

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

LITTLE ROCK FAMILY PLANNING SERVICES, *et al.*

PLAINTIFFS

v.

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

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

DEFENDANTS

ORDER

On April 13, 2020, separate plaintiffs Little Rock Family Planning Services (“LRFP”) and Thomas Tvedten, M.D., on behalf of himself and his patients (collectively, the “Supplemental Complaint Plaintiffs”) filed a motion for an *ex parte* temporary restraining order and/or preliminary injunction (Dkt. No. 134). The Court set a briefing schedule and scheduled an evidentiary hearing on the Supplemental Complaint Plaintiffs’ motion for an *ex parte* temporary restraining order and/or preliminary injunction (Dkt. Nos. 147, 152). Defendants filed a response in opposition on April 21, 2020 (Dkt. No. 153).

The next day, on April 22, 2020, the Supplemental Complaint Plaintiffs filed a second motion for an *ex parte* temporary restraining order and/or preliminary injunction (Dkt. No. 164). Also on April 22, 2020, Arkansas Governor Asa Hutchinson and the Arkansas Department of Health (“ADH”) Director and State Health Officer Nathaniel Smith, M.D., announced that a new ADH Directive would be released that would replace the April 3, 2020, ADH Directive on Elective Surgeries (the “April 3 ADH Directive”) and be effective April 27, 2020 (Dkt. No. 166, at 2). That new April 27, 2020, ADH Directive on Resuming Elective Procedures (the “April 27 ADH Directive”), which, by its terms, references the April 3 ADH Directive, was released the morning of April 24, 2020, but did not take effect until April 27, 2020 (Dkt. No. 169-1).

On April 23, 2020, all parties informed the Court that they agreed that the Court should cancel the scheduled April 24, 2020, evidentiary hearing, given the circumstances (Dkt. No. 166), and the Court canceled that hearing and set a briefing schedule on the Supplemental Complaint Plaintiffs' second motion for an *ex parte* temporary restraining order and/or preliminary injunction (Dkt. No. 167). Defendants filed a response in opposition to the second motion for an *ex parte* temporary restraining order and/or preliminary injunction on April 27, 2020 (Dkt. No. 168). The Supplemental Complaint Plaintiffs' reply is due at 9:30 a.m. on April 28, 2020 (Dkt. No. 167, at 3).

On April 27, 2020, the Supplemental Complaint Plaintiffs filed a status report with the Court in which they indicated that they "have asked the ADH to confirm that ADH has withdrawn its April 10, 2020 Cease and Desist Order to LRFP, which provided that no surgical abortion care could occur unless 'immediately necessary to protect the life or health of the patient,'" but that "ADH has not yet responded." (Dkt. No. 169, at 2 (citation omitted)). The Supplemental Complaint Plaintiffs also indicated that they "are . . . working diligently to assess their ability to comply with all aspects of the April 27 Directive, including the . . . rapid-testing component." (*Id.*) To that end, the Supplemental Complaint Plaintiffs request that the Court "re-open the record" of their April 13, 2020, motion for a preliminary injunction "and set an expedited reply and sur-reply briefing schedule" (*Id.*, at 4). Specifically, the Supplemental Complaint Plaintiffs request until 9:30 a.m. CT on Thursday, April 30, 2020, to submit their reply brief.

The Court on its own motion construes this portion of the Supplemental Complaint Plaintiffs' April 27, 2020, status report as a request to stay briefing on their second motion for a preliminary injunction and/or temporary restraining order, and the Court grants the request. The Court will not require the Supplemental Complaint Plaintiffs to file a reply in support of their

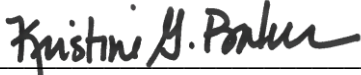
second motion for a temporary restraining order and/or preliminary injunction by Tuesday, April 28, 2020.

The Court understands that the Supplemental Complaint Plaintiffs continue to assess their ability to comply with the April 27 ADH Directive, which, by its terms, references the April 3 ADH Directive. At this time, the Court will not take action with respect to either the first or second motion filed by the Supplemental Complaint Plaintiffs, except to stay the Supplemental Complaint Plaintiffs' deadline to file a reply in support of their second motion for a temporary restraining order and/or preliminary injunction. The parties appear to be conferring to work toward resolution of these matters, given the changing circumstances.

The Court has under advisement these matters and will take them up again if and when the Supplemental Complaint Plaintiffs renew their first or second request for a temporary restraining order and/or preliminary injunction or file a new request for preliminary injunctive relief.

The Court continues to hold under advisement all issues raised in the parties' filings and in this Order.

It is so ordered this 28th day of April, 2020.



Kristine G. Baker
United States District Judge