

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

LITTLE ROCK FAMILY PLANNING SERVICES, et
al.,

Plaintiffs,

v.

LESLIE RUTLEDGE, in her official capacity as
Attorney General of the State of Arkansas, et al.,

Defendants.

CIVIL ACTION

Case No. 4:19-cv-00449-KGB

**PLAINTIFFS LITTLE ROCK FAMILY
PLANNING SERVICES AND DR.
THOMAS TVEDTEN'S STATUS
REPORT**

Plaintiffs LRFP and Dr. Tvedten (together, the “LRFP Plaintiffs”) respectfully submit this Status Report to inform the Court of developments relating to their pending (i) April 13, 2020 preliminary-injunction motion (the “First PI Motion”), and (ii) April 22, 2020 motion for an *ex parte* temporary restraining order and/or preliminary injunction (the “Second TRO/PI Motion”).

Plaintiffs’ Existing Constitutional Challenge. Plaintiffs’ First PI Motion seeks an order enjoining enforcement of Executive Order 20-13, the April 3, 2020 Arkansas Department of Health (“ADH”) Directive (the “April 3 Directive”), and the April 10, 2020 Cease and Desist Order (“the C&D Order”) to bar pre-viability access to surgical abortion care in the State. *See* Dkt. 134. Plaintiffs’ Second TRO/PI Motion, filed last night, seeks narrower emergency relief enjoining Defendants from enforcing the existing prohibition on surgical abortions against patients who would be beyond the legal limit for abortion care (21.6 weeks LMP) by the time Executive Order 20-13 expires. *See* Dkt. 164.

Recent Announcements by the Governor and ADH. During a press conference yesterday afternoon, Governor Hutchinson and ADH’s Dr. Nathaniel Smith announced that ADH will release today a Directive that will (i) replace the April 3 Directive, and (ii) be effective April 27, 2020.¹ During the press conference—and despite Defendants’ statement to this Court as recently as Tuesday, April 21 that a ban on surgical abortions is necessary in view of PPE-related “concern[s],” Dkt. 153—the Governor stated that Arkansas now feels “comfortable” with its PPE supply.² And—again, contrary to Defendants’ statements earlier this week that surgical abortion care must be banned in view of an urgent need to reduce social contacts, Dkt. 153—the

¹ *See, e.g.,* John Moritz, *State Cases at 2,276: Hospitals to Resume Elective Surgeries*, Arkansas Democrat Gazette (Apr. 22, 2020), <https://www.arkansasonline.com/news/2020/apr/22/watch-live-gov-state-health-officials-give-130-pm-/>.

² *Id.*

Governor also previewed announcements coming next week regarding the re-opening of restaurants, gyms, beauty salons, and barbers.³ Plaintiffs have yet to review the April 27 Directive, and it is unclear whether and to what extent the C&D Order will continue.

Status of the First PI Motion. Plaintiffs intend to promptly assess the impact of the anticipated April 27 Directive on their First PI Motion, and are cognizant of the potential for a new Directive to necessitate a supplementation or withdrawal of the First PI Motion, or an amended constitutional challenge. Plaintiffs do not want to waste the time and resources of the Court, parties, or witnesses by taking live testimony at the evidentiary hearing scheduled for tomorrow, April 24, 2020, that could be mooted within a matter of days by the new, April 27 Directive. Plaintiffs therefore respectfully request that the Court cancel the hearing in view of the current uncertainty, and Plaintiffs will notify the Court next week regarding their intent relating to the First PI Motion. In requesting that the hearing be canceled, Plaintiffs expressly reserve the right to seek to schedule an evidentiary hearing at a future date in connection with any supplemented or revised First PI Motion, or any amended constitutional challenge.

Plaintiffs' Intent With Regard to the Second TRO/PI Motion. Plaintiffs respectfully continue to seek emergency relief with regard to the April 3 Directive for patients who will be pushed past the legal limit for abortion care in Arkansas by the current Order. As explained in the Second TRO/PI motion, Plaintiffs are scheduled to treat two women *today* who will soon be past the legal limit for abortion care in this State, and are irreparably harmed every day that the Ban on surgical abortion care is enforced.

³ *Id.*

Dated: April 23, 2020

Respectfully submitted,

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** Motion for admission pro hac vice
granted*

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