



Written by [Raven Clabough](#) on April 30, 2020

Doctors, Residents Sue Minnesota for Allowing Elective Abortions During Pandemic

A group of doctors and residents in Minnesota have sued the state and several of the state's abortion providers, demanding they stop performing surgical abortions during the COVID-19 pandemic, asserting elective surgical abortions are "non-essential."



According to Life News, the [complaint](#) was filed on Tuesday by multiple doctors and nurses, as well as the AALFA Family Clinic, the American Association of Pro-Life Obstetricians and Gynecologists, Pro-Life Action Ministries, and several concerned individuals. It lists Governor Tim Walz, Commissioner for the Minnesota Department of Health Jan Malcolm, and four abortion providers as defendants in the suit. The plaintiffs are represented by the Thomas More Society, a not-for-profit national public-interest law group that seeks to restore legal respect for life, liberty, and family.

Though Governor Walz issued an executive order on March 19 to stop all "non-essential or elective" surgeries to conserve the limited available personal protective equipment (PPE), the state Department of Health has refused to enforce the order against abortion providers and Governor Walz has "deferred" to the department's decision. Abortion clinics have also been exempted from Governor Walz's March 25 [stay-at-home order and social-distancing guidelines](#), stating the "work duties" related to "reproductive health care" cannot be performed at employees' homes or place of residence.

The complaint contends that medication abortions will require significantly less PPE than surgical abortions, and that under the executive order as it is [written](#), surgical abortions "cannot qualify as an 'essential' surgery when medication abortion can be used to achieve the same result." The providers cited in the suit continue to enable patients to select surgical abortions despite the state's efforts to conserve PPE. The complaint states several of the doctors listed as plaintiffs in the suit rely on the availability of PPE to provide "medically necessary healthcare during this time of worldwide shortage" and that their lives are threatened by the use of this equipment by abortion providers, which serves to further contribute to scarcity.

"Not only is the governor's action in allowing elective surgical abortion dangerously unsafe," explained Thomas More Society Special Counsel Erick Kaardal, "but critically and irresponsibly wasteful. These elective abortion procedures take personal protective equipment away from hospitals, clinics,



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emergency rooms, doctors, nurses, and others on the frontlines of trying to stop the spread of the deadly coronavirus.”

The lawsuit contends the state’s failure to enforce the prohibition against elective surgeries when it comes to abortions and the state’s refusal to enforce stay-at-home orders against abortion providers is not only prolonging the crisis, failing to protect residents, and failing to conserve necessary equipment and resources, but it violates the constitutional rights of its citizens by picking and choosing how the law is applied and against whom.

“In an effort to enforce social distancing, Governor Walz has issued stay-at-home orders that prohibit Minnesotans from exercising their constitutional rights to peaceably assemble and attend church services.... Yet the Governor’s orders refuse to subordinate any aspect of the right to abortion to social-distancing requirements, and they are allowing abortion clinics to continue performing surgical abortions even though medication abortion requires less patient contact with clinic staff and less patient time at the clinic,” the complaint reads.

Plaintiff Peter J. Daly, for example, is an orthopedic doctor who has been forced to stop all elective surgeries under the state’s executive order, forcing him to furlough 90 percent of his employees without pay. The complaint asserts the governor’s order to force certain elective surgeries to cease while allowing elective abortions to take place unfettered is discriminatory. Other plaintiffs are suing because they believe the law is being discriminatorily applied by restricting them from attending church services while allowing abortion providers to continue to skirt social-distancing requirements.

As such, the lawsuit accuses the defendants of violating the Equal Protection Clause by exempting abortion providers from the state’s COVID-19 prevention protocol.

“The State’s decision to give special dispensations to abortion providers when other elective surgeries and fundamental constitutional rights have been suspended violates the Equal Protection Clause, by infringing fundamental rights without precisely tailoring those restrictions to the State’s admittedly compelling interest in preventing the spread of COVID-19,” the complaint reads. “A State may curtail the exercise of constitutional rights to prevent the spread of a deadly pandemic, but it cannot give special status to politically favored rights such as abortion when rights that actually appear in the Constitution — such as the right to the free exercise of the religion and the right of the people to peaceably assemble — are being subordinated to the State’s COVID-19 prevention measures.”

Beyond Equal Protection Clause violations, the lawsuit asserts abortion is not a constitutionally protected right as “there is nothing in the language of the Constitution that even remotely suggests that women have a constitutional right to abort their fetuses.”

“The Constitution makes no allowance for the Supreme Court to invent or impose constitutional ‘rights’ that have no grounding in constitutional text or historical practice,” the complaint reads.

The suit asks the court to enjoin Walz and Malcom from enforcing the state’s COVID-19 executive orders and any future orders that continue to restrict elective surgeries, regulate the use of PPE, or impose social-distancing requirements “unless and until those orders are amended or reinterpreted to prohibit surgical abortions except for patients who are contraindicated for medication abortion, or for patients who were unable to schedule and obtain a medication abortion during the time in which medication abortion is legally available in Minnesota.”

The suit also asks the court to enjoin the defendant abortion clinics from continuing to perform surgical abortions except for the aforementioned exceptions.



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It also seeks compensatory damages, costs, and attorneys' fees for the plaintiffs.

Minnesota's *Post Bulletin* observes the lawsuit is not the first effort to discontinue elective abortions during the pandemic. In March, Minnesota Citizens Concerned for Life made similar arguments to those outlined in the complaint, while the Minnesota Family Council CEO John Helmberger sent a [letter](#) to the U.S. Department of Health and Human Services urging public officials to use "broad emergency authority to safeguard against the extreme abortion agenda" during the coronavirus crisis.



Raven Clabough acquired her bachelor's and master's degrees in English at the University of Albany in upstate New York. She currently lives in Pennsylvania and has been a writer for The New American since 2010.



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