

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

THE STATE OF TENNESSEE, <i>et al.</i> ,	)	
	)	Case No. 3:22-cv-257
<i>Plaintiff,</i>	)	
	)	Judge Travis R. McDonough
v.	)	
	)	Magistrate Judge Debra C. Poplin
UNITED STATES DEPARTMENT OF	)	
AGRICULTURE, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	
	)	

ORDER

Before the Court is Plaintiff States’¹ motion for preliminary injunction and request for expedited hearing thereon (Doc. 2). Plaintiff States seek to enjoin Defendant United States Department of Agriculture (“USDA”) from enforcing a policy prohibiting discrimination based on gender identity and sexual orientation in certain contexts. Plaintiff States requested that the Court enter an order requiring Defendants to file a response to the motion for preliminary injunction by August 2, 2022, requesting Plaintiff States to file a reply by August 5, 2022, and setting a hearing during the week of August 8, 2022. (*Id.* at 4.) The basis for the request to expedite the hearing is Plaintiff States’ contention that Defendant USDA requires the states to agree not to engage in gender-identity or sexual-orientation discrimination for purposes of administering the Supplemental Nutrition Assistance Program (“SNAP”) by August 15, 2022, or risk losing millions of dollars of federal SNAP funding.

¹ Plaintiff States are Tennessee, Indiana, Alabama, Alaska, Arizona, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia. (Doc. 1, at 1.)

I. BACKGROUND

The preliminary injunction seeks to enjoin USDA from enforcing both a memorandum and a final rule addressing discrimination based on gender identity and sexual orientation. (Doc. 3, at 11–16.)

The USDA memorandum (“the Memo”) announces the agency’s interpretation of prohibitions on sex discrimination contained in the Food and Nutrition Act of 2008 (“FNA”) and in Title IX on the Education Amendments of 1972 (“Title IX”). (Doc. 1-1.) Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). The FNA provides, “[i]n the certification of applicant households for the supplemental nutrition assistance program, there shall be no discrimination by reason of race, sex, religious creed, national origin, or political affiliation.” 7 U.S.C. § 2020(c)(1). USDA interprets these prohibitions as coterminous with the Title VII prohibition against sex discrimination and, relying on *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020), concludes that Title IX and the FNA also prohibit discrimination based on gender identity and sexual orientation. (Doc. 1-1.)

The challenged final rule (the “Rule”), Supplemental Nutrition Assistance Program: Civil Rights Update to the Federal-State Agreement, 87 Federal Register 35,855 (June 14, 2022) (to be codified at 7 C.F.R. 272), updates SNAP civil-rights-assurance template language for the Federal State Agreements (“FSAs”). “The FSA is the legal agreement between the [USDA] and the State agency by which the State elects to operate SNAP doing so in accordance with the [FNA], SNAP regulations, the State Plan of Operation (State Plan), civil rights laws, and civil rights regulations.” Supplemental Nutrition Assistance Program: Civil Rights Update to the

Federal-State Agreement, 87 Fed. Reg. at 35,855. The Rule requires that states' FSAs include the following language:

The State agrees to: . . . 2. Assurance of Civil Rights Compliance: Comply with . . . Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), [and] section 11(c) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2020), . . . to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation . . . be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP.

Id. at 35,857. USDA requires Plaintiff States to execute such FSAs by August 15, 2022. (Doc. 1, at 25 (citing FY 2023 Supplemental Nutrition Assistance Program Education Plan Guidance, U.S. Department of Agriculture Food and Nutrition Service, at 77, 159 (May 10, 2022), <https://bit.ly/3IJLWWu>.)

Plaintiff States seek to enjoin the enforcement of the Memo and Rule, asserting: (1) USDA failed to satisfy the Administrative Procedure Act's procedural requirements to promulgate the Memo and Rule, (2) the interpretation of sex discrimination contradicts the language of Title IX and the FNA, and (3) the Memo and Rule violate the U.S. Constitution. (Doc. 3, and 18–24.) They contend that a preliminary injunction is justified because they will face irreparable harm through the infringement on their sovereign powers to enact and enforce state laws. These state laws relate to maintaining sex-separated restrooms and sports teams in schools, preserving religious freedom, and protecting state-college faculty's free-speech rights to choose the pronouns by which they choose to refer to students. (Doc. 1, at 26–28; Doc. 3, at 33–34.)

II. ANALYSIS

Pursuant to Federal Rule of Civil Procedure 65(a)(1), the “court may issue a preliminary injunction only on notice to the adverse party.” Fed. R. Civ. P. 65(a)(1). “Rule 65’s notice

requirement ‘implies a hearing in which the defendant is given a fair opportunity to oppose the application and to prepare for such opposition.’” *L.A. Ins. Agency Franchising, LLC v. Kutob*, No. 2:18-CV-12310, 2018 WL 8806102, at *1 (E.D. Mich. Sept. 19, 2018) (quoting *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 246 (6th Cir. 2011)). Based on the Court’s review of the docket, to date, Plaintiff States have not served Defendants, and the Court has received no indication that Defendants have received notice. The Court will not hold a preliminary-injunction hearing until Defendants have received notice of Plaintiffs’ request and have had a fair opportunity to oppose the application.

Notwithstanding the notice issue, Plaintiff States have not shown good cause for an expedited hearing. They represent that good cause exists because USDA requires them to adopt the Rule’s required language no later than August 15, 2022.² That is, Plaintiff States must agree in their FSAs that no person “on the grounds of sex, including gender identity and sexual orientation . . . be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP.” Supplemental Nutrition Assistance Program: Civil Rights Update to the Federal-State Agreement, 87 Fed. Reg. at 35,857. Yet Plaintiff States repeatedly and clearly state that they “do not deny benefits based on a household member’s sexual orientation or gender identity” for purposes of administering SNAP benefits. (Doc. 3, at 10, 17.) While Plaintiff States’ briefing certainly identifies a general clash of competing cultural norms between agency policies and state laws, it does not explain how incorporating the Rule’s language, regarding only SNAP benefits, would impact their state laws regarding sports participation, restroom use, religious freedom, or free speech. Therefore, Plaintiff States have

² Plaintiff States do not rely on the Memo as cause for an expedited, no-notice hearing.

not demonstrated that it is necessary to hold a preliminary-injunction hearing prior to the states' August 15 deadline and before notice to Defendants.

III. CONCLUSION

For these reasons, the Court **DENIES** the Plaintiff States' request for an expedited hearing. After the record reflects that Defendants have received notice of the motion for preliminary injunction, the Court will set a hearing for a date providing Defendants a fair opportunity to oppose the application for preliminary injunction, as Rule 65 requires.

SO ORDERED.

/s/ Travis R. McDonough

TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE