

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

L.W., by and through her parents)
and next friends, Samantha)
Williams and Brian Williams,)
et al.,)

Plaintiffs,)

v.)

3:23-cv-00376
JUDGE RICHARDSON

JONATHAN SKRMETTI, IN HIS)
official capacity as the)
Tennessee Attorney General)
and Reporter, et al.)

Defendants.)

BEFORE THE HONORABLE ELI J. RICHARDSON, DISTRICT JUDGE

TRANSCRIPT OF PROCEEDINGS
TELEPHONIC STATUS CONFERENCE

May 24, 2023

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2
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2 The above-styled cause came on to be heard at
3 8:33 a.m. on May 24, 2023, before the Honorable Eli J.
4 Richardson, District Judge, when the following proceedings
5 were had, to-wit:

6
7 **THE COURT:** All right. We are on the record for
8 a telephonic conference in the matter of L.W., et al., vs.
9 Skrmetti, et al., with the United States as intervenor, and
10 the case number is 3:23-cv-376.

11 The Court appreciates counsel jumping on for a
12 call here that the Court set really less than 24 hours ago.

13 And as background, the Court's review of the
14 defendants' response to the Docket No. 21, Motion for
15 Preliminary Injunction filed by the plaintiffs, had raised
16 some issues in the Court's mind about the possibility, which
17 has sort of been ongoing, consideration for the Court
18 regarding a potential hearing on the motion at Docket No. 21
19 as well as the United States' corresponding motion for
20 preliminary injunction at Docket No. 40.

21 And with time really being at a premium in
22 various senses regarding scheduling, the Court wanted to
23 schedule something sooner rather than later. Appreciate
24 counsel jumping on.

25 We're going to talk about the possibility of a

1 preliminary injunction hearing and various issues related to
2 that.

3 All right. I'm going to ask counsel to make
4 their appearances, and then I will clarify my understanding
5 about who is going to be speaking for each side. In that
6 regard, I should say that if any attorney who's not speaking
7 doesn't want to enter an appearance, that's fine as well,
8 but at least to have the appearances from counsel that will
9 be speaking. We'll start with the plaintiffs.

10 **MR. BLOCK:** Good morning, Your Honor. This is
11 Josh Block from the ACLU on behalf of plaintiffs, and I'll
12 be the one speaking today.

13 **THE COURT:** All right. Good morning, Mr. Block.

14 **MR. BLOCK:** Good morning.

15 **THE COURT:** How about for the defendants?

16 **MR. MORTARA:** Good morning, Your Honor. Adam
17 Mortara, lead counsel for the defendants. I'm joined this
18 morning by Clark Hildabrand, Ryan Henry, Trent Meriwether,
19 and Brooke Huppenthal of the Tennessee Attorney General's
20 Office.

21 **THE COURT:** All right. Thank you and good
22 morning, Mr. Mortara.

23 And for the United States?

24 **MS. DANIEL:** Good morning, Your Honor. This is
25 Tamica Daniel for the United States. I'll be speaking

1 today.

2 **THE COURT:** All right. Thank you, counsel.

3 So here's where the Court's head is at the
4 moment. The effective date of the statute at issue,
5 Tennessee Code Annotated 68-33-101, et seq., as everyone
6 knows, is July the 1st. If there is to be a hearing, it
7 makes sense to have it sooner rather than later, but not too
8 soon. Soon enough for the Court to consider fully any
9 evidence presented in open court but not so soon that
10 counsel can't prepare adequately for the hearing.

11 Regarding whether there is to be a hearing, I
12 want to note a couple of things. Right at present, it
13 remains possible that there be no evidentiary hearing or no
14 oral argument. It remains possible that there really could
15 be both, or it's possible that there could be either but not
16 both. And I think the Court wants to see more briefing to
17 make those determinations.

18 So, for example, either the plaintiffs' reply
19 brief, which could have an effect on the Court's decisions
20 about a hearing, that reply brief in support of the motion
21 for preliminary injunction is due on June the 1st. And then
22 the Court needs to make a decision about a hearing before
23 getting the government's reply in support of its motion for
24 preliminary injunction, but the Court does need to consider
25 the defendant's response to the government's motion, which

1 is due May 31st.

2 So my thought is to get a hearing date on the
3 calendar with the notion that it's possible that it could be
4 called off, you know, within the next couple of days after
5 June 1st. But we need to schedule something now.

6 The Court doesn't cancel scheduled hearings
7 lightly, but if it determines that the issues don't require
8 a hearing, it's not going to call upon counsel to expend
9 their resources in something the Court is confident would
10 not ultimately affect its decision on the instant motion.

11 So with that as background, I wanted to put out
12 the notion that from the Court's perspective -- and this is
13 related on a -- this is based on a couple, maybe three
14 different considerations that the Court has, but it's
15 looking at the dates roughly June 8th or 9th and wanted to
16 talk about that.

17 Mr. Block, I have two questions for you to start.
18 What do you think about the days June 8th or 9th or both,
19 and how long do you think it would take for the plaintiffs
20 to present their evidence in support of the motion for
21 preliminary injunction? And before I ask you to respond,
22 you know, the Court is aware, obviously, that there is --
23 you know, there is sworn testimony in the forms of
24 declarations from both sides, not from the United States at
25 this juncture, but on -- the plaintiff has its declarations,

1 the defendant has its. And the Court realizes it can rely
2 on that, but again, may want to have a hearing to resolve
3 factual disputes if the Court determines that there are
4 material ones after receiving the additional briefings I had
5 mentioned.

6 So if, Mr. Block, there was to be a hearing and
7 you were to present evidence in live Court, what do you
8 think about the June 8th, June 9th time frame, and how long
9 do you think the plaintiffs' evidence would take to present?

10 **MR. BLOCK:** Thank you, Your Honor. I -- so those
11 dates are unfortunately dates in which our plaintiffs,
12 specifically the Williams family who we would be most likely
13 to call to testify, are out of the country, and in which one
14 of our primary experts, Dr. Antommara, is out of the
15 country. So those would be hard dates for us if the Court
16 desires testimony from either of those witnesses.

17 Our position is we think that when the reply
18 comes in, that the Court will be able to resolve the motions
19 without having a hearing, but we are also, you know, more
20 than happy to, you know, present evidence on any topic the
21 Court thinks would be helpful if -- without other, you know,
22 specifications, you know, if the hearing were to take place,
23 we would have anticipated having, you know, either one of
24 the parent plaintiffs or one of the minor plaintiffs testify
25 and having one of our experts testify.

1 Some of this depends on what issues the
2 defendants actually think are in dispute.

3 Then the third issue is, I don't know if the
4 Court will find disputed questions of fact regarding what
5 Vanderbilt is doing to be dispositive, but if that is a
6 dispositive issue, there might be need to have a third party
7 subpoena to Dr. Brady at Vanderbilt because they, given all
8 of the legal -- given the legal situation, they're unwilling
9 to testify without a subpoena, which is why there's not a
10 declaration from her other than the 30(b)(6) declaration on
11 the record.

12 Again, I don't think that would be necessary, and
13 I certainly don't want to put on evidence the Court doesn't
14 desire to hear, but I guess it -- I'd say maybe that's one
15 day of evidence for our case. If defendants intend on
16 putting five days' worth of evidence, then we would
17 obviously want to have more evidence ourselves.

18 **THE COURT:** All right. Thank you for that,
19 Mr. Block. That is helpful. And certainly understand what
20 you're saying, you know, I think on the issue of whether a
21 hearing is necessary. You put your finger on it. The Court
22 needs to make a determination as to what is really in
23 dispute and whether a hearing would help in that regard. It
24 would be a matter of public record that it's rare for this
25 Court to find the need for a preliminary injunction hearing.

1 We're usually able to rule based on what's in the record,
2 but can't say for sure at this time.

3 Mr. Block, given what you have said, what would
4 your proposal be for, let's say, a two-day block for a
5 preliminary injunction hearing?

6 I'm thinking, Mr. Block, might you be on --

7 **MR. BLOCK:** Oh, yes. I apologize. I was on
8 mute.

9 Depending on -- trying to be courteous and muting
10 whenever possible.

11 Ideally for us, the week of beginning -- I'm
12 sorry. I'm looking at the wrong month on my calendar. The
13 week of the 19th would be much better for us, and the week
14 of the 26th. Of course, that cuts things very close for the
15 Court.

16 **THE COURT:** All right. Thank you for that.
17 That's helpful to know. It presents some -- based on our
18 current criminal trial that's scheduled to go, which
19 obviously are things that we can have trouble scheduling
20 around. The defendant's insisting on a speedy trial. But
21 it could present some issues, but it's helpful to know your
22 view on that.

23 All right. Continuing with the same side of the,
24 really, before we get to the defendants, I'm going to ask
25 Ms. Daniel her thoughts on the same matters that Mr. Block

1 had just discussed.

2 **MS. DANIEL:** Good morning, Your Honor. We -- the
3 8th or the 9th would work for us. We're available that date
4 but understand that that doesn't work for the plaintiff. We
5 would also be available during the earlier half of the week
6 of the 19th but not the end of that week.

7 **THE COURT:** Okay. You know, it occurs to us here
8 that based on, I think, when the weekend falls, that the
9 19th is, I think it's the recognized holiday for Juneteenth
10 this year, right? So that would be starting -- you're
11 saying that week of Tuesday, so maybe Tuesday and Wednesday
12 but not like Thursday or Friday?

13 **MS. DANIEL:** Correct, Your Honor.

14 **THE COURT:** Yeah. Okay. All right.

15 Now, you know, when I look at the government's
16 briefing and kind of what it's saying and what it has filed
17 and what it has not filed, I'm suspecting that a preliminary
18 injunction hearing, the United States would not have its own
19 evidence to present. Would that be fair to say, Ms. Daniel?

20 **MS. DANIEL:** Your Honor, that's correct. We
21 don't have our own witnesses to present.

22 **THE COURT:** Okay. All right.

23 Mr. Mortara, what are your thoughts?

24 **MR. MORTARA:** Good morning, Your Honor. Thank
25 you.

1 We did have an opportunity to meet and confer
2 with plaintiffs' counsel yesterday and discuss the
3 possibility of an evidentiary hearing during which Mr. Block
4 let me know that the weeks of June 5th and June 12th did not
5 work. So when we went to consult our experts as to their
6 availability, we were focused on the last two weeks. So I
7 can tell you right now I have not even asked the experts
8 about the 8th and the 9th. But that raises a sort of
9 anterior or preliminary issue of what it is we would
10 actually be materially disputing, and Your Honor mentioned
11 the possibility of written testimony.

12 Mr. Block and I also discussed the possibility of
13 the expert portion of the case being fully written if the
14 gravamen of the material of disputed facts were on the, I
15 would say, the plaintiffs' side, the fact witness, the
16 irreparable harm side, and Mr. Block referred to the
17 situation with Vanderbilt where there are two Vanderbilt
18 declarations that are attached to our brief as part of
19 Exhibit 1. I'm sure the Court has at least seen that they
20 exist, whether the Court's consulted them or not.

21 And, of course, Mr. Block mentioned the
22 possibility of third-party witnesses. If it were a fact
23 witness exclusive affair, then, of course, I don't need to
24 consult our expert witnesses, and the June 8th and 9th dates
25 would work just fine for us. I would suggest that if that's

1 really the only date that could work, that we work something
2 out with the Williamses in the form of possibly a
3 stipulation or some other way that we could accommodate the
4 Williamses' testimony perhaps remotely.

5 As to the week of Juneteenth, the dates of 20th
6 and the 21st and the 22nd, which is the Thursday, I think
7 the United States previously advised that the 23rd is a
8 complete no-go. But 20, 21, and 22 work fine, and the week
9 of the 26th works.

10 We have, again, if the gravamen of the material
11 disputes goes to experts and the Court really wants experts
12 there, we have sporadic expert availability throughout that
13 time. Some are available some days, some not. And at this
14 point, I couldn't possibly guarantee -- in fact, I can tell
15 you guaranteed not, to be able to get all of defendants'
16 experts, any one or two of those days that have been
17 mentioned.

18 But again, if Mr. Block and I agree that expert
19 testimony would go in written form as we were talking about
20 yesterday, we have not come to any conclusion, because, of
21 course, defendants have not seen the reply brief which is
22 quite important for making any decision like this. That
23 would make it much easier for us to do any of those dates --
24 20, 21, or 22 or anytime of the week of the 26th -- or the
25 8th or 9th, because all the witnesses would be plaintiffs.

1 **THE COURT:** Okay. All right. Thank you for
2 that, Mr. Mortara.

3 Mr. Block, what are your thoughts in response to
4 that?

5 **MR. BLOCK:** Well, Your Honor, I guess -- you
6 know, I guess it depends a little bit on what defendants
7 want to get out of the testimony of the plaintiffs. I think
8 that our -- we do have the two families that are proceeding
9 anonymously. They are available during that time period.
10 It, of course, raises just more logistics about closing
11 courtrooms and things like that for them to testify.

12 The Williamses are -- they're out of -- they've
13 had a long-standing vacation. I think they're in London on
14 that day. If there's no expert testimony, then the
15 conference with our expert isn't necessary to -- it isn't an
16 impediment.

17 Obviously, if the Court -- we're happy to do
18 whatever the Court wants, and we will, you know, make
19 ourselves available to provide whatever evidence the Court
20 wants. We just might not be able to make certain witnesses
21 available. And I do think that Dr. Antommara, to the
22 extent the Court wants to hear expert testimony, might be a
23 particularly important expert for the court to hear. He
24 testified in the Alabama case, and -- you know, and
25 obviously the Williams family is more comfortable testifying

1 publicly than the others.

2 **MR. MORTARA:** Your Honor, this is Adam Mortara.
3 May I make a suggestion?

4 **THE COURT:** Yes, sir.

5 **MR. MORTARA:** What if we did a June 8 and 9 with
6 everybody but the Williamses and did a cleanup hearing, if
7 you will, one day the week of the 19th for the Williamses to
8 testify should it become necessary? Again, this is all
9 prefaced by if the Court believes the gravamen of the
10 material disputes is on the fact side, and we can do the
11 experts in writing. Because, of course, I haven't consulted
12 our experts about availability on the 8th and 9th.

13 **THE COURT:** All right. So the notion being, you
14 know, June 8th or 9th for witnesses other than the
15 Williamses and other than the expert who is not available,
16 right?

17 **MR. MORTARA:** We would agree with plaintiffs that
18 the experts would all go in in writing should the Court
19 agree with that.

20 **THE COURT:** Okay. All right. One moment. Stand
21 by.

22 (Respite.)

23 **THE COURT:** All right. So in your view,
24 Mr. Mortara, when we think about June 8th or 9th, you know,
25 we wouldn't have the Williamses, we wouldn't have the

1 experts, then the question becomes, okay, well, then, who
2 would testify? The other plaintiffs or plaintiffs' parents,
3 and also someone -- we'll say Dr. Brady, whomever -- at
4 Vanderbilt. Is that the -- sort of the universe of
5 potential people for June 8th or June 9th under your
6 proposal?

7 **MR. MORTARA:** Your Honor, I will give you the
8 broadest possible universe with the caveat that the reply
9 brief could substantially cut it down. I think I actually
10 sent Mr. Block an e-mail just an hour before this hearing
11 saying there's a sliver of a chance that what gets said in
12 the reply brief makes even the defendants believe a hearing
13 is unnecessary, although I think we're the most pro-hearing
14 of the group of court plaintiffs, United States defendants.

15 But the broadest universe would be that we felt
16 there was some need to call the plaintiffs' parent, the
17 plaintiff parents. And there is one, I believe,
18 non-plaintiff parent of Ryan Roe, that we wanted them to
19 testify. We do not anticipate any need for the minors to
20 testify as far as we're concerned.

21 Then there is Vanderbilt and the possibility of a
22 witness or witnesses from there. We could serve trial
23 subpoenas as Mr. Block suggested, do that today or tomorrow
24 so that they would have some chance, two weeks, to know that
25 they have to be there.

1 On top of that, we have a variety of fact witness
2 declarations that were offered by persons who are sometimes
3 called detransitioners -- I'm sure Your Honor might be
4 familiar with the term -- and others that we might wish to
5 call during that June 8 or 9. We are securing availability
6 of some of those individuals. And I think Your Honor could
7 probably sense the materiality or not of that testimony and
8 give us a sense of whether that would be something the Court
9 wanted to hear, but we could make those people or some of
10 them available.

11 So that's the broadest universe. I think the
12 likely core universe is some of the plaintiffs and the
13 non-Williamsses, obviously, and Vanderbilt.

14 **THE COURT:** Okay. All right. That is helpful,
15 Mr. Mortara.

16 You know, and the Court, not really in a position
17 to say for sure, it could see how testimony from Vanderbilt
18 wouldn't be necessary in terms of their not necessarily
19 being in dispute about what Vanderbilt is doing and why,
20 although I haven't decided.

21 But sort of the proposal there's still this
22 possibility of testimony from someone from Vanderbilt under
23 subpoena, sounds like; some detransitioners; plaintiff
24 parents; and a non-plaintiff parent of Ryan Roe; the notion
25 being, hey, maybe set aside the 8th or the 9th, maybe

1 both -- but we can talk about what the timing would be --
2 for those persons.

3 And then the expert witnesses would, you know,
4 testify by affidavits only as they have now. I guess that
5 could be supplemented if someone felt the need in response
6 to the briefing. And then the -- you know, the Williamses
7 could -- you know, they could either, if they want to do
8 sort of post-briefing declarations, they could do that.

9 But there still is the possibility of a later
10 hearing date if that isn't done in writing.

11 My thought is that probably, if the parties are
12 in agreement, to do -- to have expert testimony be by
13 declaration only whereby the parties aren't, after the fact,
14 gonna jump up and down and say, well, the Court should have
15 had live testimony to make credibility determinations. If
16 the parties aren't going to do that, have that view, then I
17 think it makes sense for the Court to think that it's likely
18 to be able to make determinations based on the declarations.
19 And, of course, at the preliminary injunction stage, these
20 are preliminary only.

21 But I'm certainly amenable to the notion of
22 someone saying, you know, hey, listen, this is if everyone
23 has decided there are material factual disputes between the
24 experts that are relevant to particular motions at hand, for
25 someone to say, well, we have to have live testimony just,

1 you know, on material issues, and credibility determinations
2 have to be made based on live testimony. I'm all ears.

3 But I'm also open to the notion that, you know,
4 if folks say right now, hey, Judge, to the extent those
5 decisions have to be made, you know, you should make them on
6 the -- you know, we think you should make them on the
7 written submissions.

8 So I'm going to ask Mr. Block: What do you think
9 of Mr. Mortara's proposal for June 8th or 9th?

10 **MR. BLOCK:** Your Honor, I think our preference,
11 especially if we're talking about just one or two days of
12 hearing, would still very much be to have it later. One of
13 our -- the Doe family is traveling June 1st through 5th, and
14 so that doesn't give a lot of time for us to prepare them.
15 And I know just the stress that goes through putting, you
16 know, these families -- getting these families prepared for
17 hearings, that it -- we would have to do a lot of the prep
18 work for them, I think, significantly in advance of when the
19 Court makes a determination as to whether a hearing is
20 necessary.

21 So I think that it would be -- our preference
22 would still very much be for, if a one- or two-day hearing,
23 to be later in the month.

24 In terms of whether a hearing is necessary for
25 these witnesses, I -- of course, if defendants are putting

1 on detransitioners, we -- and the Court deems that to be
2 helpful and relevant testimony, then we certainly want to
3 put on our plaintiffs and their families.

4 If there's not going to be live testimony on the
5 detransitioners, I do have my doubts that the testimony of
6 the parent plaintiffs will be that relevant to the issues in
7 dispute to the extent that the issues in dispute are what
8 care are they receiving now that Vanderbilt is not providing
9 the care. Or to the extent that part of the defendants want
10 to contest whether their care is medically necessary,
11 obviously, Dr. Brady would be the most appropriate witness
12 for that as opposed to the parents themselves who have seen
13 their children flourish but are not medical professionals
14 themselves.

15 So we will make ourselves available to the Court.
16 I do think that for our plaintiff families, it would be --
17 having it later in the month would be, you know, much less
18 stressful and would give the Court time to determine whether
19 it really wants to hear from them.

20 **MR. MORTARA:** Your Honor, this is Adam Mortara.
21 May I have a third proposal?

22 **THE COURT:** Yes, sir.

23 **MR. MORTARA:** I'm sorry, Your Honor, to jump in.
24 I think we're having a little bit of a broader conference
25 than I had anticipated, but I -- it really does sound to me

1 from a number of things Mr. Block has said, both yesterday
2 in our very expansive meet and confer and today, that the
3 parents' testimony may not be necessary. And if it isn't,
4 then we go right back to the 8th or the 9th being possible
5 for Vanderbilt or the detransitioners, which may or may not
6 be necessary themselves, and some parents that we have, the
7 declarants that you saw in our brief.

8 The question that I have, and I just put it to
9 the Court because I know the Court probably doesn't like
10 questions being put from one side to the other, is if
11 Mr. Block will tell us that the parents have arranged for
12 alternative treatment for the minor plaintiffs to begin
13 after Vanderbilt stops treating July 1st, and confirm that
14 in writing, I don't see any need to call the parents at all.

15 **THE COURT:** What do you think about that,
16 Mr. Block?

17 **MR. BLOCK:** Well, Your Honor, I do think if
18 defendants are putting in -- on testimony from other
19 third-party parents who, you know, are upset that their
20 child transitioned, then the testimony of our parents is
21 very relevant and we would want that to be put in.

22 In terms of the care, two of our plaintiff -- no
23 one has alternative treatment options in Tennessee. The
24 defendants have talked about the Choices Clinic. They only
25 serve people that are 16 or older. Two of our families have

1 appointments scheduled in the future for clinics out of
2 state. Those appointments have not taken place yet, but
3 they are backup plans that they have scheduled initial
4 appointments in the future for, and the third family has not
5 yet identified an out-of-state clinic to schedule an
6 appointment yet.

7 **MR. MORTARA:** So, Your Honor, again -- I'm sorry,
8 Your Honor.

9 **THE COURT:** Go ahead.

10 **MR. MORTARA:** Your Honor, Adam Mortara again. So
11 again, from our perspective, we will forebear calling any
12 fact witness that would require the parents to be there.
13 And Mr. Block didn't identify which families are which. If
14 the Williamses are one of the families that have lined up
15 alternative treatment, we do not need to call them. The
16 only parents that we would need to call are the ones, the
17 parents of the family that has not yet lined up alternative
18 treatment.

19 And the reason for this, Your Honor, should be, I
20 think, fairly plain, but I will make it express: If
21 plaintiffs have lined up alternative care, this is not an
22 emergency from our perspective. For reasons that we gave
23 you before and that the Court frankly did not agree with,
24 but now even more the additional reasons that they have
25 alternatives and that this is not a high-pressure emergency

1 situation if they have alternatives.

2 The one family that does not, what we would like
3 to ask them is why haven't you or what's the problem. And I
4 guess that's all I'd have to say about that, Your Honor.
5 But I think we're getting very close to an agreement that
6 most of the testimony is not necessary.

7 **THE COURT:** You know, I'm in general sort of
8 seeing it that way. And I think there are a couple of
9 considerations here as I sort of take stock of where we now
10 are. One is, scheduling this is going to be difficult, and
11 that's a function of obviously who is available and who
12 isn't.

13 It's also a function of the relatively short time
14 frame that we're looking at here, and there's nothing anyone
15 can do about any of that.

16 The other thing is that, you know, now it's
17 typical for parties in preliminary injunction context to
18 sort of insist -- and I'm not saying disingenuously but, you
19 know, insist that a hearing would be something they want and
20 it's a good idea. But sometimes, upon further reflection,
21 the parties really aren't insisting on that and don't
22 necessarily think it's necessary.

23 I will say this, that from my perspective,
24 usually a factually and legally sound opinion on a motion
25 for preliminary injunction can be done without a hearing by

1 a U.S. district judge, but a district judge would do well to
2 err on the side of holding a hearing if one or more parties
3 are really insisting on it. I'm not really hearing that,
4 understanding that that's sort of a general statement that
5 doesn't account for various, you know, particulars, but
6 that, you know, could play out based on what, you know, may
7 show up to be in factual dispute.

8 But I do think that we have a situation here
9 where at the moment, no one is seeking to beat down the
10 courthouse doors to have a hearing.

11 Now, here's what I'd like to do: ask Mr. Block to
12 give me any further thoughts, then Ms. Daniel, then we'll
13 take about a five-minute break where folks can stay on the
14 call and step away and then come back in roughly five
15 minutes, and we'll see where we are on sort of a -- what
16 kind of is a not insignificant and tricky sort of scheduling
17 issue.

18 Mr. Block, your most recent thoughts?

19 **MR. BLOCK:** I think they're probably in accord
20 with what the Court just said. I think the issue of whether
21 or not there is sufficient irreparable harm to warrant an
22 injunction I think is going to be a matter the Court
23 determines, you know, as a matter of law based on facts that
24 are essentially undisputed. And so I don't think that that
25 would be helpful to have a hearing on.

1 I think that, you know, to the extent the only
2 thing I've heard today that makes me think that we would
3 want or insist on a hearing would be if the Court is
4 inclined to sort of waive a narrative of detransitioners or
5 the parents of detransitioners to test the need for our
6 plaintiffs to have care, then we certainly would want to put
7 on live testimony of our own witnesses.

8 Other than that, I think that this also depends
9 on the level of scrutiny the Court determines applies, or
10 that we think that a high scrutiny applies that whatever
11 disputes there are between either the fact witnesses or the
12 expert witnesses don't rise to the level of a material
13 dispute that prevents the Court from issuing the preliminary
14 injunction in our favor based on the prediction of
15 likelihood of success.

16 So we -- I guess I largely echo what the Court's
17 preliminary thoughts were.

18 **THE COURT:** All right. Thanks for that,
19 Mr. Block. And understanding that, you know, you're making
20 sort of general statements about your view for a need for a
21 hearing. And that, you know, if the Court's going to rely
22 on testimony of detransitioners, their stories, then you
23 might want witnesses. And you do think it's possible that
24 factual differences, disagreements would be more material
25 under a rational-basis standard of review. But with those

1 caveats, you're not seeing a blazing need for an evidentiary
2 hearing.

3 All right. Thank you for that.

4 Ms. Daniel, my sense is that, you know, in terms
5 of a hearing, the government's view is, hey, if there's
6 going to be oral argument, we're all for that, but otherwise
7 we don't need a hearing, we don't need an evidentiary
8 hearing, because that's more the plaintiffs' bailiwick.

9 Is that fair to say?

10 **MS. DANIEL:** Your Honor, I think that is fair to
11 say. We -- given that we're not presenting our own
12 witnesses, we don't have any strong opinions on the
13 necessity of an evidentiary hearing.

14 **THE COURT:** Okay. All right.

15 **MR. MORTARA:** Your Honor, Adam Mortara here.
16 Would you mind me getting one final point in?

17 **THE COURT:** Yeah, yeah, yeah. We'll hear from
18 you and then we'll take a few-minute break.

19 **MR. MORTARA:** So, Your Honor, just not wishing to
20 dispute the spirit of what you said about nobody wanting a
21 hearing, the issues on which we would want a hearing -- and
22 I fully agree with Your Honor's comments about nobody
23 jumping up and down about the expert situation, so we can
24 agree with your characterization of that. We will not jump
25 up and down.

1 The things on which we would want a hearing
2 include the issue of irreparable harm with respect to
3 alternative treatment that I just mentioned, but also should
4 there be a disagreement between the parties about whether
5 VUMC, who will return to offering these treatments if a
6 preliminary injunction issues, which we have highlighted
7 very profoundly in our brief that we believe that VUMC is
8 not going to start these treatments again if there's a
9 preliminary injunction because of Section 105, the private
10 right of action, which is unaffected by this proceeding, and
11 because of their decision to simply exit the business, and
12 their statement that they would only reenter it if the
13 enforcement entire of the act was enjoined, if that's a fact
14 issue about what their intent is, we would need a hearing on
15 that. And those are kind of two irreducible minimums for
16 us.

17 **THE COURT:** All right. Okay.

18 **MR. MORTARA:** Thank you, Your Honor.

19 **THE COURT:** Yes, sir. Appreciate it.

20 The -- you know, I'm calling them the state
21 defendants, but the defendants, is seeking -- does believe a
22 live hearing is necessary on the issue of alternative
23 treatments, and a particular -- it sounded like based on
24 what Mr. Block represented, there is, you know, one family
25 that has not lined up alternative care, and the state would

1 want -- the state defendants would want to inquire into that
2 because it goes to irreparable harm, and then also, in terms
3 of irreparable harm, evidence regarding VUMC's position on
4 what would happen even if there was a preliminary
5 injunction.

6 Have I summarized that correctly?

7 **MR. MORTARA:** That is correct, Your Honor.

8 **THE COURT:** All right. Thank you.

9 Well, now that you've raised that, I feel
10 compelled to give Mr. Block one more chance and then we'll
11 take our break. Then I think we'll have it sort of
12 crystalized for the Court to maybe put out a proposal.

13 Mr. Block?

14 **MR. BLOCK:** Thank you, Your Honor. You know, two
15 brief things. On the irreparable harm issue, the fact that
16 our client made appointments to travel hundreds of miles out
17 of state to, you know, find care for their kids that they
18 previously were able to obtain in Nashville, I think, is
19 deficient irreparable harm for a P.I. and --

20 **THE COURT:** Is there -- sorry to interrupt,
21 Mr. Block. Is your view that even if it's a little murkier
22 from the state's perspective -- the defendant's perspective,
23 I keep saying state -- but as we all know, under 11th
24 Amendment and so forth, we're talking about defendants in
25 their official capacity. So the -- you know, the defendants

1 see this as definitely murkier with one of the minors. But
2 your view is, yeah, but there are these other plaintiffs,
3 and there's no -- you know, there's no issue with respect to
4 those plaintiffs, those other plaintiffs. Is that what
5 you're saying?

6 **MR. BLOCK:** Well, yeah. Our view is that there's
7 no provider in Tennessee that will provide care for minors
8 under 16 during this time period. Two of the families have
9 care outside Tennessee which is irreparable harm, and the
10 third family might not even have that. But we think that
11 even if they were -- the defendants were able to show that
12 the third family could also line up care outside Tennessee
13 with the waiting lists going on, that that still would not
14 defeat irreparable harm.

15 So that's sort of a paraphrase what I think
16 Your Honor was saying.

17 **THE COURT:** Okay. All right. I thought maybe
18 one of the things was that, you know, the defendants were
19 saying as well, and this one plaintiff, you know, if they
20 haven't seen the need to look outside Tennessee, maybe it's
21 not an issue where the lack of such care would be
22 irreparable harm for that particular minor. I thought that
23 might be part of it as well, but . . .

24 **MR. BLOCK:** Oh, no, I think that the families are
25 hoping very much that a preliminary injunction is entered

1 and so that they don't have to incur the harm and expense of
2 trying to take their kids out of state.

3 But I do think that that's immaterial ultimately
4 to the legal determination where care is being cut off as of
5 April 1st for everyone regardless. That's undisputed, and I
6 think that that is sufficiently close in time also for PI
7 even under -- even if all the other facts are found against
8 us.

9 But in addition, Your Honor, on the issue of
10 Vanderbilt, you know, Vanderbilt has, you know, provided two
11 30(b)(6) declarations. And in them, you know, they have
12 stated that they would provide care, they would resume
13 providing care in the event that the preliminary injunction
14 were entered. So I think that, you know, ultimately, you
15 know, I think that after reviewing the evidence in the
16 record, you know, the Court, in applying the standard which
17 is that I don't think there has to be a 100 percent showing
18 that the PI will guarantee at Vanderbilt, provide care just
19 so that it is likely, I think that those -- the facts in the
20 paper record, coupled with the legal standard, will enable
21 the Court to make an order.

22 But we certainly -- if the Court thinks that
23 Dr. Brady and Vanderbilt are key witnesses, we would
24 certainly be okay having a hearing in which they're called
25 as a witness. But I think -- I hope that the Court

1 ultimately does not think that's necessary.

2 **THE COURT:** All right. Final thing. And I know
3 we said -- I've said a couple of people could have the last
4 word, but Mr. Mortara, any response to Mr. Block's
5 assessment, your view is that, you know, actually what's in
6 the declaration may not tell the full story about
7 Vanderbilt's intentions; is that right?

8 **MR. MORTARA:** Well, you will see in Dr. Brady's
9 declaration, she refers to other threats of liability which
10 is, to us, pretty clearly a reference to Section 105 which,
11 as I've said, cannot be affected by this proceeding. So the
12 issue is, if a preliminary injunction will not open the
13 doors of Vanderbilt to these patients because Vanderbilt,
14 for other reasons unaffected by the injunction, will not
15 resume care, then the preliminary injunction causation
16 standard is not met.

17 So we would put Vanderbilt on the stand and force
18 them to answer whether they will do these things if there is
19 a preliminary injunction, and you will find that their
20 declarations do not say that.

21 **THE COURT:** Okay. All right. Understanding both
22 sides' views about VUMC on that.

23 All right. Counsel, stand by. We're going to
24 take about five minutes, and then we'll get everyone
25 reconvened, we'll take this back up, and decide where we

1 are. Thank you.

2 (Recess 9:19 a.m. to 9:24 a.m.)

3 **THE COURT:** All right. Do we have Mr. Block back
4 on the line?

5 **MR. BLOCK:** Yes, Your Honor.

6 **THE COURT:** Thank you. Mr. Mortara, are you on
7 the line?

8 **MR. MORTARA:** I am here, Your Honor.

9 **THE COURT:** All right. And Ms. Daniel?

10 **MS. DANIEL:** I'm here, Your Honor.

11 **THE COURT:** All right. Now, the one fly in the
12 ointment for this particular plan is the stated
13 unavailability of the government. I don't know who-all that
14 means.

15 I would say this. My proposal is not going to
16 involve oral argument anyway, and therefore, it may -- my
17 hope would be that, you know, the government could have a
18 representative to observe, even if it's not lead counsel or
19 counsel that would do any oral argument. So we'll see if
20 that is, in fact, the case.

21 My thought is, given trying to walk between the
22 raindrops, as the expression goes, of trying to sort of find
23 a time for potential testimony. It would need to be, I
24 think, June 23rd, given our calendar here and some criminal
25 things going on and given the schedule of various folks that

1 was expressed to us.

2 I do think that our thought is to let the parties
3 know by June 5th whether we're going to have the evidentiary
4 hearing on June the 23rd. And the testimony on June 23rd
5 would be, if at all, about one or both of the following:
6 testimony related to the extent to which there is
7 irreparable harm that would befall the plaintiffs in the
8 absence of a preliminary injunction, and that could include
9 issues about the lining up of alternative treatment. So
10 that line of inquiry would be a possibility, and also
11 testimony about VUMC's intentions for continuing or not
12 continuing treatment under various circumstances, most
13 relevantly in the event that a preliminary injunction was
14 granted.

15 So I'm inclined to put that on the calendar for
16 June 23rd, let folks know by June the 5th whether we can
17 call that off. And I don't know if I can do any better than
18 that without saying, you know what? A hearing is really not
19 going to work very well. We're just not going to do one. I
20 think that's the best I can do, and I think we've probably
21 narrowed down what a potential hearing would need to be
22 about.

23 So, Ms. Daniel, understanding we're not going to
24 have oral argument so it won't be like, you know, Abraham
25 Lincoln and Daniel Webster having an opportunity to, you

1 know, display their rhetorical craft, it's going to be about
2 evidence anyway; if that's the case, can suitable counsel
3 for the government be available? I'm sure they'd want to
4 observe.

5 **MS. DANIEL:** Your Honor, we can have someone
6 available.

7 **THE COURT:** All right. Thank you.

8 Mr. Block, what do you think of that?

9 **MR. BLOCK:** That certainly works, Your Honor.
10 And would it make sense to send the trial subpoena to
11 Vanderbilt now or to wait until after June 5th?

12 **THE COURT:** To me, I think it would be prudent to
13 put them under subpoena with the option to call them off. I
14 think that would probably be prudent. And I say that
15 without intending to indicate any preliminary thoughts about
16 materiality of any factual dispute there. Thank you.

17 Mr. Mortara? What do you think?

18 **MR. MORTARA:** Your Honor, thank you for your
19 accommodation. That date works fine with the understanding
20 of the subject matter. Thank you very much.

21 **THE COURT:** All right. Thank you.

22 So here's what we're going to do. We're going to
23 put out an order putting this on the calendar and sort of
24 making express what I've stated, which is that there is a
25 hearing scheduled, but that it could be canceled based on

1 the Court's review of the defendants' response to the
2 government's motion for a preliminary injunction and the
3 plaintiffs' reply in support of their own motion for
4 preliminary injunction, that the Court will let the parties
5 know by June the 5th whether this hearing will be canceled
6 or whether it will proceed and, if so, which of the two
7 issues. It will set the time in that order for 8:30 on June
8 23rd.

9 And I think that that should do it. All right.
10 Any questions about the plan there?

11 **MR. MORTARA:** None from the defendants, Your
12 Honor.

13 **MR. BLOCK:** No, Your Honor.

14 **MS. DANIEL:** Your Honor, just a quick question.
15 I just wanted to make note of the fact that our reply is
16 coming in presumably on June 7th and --

17 **THE COURT:** Yes.

18 **MS. DANIEL:** -- and flag that for the Court.

19 **THE COURT:** Yeah, I had it seven days after
20 May 31st. And it did occur to me, you know, that it's
21 certainly possible that the government's reply in support of
22 the motion for preliminary injunction should -- you know,
23 could have, obviously, an effect on various thoughts of the
24 Court. Could have an effect on the decision whether to have
25 this evidence -- this evidentiary hearing on June 23rd.

1 I think on balance, though, I'll be able to make
2 that decision, and so I was inclined to go a little bit
3 earlier with making the decision unless, Ms. Daniel, you
4 would say, Judge, it may be really prudent if you wait until
5 June 8th after having a day to review our reply.

6 **MS. DANIEL:** Your Honor, I think June the 5th
7 will be fine. Just wanted to make sure that that was in
8 your consideration.

9 **THE COURT:** Yeah, and that should be the last
10 brief that we have, that June 7th government reply in
11 support of its motion.

12 All right. Anything else that counsel wish to
13 raise at this time? I know you have a discussion coming up
14 with Judge Newbern. Anything for the District Judge at this
15 time?

16 **MR. BLOCK:** No, Your Honor.

17 **MR. MORTARA:** Adam Mortara for defendants, Your
18 Honor. No, and thank you for your time today.

19 **THE COURT:** Yes, sir.

20 Anything from the government?

21 **MS. DANIEL:** No, Your Honor. That's it for
22 today.

23 **THE COURT:** All right. Thank you, counsel. Look
24 for that order to be issued, and we'll go from there.

25 Thank you. We stand in recess.

1 (WHEREUPON, the foregoing proceedings were
2 concluded at 9:32 a.m.)
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1 REPORTER'S CERTIFICATE

2
3 I, Deborah K. Watson, Official Court Reporter for
4 the United States District Court for the Middle District of
5 Tennessee, with offices at Nashville, do hereby certify:

6 That I reported on the Stenograph machine the
7 proceedings held via teleconference on May 24, 2023, in the
8 matter of L.W., by and through her parents and next friends,
9 Samantha Williams and Brian Williams, et al. vs. JONATHAN
10 SKRMETTI, in his official capacity as the Tennessee Attorney
11 General and Reporter, et al., Case No. 3:23-cv-00376; that
12 said proceedings in connection with the hearing were reduced
13 to typewritten form by me; and that the foregoing transcript
14 (pages 1 through 36) is a true and accurate record of said
15 proceedings.

16 This the 28th day of May, 2023.

17
18 /s/ Deborah K. Watson
19 DEBORAH K. WATSON, RPR, CRR
20 Official Court Reporter
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