports 13 new COVID-19 cases; state prepares Oregon Medical Station* (Mar. 19, 2020) (internet); *see Oregon releases health care system action plan to fight COVID-19*, The News Guard (Mar. 30, 2020) (internet).

capacity by allowing hospitals to add beds without going through the State's ordinary certificate-of-public-need and licensure requirements.[33]

Amici have also utilized orders limiting outdoor movement and social activities as a way to prevent COVID-19 transmission and the virus's associated burdens on PPE and hospital capacity. Although Texas recently issued such a limiting order, it still allows numerous face-to-face interactions that almost certainly present an as-great if not far-greater risk of COVID-19 transmission than the provision of abortion services by medically knowledgeable personnel with experience of hygiene protocols.[34]

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[33] *See* Virginia Office of the Governor, Exec. Order No. 52 (Mar. 20, 2020) (internet).

[34] *Compare* Texas Office of the Governor, Exec. Order No. GA-14 (Mar. 31, 2020) (internet) *with* New York State on Pause, 10 Point Plan.

POINT II

MANDAMUS SHOULD BE DENIED BECAUSE THE DISTRICT COURT DID NOT COMMIT INDISPUTABLE ERROR

Mandamus "is a drastic and extraordinary remedy reserved for" truly "exceptional circumstances amounting to a judicial usurpation of power, or a clear abuse of discretion." *Cheney v United States Dist. Court for Dist. of Columbia*, 542 U.S. 367, 380 (2004) (quotation marks and citation omitted).Petitioners do not qualify for that relief here because, among other things, they cannot show that the district court indisputably erred when it evaluated petitioners' abortion ban under well-established and binding precedent and concluded that respondents were both substantially likely to succeed on the merits and threatened with irreparable harm.

The Supreme Court has repeatedly reaffirmed that "[b]efore viability, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy." *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007) (quotation marks omitted); *see also Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2309-10 (2016). As demonstrated by the long list of decisions cited by respondents, "attempts to ban abortion prior to

viability have been uniformly rejected by courts across the country and by the Fifth Circuit." (App. 57-58.)

As the district court correctly found and, as the state petitioners concede, petitioners are claiming an ability to prohibit nearly all pre-viability abortions in Texas during the term of the emergency order, which may last many months. (App. 268-269.) *See* Mandamus Pet. at 15, 17. The district court did not indisputably err in applying to these facts the settled law holding that a ban on access to pre-viability abortions is invalid.

Although petitioners assert that this prohibition is needed to conserve public health resources, the Supreme Court has explained repeatedly that even a measure furthering a valid state interest "cannot be considered a permissible means of serving its legitimate ends" if it "has the effect of placing a substantial obstacle in the path of a woman's choice." *Casey*, 505 U.S. at 877 (plurality op.); *Whole Woman's Health*, 136 S. Ct. at 2309. And the Court has made clear that an abortion restriction cannot survive constitutional scrutiny when it imposes greater burdens than benefits, no matter how slightly the scale tips in favor of the burdens. *See Whole Woman's Health*, 136 S. Ct. at 2310.

The services that petitioners have banned include medication abortions that require no PPE and present an exceedingly low likelihood of a need for further medical intervention or inpatient treatment. Prohibiting these services does not advance petitioners' asserted interest in preserving PPE and hospital capacity. Nor does it sufficiently advance petitioners' asserted interest in preventing the transmission of COVID-19, as petitioners must show to demonstrate that the burdens they are imposing on abortion access are not "undue," *Whole Women's Health*, 136 S. Ct. at 2309; *see also Stenberg v. Carhart*, 530 U.S. 914, 921 (2000); *Casey*, 505 U.S. at 887-901 (plurality op.).

The ready availability of other more effective anti-transmission measures highlights the extent to which petitioners' abortion ban is unnecessary to advance the State's asserted interest in protecting the public health. *See Whole Woman's Health*, 136 S. Ct. at 2311. Indeed, petitioners' abortion ban is likely to encourage interstate travel that increases the risks of COVID-19 transmission, and the attendant likelihood of burdens on petitioners' hospital facilities and PPE supplies. As petitioners have acknowledged, over 53,000 women obtained abortions in Texas in 2017. (Mandamus Pet. 17). The amici States' past

experience and the current record evidence shows that if abortions remain unavailable in Texas, many similarly situated women will cross state lines to obtain abortions—and indeed, some already have.[35]

Petitioners and their amici are incorrect in claiming that public necessity justifies their proposed abortion ban. They mistakenly rely on cases involving physical property or commercial interests, Mandamus Pet. at 12, that have no import here, where a personal liberty interest and right to bodily integrity are at issue. Nor are petitioners aided by *Jacobson v Massachusetts*, 197 U.S. 11 (1905), which rejected a challenge to a mandatory vaccination requirement in the context of a small pox outbreak.

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[35] Molly Hennessy-Fiske, *Crossing the 'abortion desert': Women increasingly travel out of their states for the procedure*, L.A. Times (June 2, 2016) (internet); Alexa Garcia-Ditta, *With More Texans Traveling for Abortions, Meet the Woman Who Gets Them There*, Texas Observer (June 9, 2016) (internet) (Texas patients in New Mexico doubled after 2013 Texas law restricting access, and half of patients at Las Cruces clinic come from Texas); *see also* Jonathan Bearak, et al., *COVID-19 Abortion Bans Would Greatly Increase Driving Distances for Those Seeking Care*, Guttmacher Institute (Apr. 2, 2020) (internet)

Petitioners misplace their reliance on *Jacobson*'s statements that liberty interests may be subject to "reasonable regulation" to protect the public health. *Id.* at 25-26, 29-30. As the Court recognized there, where an exercise of the police power is "in particular circumstances and in reference to particular persons in such an arbitrary, unreasonable manner," the courts should intervene to protect individuals subject to the restriction. *Id.* at 28, 38. The district court correctly did so here, in light of the fundamental constitutional right to access abortion services at issue.[36]

[36] Petitioners' amici derive no support from *Hickox v Christie*, 205 F. Supp. 3d 579 (D.N.J. 2016), a readily distinguishable case involving a challenge to the temporary quarantine of an individual at risk of exposure to Ebola. The *Hickox* plaintiff's interest in not being subjected to a limited period of detention, *id.*, is not comparable to the permanent consequences faced by respondents' patients.

CONCLUSION

For the reasons set forth above and in respondents' opposition, this Court should deny the petition for a writ of mandamus.

Dated: New York, New York
April 2, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, William P. Ford, an employee in the Office of the Attorney General of the State of New York, hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 3,861 words and complies with the typeface requirements and length limits of Rules 21(d), 29, and 32(a)(5)-(7), and the corresponding local rules.

/s/ *William P. Ford*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Court's CM/ECF system on April 2, 2020. I certify that all parties and counsel of record in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 2, 2020
New York, NY

/s/ Anisha S. Dasgupta