

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

DYLAN BRANDT, et al.,

PLAINTIFFS

v.

CASE NO. 4:21-CV-00450-JM

LESLIE RUTLEDGE, et al.,

DEFENDANTS

**REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR
SCHEDULING ORDER**

While styled as an Opposition, Defendants' response to Plaintiffs' Motion for a Scheduling Order improperly seeks a stay of this case pending interlocutory appeal. This is not an appropriate manner in which to seek a stay of this action pending appeal, and should be rejected on that basis. Fed. R. App. P. 8(a)(1). Moreover, Defendants do not come close to meeting their "burden to 'make out a clear case of hardship or inequity in being required to go forward,'" which they must given the impact such a stay would have on Plaintiffs, even if Defendants' had properly filed a motion to stay. *Yashtinsky v. Walmart, Inc.*, No. 5:19-CV-5105, 2019 WL 5986708, at *6 (W.D. Ark. Nov. 12, 2019) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)).¹

Defendants wrongly contend that Plaintiffs suffer no prejudice if a stay is granted because there currently is a preliminary injunction in place. (Defs. Br. at 2.) The challenged, law, if it takes effect, would withhold critical and, sometimes, lifesaving treatment from the minor Plaintiffs and other transgender minors. (*See* ECF No. 12 at 11-19.) If the Eighth Circuit overturns the preliminary injunction,

¹ Defendants incorrectly rely on several decisions granting joint or unopposed motions for a stay. *Dordt Coll. v. Burwell*, No. C 13-4100-MWB, 2014 WL 5454649, at *1 (N.D. Iowa Oct. 27, 2014) (granting "Unopposed Motion To Stay District Court Proceedings Pending Appeal"); *Libertarian Party of Ark. v. Thurston*, No. 4:19-CV-00214-KGB (E.D. Ark. Feb. 3, 2020), ECF No. 53 (granting "joint unopposed motion to continue proposed trial date and to stay all deadlines pending appeal"); *Rodgers v. Bryant*, No. 4:17-CV-00501-BRW (E.D. Ark. Oct. 16, 2017), ECF No. 32 (granting "Joint Motion to Stay").

Plaintiffs would be severely prejudiced if they were only then permitted to begin litigating this case on the merits without the protection of this Court's preliminary injunction, rather than beginning now. This delay could subject the minor Plaintiffs to several additional months, or more, without access to the care they rely on for their health and well-being. And given this Court's already crowded docket, the wait for a hearing on the merits should the Court stay proceedings could be a long one.

In addition, Plaintiffs are entitled to a final order ensuring their continued access to treatment as quickly as reasonably possible. *Yashtinsky*, 2019 WL 5986708, at *6 (W.D. Ark. Nov. 12, 2019) (“[S]taying the case would prejudice [plaintiff] by delaying the resolution of his claims.”). They should not have to live in fear of treatment being withheld, or uncertainty about whether they can remain in their home state, any longer than necessary.

Defendants have not even attempted to identify any hardship they would suffer if a stay is not granted, and, indeed, they would suffer no hardship because the parties inevitably will need to proceed with discovery and trial in this case, regardless of the Eighth Circuit's decision on the preliminary injunction. *See, e.g., Mendez v. Optio Sols., LLC*, 239 F. Supp. 3d 1229, 1234 (S.D. Cal. 2017) (finding party requesting stay did “not demonstrate a hardship in moving forward with inevitable discovery and motion practice”). While Defendants speculate that it may

be more efficient to proceed to final judgment after the Eighth Circuit rules on the appeal, an efficiency interest, without a showing of hardship, is not sufficient given the harm a stay poses to Plaintiffs. *Georgia-Pac. Consumer Prod., LP v. Myers Supply, Inc.*, No. 08CV6086, 2009 WL 256109, at *2 (W.D. Ark. Feb. 3, 2009) (“If there is even a ‘fair possibility’ that a stay will cause damage to someone else, *Landis* requires that the moving party clearly demonstrate hardship or inequity if it is required to go forward.”) (citation omitted).

For the reasons discussed in Plaintiffs’ Motion, the Court should enter the Proposed Final Scheduling Order attached thereto, or in the alternative enter an Initial Scheduling Order in this matter. (ECF No. 72-1.)

Dated: September 28, 2021

Respectfully submitted,

/s/ Leslie Cooper

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