

No. 20-5408

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ADAMS & BOYLE, P.C., on behalf of itself and its patients;
MEMPHIS CENTER FOR REPRODUCTIVE HEALTH, on behalf of
itself and its patients; PLANNED PARENTHOOD GREATER
MEMPHIS REGION; PLANNED PARENTHOOD OF TENNESSEE
AND NORTH MISSISSIPPI, fka Planned Parenthood of Middle and
East Tennessee; DR. KIMBERLY LOONEY,

Plaintiffs-Appellees,

v.

HERBERT H. SLATERY, III, Attorney General of Tennessee;
GLENN R. FUNK, District Attorney General of Nashville; AMY P.
WEIRICH, District Attorney General of Shelby County; BARRY P.
STAUBUS, District Attorney General of Sullivan County; CHARME
P. ALLEN; LISA PIERCEY, M.D.; W. REEVES JOHNSON, JR.,
M.D.; WILLIAM BYRON LEE, Governor; RENE SAUNDERS,
M.D., in their official capacities,

Defendants-Appellants.

**Motion of the States of New York, California, Colorado,
Connecticut, Delaware, Hawai'i, Illinois, Maine, Massachusetts,
Minnesota, Nevada, New Mexico, Oregon, Pennsylvania,
Rhode Island, Vermont, Virginia, and Washington, and the
District of Columbia to Submit a Brief as Amici Curiae in
Support of Appellees and in Opposition to Appellants'
Application for a Stay**

The States of New York, California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Massachusetts, Minnesota, Nevada, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, and the District of Columbia move this Court for leave to file the enclosed brief, as amicus curiae in opposition to appellants' application for a stay pending appeal of the district court's April 17, 2020 opinion and order granting appellees' motion for a preliminary injunction.¹ The brief includes material that is "relevant to the disposition" of the stay application, and which would be "desirable" for the Court to consider. Fed. R. App. P. 29(a)(3)(B).

The brief describes, through amici's own experiences, how the present public health crisis can be addressed effectively without denying access to abortion services. Amici explain how they have been able to permit abortions to continue while still conserving personal protective equipment and minimizing interpersonal contacts. Amici also explain the

¹ While a State is permitted to file an amicus brief without the parties' consent or permission of the Court during the "consideration of a case on the merits," Fed. R. App. P. 29(a)(1)-(2), that Rule does not expressly permit a State to file an amicus brief during the Court's consideration of a motion. Accordingly, in an abundance of caution, amici States move for leave to file an amicus brief in opposition to appellants' stay request.

other strategies available to alleviate potential shortages of public health resources, and how they have successfully pursued those strategies.

The outcome of this litigation is of significant concern to amici 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 Tennessee 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.

The proposed brief complies with the type-volume limitations for an amicus brief on a motion because it uses fewer than half of the 5,200 words permitted for a motion or response. *See* Fed. R. App. P. 27(d)(2(A); *id.* 29(a)(5).

CONCLUSION

The Court should grant amici curiae leave to file the enclosed brief in support of plaintiffs-appellees and in opposition to defendants-appellants' stay application.

Dated: April 23, 2020
Albany, New York

/s/ Laura Etlinger
LAURA ETLINGER

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 27 and 32 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 document, the document contains 316 words and complies with the typeface requirements and length limits of Rules 27(d) and 32(a)(5)-(6).

/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 23, 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 23, 2020
Albany, NY

/s/ Laura Etlinger