

**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' MOTION FOR EX PARTE
TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

Plaintiffs Little Rock Family Planning Services (“LRFP”) and Dr. Thomas Tvedten, on behalf of themselves and their patients, hereby move the Court under Federal Rule of Civil Procedure 65 for an *ex parte* temporary restraining order and/or preliminary injunction restraining Defendants from enforcing the Arkansas Department of Health’s April 3 and 27, 2020 Directives to the extent that they would prevent patients from obtaining surgical abortion care in Arkansas at all times before the 21.6-week-LMP legal limit. Violation of the Directives carries criminal, financial, and licensure penalties, and each day a person or business operates in violation of the guidance would constitute a separate offense.¹

The issuance of a temporary restraining order without a hearing and without notice to Defendants or providing them an opportunity to respond is warranted. First, Plaintiffs have set forth specific facts in the Supplemental Complaint (and the contemporaneously filed proposed Substituted Supplemental Complaint) and in sworn declarations, attached hereto, clearly showing that immediate and irreparable injury, loss, or damage will result to Plaintiffs’ patients before Defendants can be heard in opposition. If the Directives are enforced against them, three of the women identified in Plaintiffs’ declarations will be forced to carry their pregnancies to term against their will, attempt self-managed abortions, or—in the midst of a pandemic—assume the substantial burdens associated with attempting to travel to another State to exercise their constitutional right to access pre-viability abortion care. That is a quintessential example of immediate and irreparable harm. *See Fed. R. Civ. P. 65(b)(1)(A); see also Zaxby’s Franchising, LLC v. MJM Foods, LLC*, 2016 WL 3024074, at *1 (E.D. Ark. May 25, 2016) (granting *ex parte*

¹ *See Ark. Code § 20-7-101*; Executive Order to Amend Executive Order 20-03 Regarding the Public Health Emergency Concerning COVID-19 for the Purpose of Imposing Further Restrictions to Prevent the Spread of COVID-19, EO 20-13, § 2(a) (Apr. 4, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-13._.pdf.

temporary restraining order to prevent customer confusion before restaurant trademark dispute could be resolved); *Tempur-Pedic Int'l, Inc. v. Waste To Charity, Inc.*, [2007 WL 535041](#), at *5 (W.D. Ark. Feb. 16, 2007) (granting *ex parte* temporary restraining order to prevent the movement or destruction of mattresses).

Second, Plaintiffs attempted to contact counsel for Defendants on May 1, 2020, to resolve this matter without litigation, and expressly informed Defendants that Plaintiffs would be seeking emergency relief if the matter could not otherwise be resolved. These efforts to resolve the matter have been unsuccessful. *See* Godesky Decl. ¶ 3. This is more than sufficient to satisfy Plaintiffs' obligations to give notice and, given the threat of imminent and irreparable harm, no further notice should be required. *See* [Fed. R. Civ. P. 65\(b\)\(1\)\(B\)](#); *see also, e.g., GE Commercial Distribution Fin. Corp. v. Crabtree RV Ctr., Inc.*, [2009 WL 10707170](#), at *3–4 (W.D. Ark. Apr. 3, 2009) (granting *ex parte* temporary restraining order to protect interest in recreational vehicles even where “no efforts have been made to give notice to the Defendant,” given the threat of imminent and irreparable harm) (emphasis added); *Ellis v. Jackson Nat'l Life Ins. Co.*, No. 2:11-CV-1064-WKW, [2011 WL 6300608](#), at *1–2 (M.D. Ala. Dec. 15, 2011) (finding single phone call to nonmovant's counsel sufficient to grant *ex parte* temporary restraining order).

As more fully explained in the accompanying brief, Plaintiffs satisfy the remaining requirements for a temporary restraining order and a subsequent preliminary injunction because (i) Plaintiffs are likely to succeed on the merits of their claims that the Directives violate the constitutional rights of Plaintiffs and their patients; (ii) the balance of equities tips strongly in favor of Plaintiffs and their patients; and (iii) the public interest will be served by a temporary restraining order and/or an injunction. Plaintiffs further request that, given the nature of the relief sought and Plaintiffs' limited means, bond be waived should the Court grant injunctive relief.

This Motion is based upon the Supplemental Complaint filed in this case, the exhibits to that Complaint, the brief filed herewith, and the following documents:

1. Attached as **Exhibit 1** is a true and accurate copy of the declaration of Jane Doe 1.
2. Attached as **Exhibit 2** is a true and accurate copy of the declaration of Jane Doe 2.
3. Attached as **Exhibit 3** is a true and accurate copy of the declaration of Jane Doe 3.
4. Attached as **Exhibit 4** is a true and accurate copy of declaration of Jane Doe 4.
5. Attached as **Exhibit 5** is a true and accurate copy of the declaration of Lori Williams.
6. Attached as **Exhibit 6** is a true and accurate copy of the declaration of Alison Stuebe.
7. Attached as **Exhibit 7** is a true and accurate copy of the declaration of Leah Godesky.

Dated: May 1, 2020

Respectfully submitted,

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** Motion for admission pro hac vice
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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
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LITTLE ROCK FAMILY PLANNING SERVICES, et
al.,

Plaintiffs,

v.

LESLIE RUTLEDGE, et al.,

Defendants.

CIVIL ACTION

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

**Declaration of Patient Jane Doe 1 in Support of Plaintiffs' Motion for Temporary
Injunction Order and Preliminary Injunction**

I, Jane Doe 1,¹ declare and state:

1. I am in my mid-20s and a resident of the State of Louisiana.
2. On April 28, 2020, at approximately 21 weeks into my pregnancy, I attempted to obtain a surgical abortion at Little Rock Family Planning ("LRFP"). At the clinic, Lori Williams told me that Arkansas requires women who want a surgical abortion to get tested for COVID-19 and receive a negative test result within 48 hours of the surgery. I was surprised, because I have been quarantining at home, I have no symptoms of COVID, and I have not come into contact with anyone who has COVID. The only place I have been in the past two months, other than my apartment and to seek an abortion, is to visit my mother, who lives in the same town as me and sometimes watches my children. I have not been to the grocery store or anywhere else, and have been very careful so I do not contract COVID.
3. I found out that I was pregnant around the end of January. I knew that I did not want to have another baby. I already have two children, and my youngest was just born in September 2019. After I had her, I experienced serious post-partum depression. I did not realize I had post-partum depression at first, because I did not experience it after my

¹ Jane Doe 1 is a pseudonym. A motion to file a pseudonymous declaration and brief in support are forthcoming.

giving birth to my first child. I felt like there was nobody I could talk to, and it was a dark time of my life. When I found out I was pregnant again, right around the same time I was finally overcoming my post-partum depression, I knew that I could not afford another child and I was worried about my physical and mental health.

4. I could not afford to get an abortion in January or February after I found out I was pregnant. I needed to wait until I received my tax refund. Once I had money saved up to pay for the abortion, I made an appointment with Hope Medical Group for Women in Shreveport, Louisiana, which is about a two-hour drive from my apartment. However, the clinic closed because of COVID-19 before I could have my appointment. I had to wait until the clinic could re-open and see me again.
5. I went back to the Hope Clinic in March, and received an ultrasound. The Clinic told me that I was around 15.5 weeks pregnant, which is close to the sixteen-week limit where I could receive an abortion. The Clinic told me that they could not perform an abortion, and referred me to the National Abortion Federation.
6. After contacting the National Abortion Federation, I received the information for Little Rock Family Planning. I made an appointment, and dropped my children off with my mother. I arrived at the clinic for my initial consultation appointment, and that's when I learned that I would need to get tested for COVID before the facility could provide an abortion.
7. I have tried hard to get a test for COVID, but because I have no symptoms of the coronavirus, I cannot get tested. The only place I can get a test in my town is only open on Tuesdays and Thursdays, from 1pm to 3pm. By the time I left Little Rock Family Planning on April 28, it was too late to make it back in time to get tested, since my apartment is a four-hour drive from Little Rock. Also, I heard from a friend that the clinic had to stop testing early, around 2pm, because of bad weather.
8. On April 29, I drove back up to Little Rock, even though it is a four-hour drive, and went to University of Arkansas for Medical Sciences ("UAMS") because Ms. Williams told me the facility had COVID tests. When I arrived, I answered some screening questions, and someone took my temperature. However, they told me that I was not eligible for a test, because I had no symptoms and UAMS would only give me a test if I had an elective surgery scheduled at their hospital. By the time I left UAMS, it was too late in the day to get a test at any other clinic in the Little Rock area that I knew of.
9. At this time, it is too late for me to get a test and my results within the 48 hours before the appointment at LRFP that I have scheduled for tomorrow, May 1. I am currently more than 21 weeks pregnant, and will be pushed past the legal limit to get an abortion in Arkansas after Monday, May 4.

10. I don't know what I am going to do if I cannot get an abortion. I live in an apartment with my boyfriend of five years and my two children, a 5-year-old son and a 7-month-old daughter. I am not working currently. I have a college degree and background in fashion, and it is hard to find work that pays well and allows me to take care of my children. In February, I was working in retail, but after a few weeks, I realized that I was not bringing in enough money, and my schedule did not let me spend enough time with my children. I looked for a 9 to 5 job so I could be more financially stable while still being there for my family. I lined up a job as a receptionist in a dentist's office that would have given me the stability I wanted. Unfortunately, the week I was to start work, the office was forced to close because of COVID-19. I am not sure if the office will still hire me when the pandemic is over, and I am worried that I will not be able to find a job because so many places are not hiring, especially if I am pregnant.
11. I love my two children deeply. But I am worried that I could not provide for them, especially if I have another child. We are just barely getting by now as it is. If I have another child, I will have to get another car big enough to fit us all, and I cannot afford that. Also, our apartment is in my boyfriend's name. If we broke up, I would not be able to afford an apartment and raise three children by myself.
12. I am also very worried about my health. After my second child, I experienced postpartum depression. I am concerned that will happen again. I also have been experiencing pains with this pregnancy I did not experience with my last two pregnancies. I have trouble digesting and keeping down food. I have terrible back pain, and feel pressure all the time. It's hard to do things at home, and there are days where I need to lie down and have trouble getting up and walking around the apartment. I am grateful my boyfriend still has his job and is bringing in money, but that means he often leaves for 12-hour shifts. With back and leg pain, it's difficult to take care of my two young children by myself all day. I am worried that these symptoms will get worse if I have to continue this pregnancy. I am also concerned this means the baby might not be healthy, since I did not experience any of these symptoms with my prior two pregnancies.
13. I cannot afford to travel to another state to get an abortion. I have already spent between \$200 and \$300 in gas and medical expenses, driving to and from Shreveport and Little Rock. I simply cannot afford to travel somewhere like Illinois to get an abortion. I would have to pay for someone to watch my children, and I would have to pay for a hotel to stay in overnight, as well as pay for gas or for a flight. That is more than I can afford.
14. I know that right now I cannot handle another pregnancy or baby. My physical health is suffering because of the pregnancy, and I am worried my mental health will suffer after giving birth again too. It will be very difficult to care for three children by myself if my depression comes back. Also, COVID has made finding a job extremely difficult so I do not know how I will financially support another baby. Although it is a difficult choice, I know that an abortion is the best choice for the well-being of myself and my two

children.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed April 30, 2020

/s/Jane Doe 1
Jane Doe 1

EXHIBIT 2

**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, et al.,

Defendants.

CIVIL ACTION

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

**Declaration of Patient Jane Doe 2 in Support of Plaintiffs' Motion for Temporary
Injunction Order and Preliminary Injunction**

I, Jane Doe 2,¹ declare and state:

1. I am 36 years old and a resident of the State of Arkansas.
2. On April 21, 2020, at approximately 15 weeks into my pregnancy, I went to Little Rock Family Planning ("LRFP") for my counseling session prior to obtaining an abortion. LRFP is more than an hour away from my home.
3. Lori Williams later informed me that in order to get a surgical abortion, I needed to be tested for COVID-19 and have a negative result 48 hours before the procedure. My procedure was scheduled for April 28, 2020.
4. On April 26, 2020, I went to a clinic in Hot Springs and was tested for COVID-19. I have still not received the results from that test.
5. On April 28, 2020, my procedure was cancelled by LRFP, and I was told I needed to get tested again for COVID-19 and get a negative result before my procedure that was rescheduled for April 30, 2020.

¹ Jane Doe 2 is a pseudonym. A motion to file a pseudonymous declaration and brief in support are forthcoming.

6. I was tested for COVID-19 on April 28, 2020, and as the morning of May 1, 2020, I have still not received my results. I have contacted the clinic that tested me, and they told me the results are not back. Because I could not get the results of that test, I was unable to attend my rescheduled procedure on April 30, 2020.
7. I have no COVID-19 symptoms. I follow the social distance guidelines. I wear a mask when I am not at home. I do not leave the house unless I have to. I have taken my daughter to daycare and have gone to work when I have shifts. My family quarantined at home for seven days after a visit to my daughter's doctor when she had a double ear infection. She was tested for COVID at that doctor's visit, and she tested negative. I have not come into contact with anyone with COVID-19. I am very careful to protect my family and me.
8. I have three children. Two of them are under three-years-old. They both have respiratory issues, delayed speech, and physical development issues. They were both born premature at around thirty-three 33 weeks. I had pre-eclampsia with my daughter and had to have an emergency c-section to deliver her. I am a high-risk patient for this pregnancy because of my age and pregnancy history. I tried to have my tubes tied after my daughter was born, but Medicaid would not cover the cost, and I could not afford to pay for it on my own.
9. I have a hard time supporting my family of four. No one in my house earns an income other than me. I work as a housekeeper at a local hotel. I was laid off when the COVID crisis began. I received unemployment benefits until I was called back to work four weeks ago. Since then, I have only worked four or five shifts. I have very little income to support my family, especially with childcare costs and the special needs of my youngest two children. I do not receive assistance from their fathers, from any family members, or from child support. I cannot afford to have another child.
10. I realized I was pregnant about a month ago. I have not had any care from an obstetrician. My mental and emotional stress have suffered since I learned I was pregnant. To care for my children with the money I earn, I decided to look into getting an abortion at LRFP.
11. I have had to take off work several times to travel to Little Rock for my consultation at LRFP and for COVID testing. I had to pay for childcare during those trips. I worry that I will lose my job because I have taken off work several times.
12. If I cannot get an abortion at LRFP, I cannot afford to travel to Illinois or another state to get an abortion there. I do not have reliable transportation, overnight childcare, or the money to travel outside of the state.
13. With three children at home, I cannot afford to have another child, and I worry about the risks of having another child at my age and with my previous pregnancy history. I know

that it would be a struggle for me mentally, and it would cause my family to suffer. I do not want to have another baby.

14. Unless I get a negative COVID-19 test within 48-hours of my scheduled appointment, I cannot get an abortion. I am now almost sixteen 16 weeks pregnant, and I feel like I am running out of options.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed May 1, 2020

/s/Jane Doe 2
Jane Doe 2

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
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LITTLE ROCK FAMILY PLANNING SERVICES, et
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Defendants.

CIVIL ACTION

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

**Declaration of Patient Jane Doe 3 in Support of Plaintiffs' Motion for Temporary
Injunction Order and Preliminary Injunction**

I, Jane Doe 3,¹ declare and state:

1. I am in my early-20s and a resident of the State of Texas.
2. I am scheduled to have an abortion on May 1, 2020 at Little Rock Family Planning ("LRFP"). Lori Williams told me that Arkansas requires women who want a surgical abortion to get tested for COVID-19 and receive a negative test result within 48 hours of the surgery.
3. I have not been exposed to anyone with COVID, and I have no symptoms. Nonetheless, I was able to get a COVID test on April 29, 2020. At this time, I have not received my test results. If I do not receive my tests results by tomorrow afternoon, then it will be too late for me to get another test and my results within 48 hours of my LRFP appointment on Friday, May 1. I am currently 21.3 weeks pregnant, and I will be pushed past the legal limit to get an abortion in Arkansas after Sunday, May 3, so I cannot try to get tested again next week.
4. Before visiting LRFP, I previously visited a clinic in Fort Worth, Texas to try to get an abortion about 16 weeks into my pregnancy. I scheduled an appointment, and drove to

¹ Jane Doe 3 is a pseudonym. A motion to file a pseudonymous declaration and brief in support are forthcoming.

the clinic. But when I arrived, the clinic informed me that because of the COVID pandemic, the Texas government would not allow the clinic to perform surgical abortions, and they had to turn me away.

5. I live in an apartment with my 2-year old daughter, and my 11-year-old younger brother. Our mom passed away in September 2019, and since then I am taking care of him in addition to my daughter, so it's really like I have two children already. Because I am not working at the moment, I only leave my apartment to go to the grocery store. I wash my hands the minute I get home to protect my family from COVID.
6. I heard about LRFP, and I drove up from Texas, which was about a four and a half hour drive. I left my apartment at 5am on April 29, 2020 so I would have plenty of time to try and receive a COVID test. I had to take my brother and daughter with me because there is nobody to watch them. I first went to University of Arkansas for Medical Sciences ("UAMS"). I explained that I had no COVID symptoms, but that I needed to get a test for an elective surgery. UAMS told me that they would not test me, because I did not fit the criteria for screening. Luckily, I found a clinic in Little Rock that agreed to give me a test even though I was asymptomatic. However, they could not guarantee I would receive my test results in 48 hours in time for the procedure.
7. I lost my job earlier this month because of the COVID pandemic. I was working at a distribution center, helping box up shipments onto pallets and loading them into delivery trucks. In March, work began slowing down. I started working one day a week. Then, the first week of April, my manager told me that the center was closing down completely for three to four weeks because of the pandemic. I hope that I will be rehired when the center opens, but I have no guarantee. I am worried that I would have to try and find a new job.
8. Already I have spent about \$500 trying to get an abortion. I had to travel to and from the clinic in Fort Worth, and then had to make the four-and-a-half-hour drive to Arkansas, plus pay for a hotel and food for myself, my daughter, and my brother. Since I am out of work because of COVID, all the money I have saved needs to go to my rent, electricity, and food for my family and me. This has been a major financial and emotional burden on me.
9. I'm not sure what I am going to do if I cannot get an abortion on May 1. On top of the stress of worrying about supporting my family, this pregnancy has caused me other health problems. I have been experiencing a lot of pain and pressure on my lower body, which is something that did not happen with my last pregnancy. I find it hard to get out of bed some days because I am in so much pain. On some mornings, I try to stand up but have to lie back down again because the pain is too intense. But I have to get up and take care of my daughter and my brother, so I push through it.

10. I already have enough responsibility trying to take care of myself, my daughter, and my younger brother, especially now that I have been laid-off from work. Receiving an abortion from LRFP is my last resort. I have exhausted my other options. I do not know if I will have a job when the distribution center reopens, and this pregnancy is causing me so much pain that it is hard to get up and walk many days. Although it is a difficult decision, I know that an abortion is the right decision for my family and me.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed May 1, 2020

/s/Jane Doe 3
Jane Doe 3

EXHIBIT 4

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

LITTLE ROCK FAMILY PLANNING SERVICES, et
al.,

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Defendants.

CIVIL ACTION

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

**Declaration of Patient Jane Doe 4 in Support of Plaintiffs' Motion for Temporary
Injunction Order and Preliminary Injunction**

I, Jane Doe 4,¹ declare and state:

1. I am in my late-20s and a resident of the State of Texas.
2. I am scheduled to have an abortion on May 1, 2020 at Little Rock Family Planning ("LRFP") at which point I will be 20.6 weeks pregnant. I have been trying unsuccessfully to get an abortion since February.
3. When I first found out I was pregnant, I knew I could not have another baby. My husband and I are already spread far too thin both emotionally and financially. We have two children below the age of 6. My older child has autism and is non-verbal. He needs a lot of attention from me. But I also have a toddler and I worry that I am not giving her the attention she needs. We don't have any family around to help us. If I had another baby, I simply don't know how I would tend to all of their needs.
4. Because I knew I didn't want any more children, I asked my doctor to tie my tubes. But he refused to do it. Even though I was positive I would not want more children, he wouldn't do it because he said I was young and might change my mind.

¹ Jane Doe is a pseudonym. A motion to file a pseudonymous declaration and brief in support are forthcoming.

5. The COVID-19 crisis has also put us in trouble financially. Because of the crisis, my hours at work have been scaled back severely so now I am only working about 10 hours a week. We are struggling to get by and I worry that things are about to get worse. With things opening up, I will soon be called back to work full time. But with schools closed and day care shut down, I have no one to watch my kids so I won't be able to work full time like I used to. I think I will lose my job entirely.
6. Knowing I could not have another child, I first tried to get an appointment for an abortion in February. I called a clinic in Texas for an appointment, but they had a backlog and couldn't see me until mid-March.
7. But before you can actually get an abortion in Texas, you have to make a separate trip to the clinic for counseling. So I made the hour-and-a-half trip to the clinic for that appointment and made another appointment to come back for my procedure.
8. Before I could go back for my procedure I got a call from the clinic telling me that that they could not provide abortions anymore because of a new state law. I was devastated and I didn't know what to do.
9. When I heard that the law had changed and clinics in Texas were able to provide abortions again, I was incredibly relieved. I called the clinic back. But, as I understand it, under Texas law, the doctor who had provided the counseling initially had to be the one to provide the abortion and I wasn't able to get an appointment with that doctor.
10. Because I knew I could not care for another baby, I started looking for other options and I found the clinic in Little Rock. I took the day off work and made the 5-hour drive (each way) to Little Rock for the counseling appointment that the state requires to happen at least 72 hours before the abortion.
11. Before I could come back for my appointment, though, I got a call from Lori at the clinic in Little Rock. She told me that the law had changed again and now, somehow, I needed to get a negative COVID-19 test result no more than 48 hours before my abortion, even though I have no symptoms and have no known exposure.
12. I had no choice but to again make the 10-hour round trip journey to try to get a test. On Wednesday, April 29, I went to UAMS where I understood they had the ability to get tests back quickly. But when I got there they told me they weren't giving tests to people with no symptoms unless they were having procedures done at the hospital.
13. At UAMS, they gave me a number of an office in Hot Springs and so next I went there to try to get a test. They initially tried to turn me away because I have no symptoms, but I told them I needed a test in order to get an abortion. At that point, they tried to talk me out of having the procedure. Because of the testing requirement, I had to argue with

these complete strangers about why having an abortion was the right decision for my family and me.

14. Finally, they agreed to do the test for me. But they warned me that there was virtually no chance it would be back within 48 hours. They said it usually takes five to seven days to get results. As of tonight, I have not gotten the test results back.
15. I have been so stressed out these last couple of months. I am physically and mentally exhausted. I have been crying every day because I know I don't want to continue with this pregnancy but I am being forced to remain pregnant. And now I am distraught because I am running out of options. My ability to get an abortion will expire in just a few days. If I can't get the care I need, my life and my family's life will be irrevocably changed despite my doing everything in my power to get the care I need.
16. I declare under penalty of perjury that the foregoing is true and correct.

Executed April 30, 2020

/s/Jane Doe 4
Jane Doe 4

EXHIBIT 5

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

LITTLE ROCK FAMILY PLANNING SERVICES et al.,

Plaintiffs,

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LESLIE RUTLEDGE, et al.,

Defendants.

CIVIL ACTION

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

**DECLARATION OF LORI WILLIAMS, M.S.N, A.P.R.N., IN SUPPORT OF
PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

I, Lori Williams, M.S.N., A.P.R.N., declare under 28 U.S.C. § 1746 and penalty of perjury that the following is true and correct:

1. I am a nurse practitioner and the Clinical Director of Plaintiff Little Rock Family Planning Services ("LRFP").
2. I submit this Declaration in support of Plaintiffs' Motion for a Temporary Restraining Order and/or Preliminary Injunction.
3. I submitted declarations in support of Plaintiffs' Motions for a Temporary Restraining Order and/or Preliminary Injunction, executed on April 12, 2020 (Dkt. 134-2) and April 22, 2020 (Dkt. 160-2), respectively. I also submitted declarations in the Eighth Circuit in Opposition to Defendant-Appellants' Motion for a Stay of the Temporary Restraining Order and Petition for Mandamus, executed on April 16, 2020 and April 19, 2020, respectively. In providing this declaration, I reaffirm and incorporate my earlier declarations by reference.

4. On April 24, 2020, Arkansas Department of Health (“ADH”) announced that, effective April 27, 2020, the State will implement a Directive On Resuming Elective Procedures (the “April 27 Directive”) intended to modify the restrictions set forth in its April 3 Directive Regarding Elective Surgeries (the “April 3 Directive”) ([Dkt. 134-7](#)).

5. According to the ADH, the April 27 Directive sets forth “requirements for the resumption of elective procedures, so that surgical facilities could perform elective procedures based on a decrease in COVID-19 cases and hospitalizations.”¹ Thus, beginning April 27, 2020, surgical facilities may resume performing procedures only if they, among other things, “[s]tart with a small initial volume of cases and increase incrementally,” and have “an ample supply of PPE . . . while maintaining a reserve should there be a resurgence of the virus.”²

6. The April 27 Directive also places limitations on the patients eligible to receive care. For example, procedures will be limited to patients that are “asymptomatic for COVID-19 per ADH guidelines,” provided they had “no contact with known COVID-19 patients during the [] 14 days” preceding their procedure, and have “no plans for overnight stay” at the facility.³ In addition, “[f]or an asymptomatic patient to be a candidate for a procedure, he/she must have at least one negative COVID-19 NAAT test within 48 hours prior to the beginning of the procedure.”⁴

7. Since the State’s announcement of this new Directive, on April 24, 2020, I have been working diligently to assist my patients in obtaining COVID-19 tests and/or identifying

¹ Directive on Resuming Elective Procedures from the Arkansas Department of Health (April 27, 2020) *accessible at* <https://www.healthy.arkansas.gov/images/uploads/pdf/ResumeElectiveSurgeryDirectiveFINAL4.23.20.pdf>

² *Id.*

³ *Id.*

⁴ *Id.*

locations willing and able to administer tests on asymptomatic individuals, per the April 27 Directive. I have contacted more than 15 different locations—including hospitals, urgent cares, clinics, diagnostic centers, and private laboratories—in and around Little Rock, Arkansas, but have been unable to identify a location that is (1) willing to test asymptomatic patients, and (2) able to reliably turnaround results within 48 hours. A majority of the locations I contacted will not test asymptomatic patients at all, and others cannot commit to turning around results within 48 hours.

8. One of the locations I contacted was the University of Arkansas for Medical Sciences (UAMS). UAMS communicated that it will only conduct COVID-19 tests for asymptomatic patients that have surgeries scheduled at the hospital. As a result, patients scheduled to receive care at LRFP have been turned away from UAMS.

9. Since the April 27 Directive has taken effect, I have had to turn away 8 patients scheduled to receive surgical abortion care due to their inability to receive a COVID-19 test and/or obtain test results within 48 hours of the beginning of their procedure.

10. On Friday, May 1, 2020, LRFP is scheduled to provide care to three women who will soon be past the legal limit for abortion care in Arkansas: (i) one who is 20.6 weeks LMP, (ii) one who is 21.2 weeks LMP, and (iii) one who is 21.3 weeks LMP. All tried, but at least one was not able to obtain a COVID-19 test and result within 48 hours of their abortion, as the April 27 Directive requires. As of the morning of May 1, the other two are waiting results from a clinic that has previously taken more than 48 hours to return results for at least five of my other patients. LRFP has numerous other women who are approaching the 21.6 weeks LMP cut off for abortion care on its near-term schedule.

11. The April 27 Directive is uniquely problematic for women seeking abortion care, as compared to patients seeking other medical procedures in Arkansas, given the (1) economic and logistical challenges LRFP's patients already face in obtaining care, as discussed in my April 12, 2020 declaration ([Dkt. 134-2](#)), as well as (2) the 72-hour State-mandated delay for abortion care, for which the logistical challenges are substantially exacerbated by the 48-hour requirement in the April 27 Directive.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ^{30th}30 day of April, 2020.

 
Lori Williams, M.S.N., A.P.R.N.

EXHIBIT 6

**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, et al.,

Defendants.

CIVIL ACTION

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

**DECLARATION OF ALISON STUEBE, M.D., M.Sc., F.A.C.O.G., IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN EX PARTE TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

I, Alison Stuebe, M.D., M.Sc., F.A.C.O.G., pursuant to [28 U.S.C. §1746](#), declare under penalty of perjury that the following is true and correct:

1. I am a board-certified maternal-fetal medicine specialist (“MFM”) and obstetrician-gynecologist (“OBGYN”). I am also trained in epidemiology, and am familiar with the trajectory of epidemics and the public health measures that are most effective for managing them.

2. I submit this Declaration in Support of Plaintiffs’ May 1, 2020 Motion for a Temporary Restraining Order and/or Preliminary Injunction.

3. I submitted a Declaration in support of Plaintiffs’ Motion for a Temporary Restraining Order and/or Preliminary Injunction, executed on April 21, 2020 ([Dkt. 160-1](#)) (the “April 21 Declaration”). I now provide this supplemental declaration, and reaffirm and incorporate my earlier declarations by reference.

The ADH's April 27, 2020 Directive

4. I have reviewed the Arkansas Department of Health (“ADH”) April 27 Directive (the “April 27 Directive”), that modifies ADH’s April 3 Directive.¹

5. The April 27 Directive includes seven requirements for the resumption of elective procedures that had been barred by the April 3 Directive, including that a patient (1) “be asymptomatic for COVID-19 per ADH guidelines,” (2) “have at least one negative COVID-19 NAAT test within 48 hours prior to the beginning of the procedure.” The April 27 Directive exempts rural hospitals and critical access hospitals from its requirements, as did the April 3 Directive, and does not apply to the urgent care already permitted under the April 3 requirements.

6. Under the current landscape of COVID-19 testing, a 48-hour turnaround for results is possible only with what is commonly referred to as “rapid” testing. Rapid testing is available through a limited number of biopharmaceutical companies (*e.g.*, Abbot Laboratories, and Mesa Biotech).

The April 27 Directive's Impact On LRFP's Patients And Public Health

7. Enforcement of the April 27 Directive to surgical abortions will negatively affect LRFP’s patients and the public-health system.

8. *First*, as I previously explained, surgical abortion care is time-sensitive, urgent, and cannot be safely postponed. *See* April 21 Declaration ¶ 23. Surgical abortion care, therefore, does not belong in the April 27 Directive’s category of “elective” procedures in the first place, and any delay or added hurdle imposed in an effort to obtain testing is medically

¹ Directive on Resuming Elective Procedures from the Arkansas Department of Health (April 27, 2020) *accessible at* <https://www.healthy.arkansas.gov/images/uploads/pdf/ResumeElectiveSurgeryDirectiveFINAL4.23.20.pdf>.

inappropriate.

9. *Second*, the harms that arise when women are denied access to or delayed in accessing surgical abortion care are substantially greater than the potential public-health benefits of limiting the accessibility of surgical abortion to patients who are able to get negative tests for COVID-19 within 48 hours of their procedure. Under certain circumstances, delaying a procedure that is non-urgent and can be safely postponed (like a hip replacement or a screening colonoscopy) until a patient can take a rapid COVID-19 test within 48 hours of the procedure would be appropriate as one public health tool (though one with significant limitations that I explain below). But for time-sensitive care like surgical abortion, that care should occur when the patient needs it and based on her specific clinical considerations.

10. In addition, the April 27 Directive assumes the ready availability of rapid testing for LRFP patients. I understand based on Lori Williams's April 30, 2020 Declaration that LRFP has been unable to identify reliable access to rapid testing for its patients. If no rapid testing is available, application of the April 27 Directive to surgical abortion care will delay a woman's ability to receive an abortion, perhaps indefinitely. For all of the reasons described in my earlier declaration, this will have several negative public-health consequences. *See* April 21 Declaration ¶ 29.

11. Moreover, I understand based on information provided in Lori Williams's April 12, 2020 Declaration that LRFP has created and is strictly adhering to a COVID-19 Response Protocol (the "LRFP Protocol"). That protocol sets forth detailed information about (1) postponement of LRFP services for which delay would not risk harm to the patient (i.e., certain gynecological care); (2) screening patients for symptoms of infection, both telephonically and on site; (3) staggering appointment times in order to minimize in-person contact and shorten the time

patients spend in the clinic; (4) spacing individuals at least 6 feet apart in waiting areas to comply with the State's and CDC's "social distancing" guidelines; (5) limiting visitors and support people by requiring that they sit in cars or return home until patients are ready to be picked up; (6) performing temperature checks on all individuals entering the building (including staff); and (7) enhancing infection control protocols with frequent clinic sanitization and education of patient etiquette. In light of the measures that LRFP has implemented through the LRFP Protocol, which identify symptomatic patients and significantly reduce the possibility of in-clinic transmission of COVID-19, the public-health benefits of mandating pre-procedure testing for patients who are asymptomatic for COVID-19 are very small, and pale in comparison to the benefits of letting a woman access essential healthcare at LRFP.

12. The small benefit of pre-procedure testing for asymptomatic patients is reflected in ADH's decision not to require it of rural hospitals or critical access hospitals, where "elective" surgical procedures continue to occur without any limitation.

13. The small public health benefit is especially true given that development of rapid COVID-19 tests is ongoing, and the efficacy of the existing tests are questionable. Several reports have called into question the accuracy of COVID-19 rapid tests.² Clinical pathologists

² Rachana Pradhan, *Abbott's Fast COVID Test Poses Safety Issues, Lab Workers Say*, Kaiser Health News (Apr. 23, 2020), <https://khn.org/news/abbotts-fast-covid-test-poses-safety-issues-lab-workers-say/> ("The Abbott tests have had several other hiccups. For example, the Food and Drug Administration this month said Abbott would revise its instructions after one method for preserving specimens — known as viral transport media — caused inaccurate results because patient samples were too diluted."); Curt Devine and Drew Griffin, *Abbott's rapid tests can produce false negatives under certain conditions, the company says*, CNN (Apr. 22, 2020), <https://www.cnn.com/2020/04/21/health/abbott-laboratories-coronavirus-rapid-test/index.html> ("Clinical pathologists and lab scientists at the Cleveland Clinic said the Abbott system has produced higher false negatives than other devices they tested."); Kristen Brown, *False Negatives Raise Doctors' Doubts About Coronavirus Tests*, Bloomberg (Apr. 11, 2020), <https://www.bloomberg.com/news/articles/2020-04-11/false-negative-coronavirus-test-results-raise-doctors-doubts> ("False-negative results from coronavirus tests are becoming an increasing concern, say doctors trying to diagnose patients and get a grip on the outbreak, as a surprising number of people show up with obvious symptoms only to be told by the tests that they don't have the disease."); Lydia DePillis and Caroline Chen, *Coronavirus Tests Are Being Fast-Tracked by the FDA, but It's Unclear How Accurate They Are*, ProPublica (Apr. 10, 2020), <https://www.propublica.org/article/coronavirus-tests-are-being-fast-tracked-by-the-fda-but-its-unclear->

and lab scientists at the Cleveland Clinic, for example, said a common rapid testing system, developed by Abbott Laboratories, produce high levels of false negatives. The Cleveland Clinic study found that the rapid testing system produced a false-negative rate of 14.8 percent.³

14. Furthermore, there is a nationwide shortage of COVID-19 tests. Deploying the limited supply for use on an asymptomatic patient population seeking surgical abortion care at an out-patient facility where stringent measures are already in place to reduce transmission risks is unnecessary and a waste of limited and important resources.

15. *Third*, the April 27 Directive denies abortion care for any patients who are exhibiting symptoms of COVID-19. But, in certain circumstances, it may be reasonable to provide abortion care for certain women, even if they exhibit symptoms of COVID-19. Whether to provide individualized care to these women should be an individualized assessment, based on a specific patient's needs, balanced against any health risks.

16. *Fourth*, the April 27 Directive's rapid-testing requirement creates an additional level of restriction for abortion care compared to other surgeries that the State has characterized as "elective," because Arkansas has yet to waive or transition to telemedicine the requirement that women seeking abortion care receive State-mandated informed-consent information in-person at LRFP, at least 72 hours before their procedure. When the April 27 Directive is combined with the in-person 72-hour consent requirement, a woman seeking an abortion must therefore visit *both* LRFP and a rapid-testing site at specific intervals before the procedure—LRFP to receive the State-mandated informed-consent information (72 hours before the

how-accurate-they-are ("Dr. Yukari Manabe, associate director of Global Health Research and Innovation at Johns Hopkins Medicine, estimates that 10% to 25% of test results are false negatives.").

³ *Study Raises Questions About False Negatives From Quick COVID-19 Test*, NPR (Apr. 21, 2020), <https://www.npr.org/sections/health-shots/2020/04/21/838794281/study-raises-questions-about-false-negatives-from-quick-covid-19-test>.

procedure), and testing site for the rapid test (within 48 hours of the procedure). This two-visit pre-procedure requirement is unique to the abortion context and very challenging from a resource and logistics perspective. In contrast to many other “elective” surgical procedures, surgical abortion care is available in Arkansas only at LRFP in Little Rock, which, to the best of my knowledge, can be a nearly 400-mile roundtrip drive from other areas of the State. Ms. Williams explained in her April 12, 2020 Declaration that even before the pandemic, her patients—many of whom are low income or in poverty—struggled to overcome the logistical and economic barriers to care. The additional testing requirement therefore puts even more logistical and financial stress on women seeking abortions, as there is a tremendous amount of coordination needed to correctly time and accomplish the two requirements. Additionally, patients must necessarily come into contact with the healthcare system (72 hours before the procedure) before they undergo the rapid test (within 48 hours of the procedure)—this itself defeats the purpose of the testing requirement.

17. *Fifth*, the April 27 Directive will likely increase stress on the public-health system. As I described in my earlier declaration, once a woman is pregnant, it is a progressive condition, and therefore inevitable that she will have contact with medical providers. *See* April 21 Declaration ¶¶ 29, 31. If women are denied access to abortion and thus forced to continue their pregnancies under the April 27 Directive, most will come in contact with the broader healthcare system through miscarriage management, prenatal care, medical care necessitated by any complications that arise during pregnancy, and/or labor and delivery. *See* April 21 Declaration ¶ 29. Because this kind of care is exempted from the Directives, women will receive care for labor and delivery without regard to whether they test positive for COVID-19, including potentially at hospitals staffed with COVID-19 first responders. By preventing women

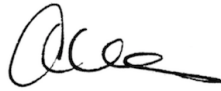
with undesired pregnancies from accessing abortion care, the April 27 Directive will redirect women to the public healthcare system for labor and delivery care that cannot be deferred, in contrast with non-urgent, routine procedures, such as a screening colonoscopy or orthopedic procedures.

* * * * *

18. In sum, abortion care is urgent care. Clinicians, in consultation with their patients, remain in the best position to accomplish that care in a timely way, with any medical testing and pre-procedure steps appropriate to the particular patient. Public health surveillance efforts of limited benefit are not appropriately used to deny or interfere with women's access to abortion. Clinicians can use their professional judgment to weigh individual patients' medical needs against any health risks—including risks related to COVID-19 infection. In the context of abortion care, the April 27 Directive removes the ability of health-care providers to make their own judgments about essential, time-sensitive patient needs. The marginal public health benefits of the April 27 Directive, when applied to abortion care, are significantly outweighed by the Directive's burdens and negative consequences.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of April, 2020.

A handwritten signature in black ink, appearing to read 'Alison', with a long horizontal stroke extending to the right.

Alison Stuebe, M.D., M.Sc., F.A.C.O.G.

EXHIBIT 7

**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, et al.,

Defendants.

CIVIL ACTION

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

**DECLARATION OF LEAH GODESKY, ESQ. IN SUPPORT OF PLAINTIFFS’
MOTION FOR AN *EX PARTE* TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

I, Leah Godesky, Esq., declare under [28 U.S.C. § 1746](#) and penalty of perjury that the following is true and correct:

1. I am an attorney at O’Melveny & Myers, LLP, counsel of record for Plaintiffs Little Rock Family Planning (“LRFP”) and Dr. Thomas Tvedten (together, “Plaintiffs”) in the above-captioned matter. I am a member in good standing of the State Bars of New York and Connecticut, and am admitted *pro hac vice* to represent Plaintiffs in this litigation.

2. I submit this Declaration in support of Plaintiffs’ May 1, 2020 Motion for an *Ex Parte* Temporary Restraining Order and/or Preliminary Injunction.

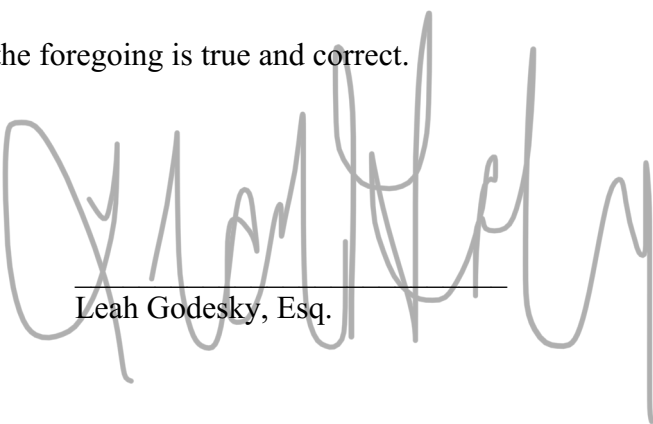
3. At approximately 8:47am CST on May 1, 2020, I notified counsel for Defendants that Plaintiffs intended to seek an *ex parte* temporary restraining order barring enforcement of the April 3 and 27, 2020 Directives by the Arkansas Health Department to the extent that the Directives are preventing patients from obtaining surgical abortion care in Arkansas before the

21.6-week-LMP legal limit. As of this filing, Plaintiffs have not yet heard from counsel for Defendants.

4. If the Directives are enforced, Plaintiffs will have to turn away at least one and potentially three patients today. All three will be beyond the legal limit for abortion care in a matter of days.

I declare under penalty of perjury that the foregoing is true and correct.

Executed 1st day of May, 2020.



Leah Godesky, Esq.