

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

WHOLE WOMAN'S HEALTH, et al.,	§	
	§	
<i>Plaintiffs,</i>	§	
v.	§	Cause No. 1:21-cv-00616-RP
	§	
AUSTIN REEVE JACKSON, et al.,	§	
	§	
<i>Defendants.</i>	§	

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**DEFENDANTS' OPPOSED MOTION TO STAY SUMMARY JUDGMENT  
AND CLASS CERTIFICATION PROCEEDINGS**

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Defendants file this Opposed Motion to Stay Summary Judgment and Class Certification Proceedings, respectfully showing the following:

Plaintiffs filed this lawsuit on July 13, 2021. *See* Docket No. 1. The various State Defendants<sup>1</sup> and Defendant Penny Clarkston received service on either July 14 or July 15, 2021. Defendant Mark Lee Dickson was served on July 16, 2021. Pursuant to the applicable rules, State Defendants intend to file their responsive pleadings by August 4, 2021, and Mr. Dickson intends to file his responsive pleading by August 6, 2021. Defendants are also aware that Plaintiffs have filed a lengthy

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<sup>1</sup> The State Defendants include Hon. Austin Reeve Jackson, Judge of the 114th Judicial District Court; Stephen Brint Carlton, Executive Director of the Texas Medical Board; Katherine A. Thomas, Executive Director of the Texas Board of Nursing; Cecile Erwin Young, Executive Commissioner of the Texas Health and Human Services Commission; Allison Vordenbaumen Benz, Executive Director of the Texas Board of Pharmacy; and Ken Paxton, Attorney General of Texas (collectively "State Defendants"). Plaintiffs have sued State Defendants in their official capacities.

motion for summary judgment (Docket No. 19) and a separate motion for class certification (Docket No. 32).

Defendants intend to raise various jurisdictional arguments in their initial responsive pleadings, explaining why this Court lacks subject-matter jurisdiction over this case and why many or all of Plaintiffs' claims are barred by sovereign immunity. Accordingly, Defendants request this Court to stay any further briefing or consideration of Plaintiffs' motion for summary judgment and motion for class certification until after Defendants have filed their initial responsive pleadings and the Court has had a reasonable opportunity to consider the threshold issues of jurisdiction and immunity that will be raised therein. The Northern District of Texas recently did just that in a similar case before dismissing for lack of subject-matter jurisdiction. *Planned Parenthood of Greater Tex. Surg. Health Servs. v. City of Lubbock, Tex.*, No. 5:21-CV-114-H, 2021 WL 2385110, at \*6 (N.D. Tex. June 1, 2021); *see also, e.g., Franciscan Alliance, Inc. v. Burwell*, No. 7:16-cv-00108-O, 2016 WL 9281524, at \*2–3 (W.D. Tex. Nov. 1, 2016) (staying summary judgment proceedings where plaintiffs filed a summary judgment motion before defendants had filed their answer and where defendants intended to contest subject-matter jurisdiction).

Counsel for State Defendants has conferred with counsel for Plaintiffs regarding this motion. Although Plaintiffs oppose a stay, they are willing to discuss a jointly agreed briefing schedule. Defendants would be willing to discuss a joint briefing schedule for all parties' various motions after Defendants have filed their

initial responsive pleadings. In the meantime, Defendants request a stay as described in this motion.

### **CONCLUSION & PRAYER**

For the foregoing reasons, Defendants ask this Court to stay all further briefing and proceedings related to Plaintiffs' motion for summary judgment and motion for class certification until after Defendants' forthcoming jurisdictional challenges have been resolved.

Respectfully submitted.

**KEN PAXTON**

Attorney General of Texas

**BRENT WEBSTER**

First Assistant Attorney General

**GRANT DORFMAN**

Deputy First Assistant Attorney General

**SHAWN E. COWLES**

Deputy Attorney General for Civil Litigation

**THOMAS A. ALBRIGHT**

Chief - General Litigation Division

*/s/ Benjamin S. Walton*

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**BENJAMIN S. WALTON**

Texas Bar No. 24075241

Benjamin.Walton@oag.texas.gov

**CHRISTOPHER D. HILTON**

Texas Bar No. 24087727

Christopher.Hilton@oag.texas.gov

**HALIE DANIELS**

Texas Bar No. 24100169

Halie.Daniels@oag.texas.gov

Assistant Attorneys General

General Litigation Division

**BETH KLUSMANN**

Assistant Solicitor General

Texas Bar No. 24036918

Beth.Klusmann@oag.texas.gov

**NATALIE THOMPSON**

Assistant Solicitor General

Texas Bar No. 24088529

Natalie.Thompson@oag.texas.gov

Office of the Attorney General

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

(512) 463-2120 – Phone

(512) 320-0667 – Fax

*Counsel for State Defendants*

/s/ Andrew B. Stephens

**ANDREW B. STEPHENS**

Texas Bar No. 24079396

[andrew@hackerstephens.com](mailto:andrew@hackerstephens.com)

**HEATHER GEBELIN HACKER**

Texas Bar No. 24103325

[heather@hackerstephens.com](mailto:heather@hackerstephens.com)

Hacker Stephens LLP

108 Wild Basin Rd. South, Suite 250

Austin, Texas 78746

Tel: (512) 399-3022

*Attorneys for Defendant Penny Clarkston*

/s/ Jonathan F. Mitchell

**JONATHAN F. MITCHELL**

Texas Bar No. 24075463

Mitchell Law PLLC

111 Congress Avenue, Suite 400

Austin, Texas 78701

(512) 686-3940 (phone)

(512) 686-3941 (fax)

[jonathan@mitchell.law](mailto:jonathan@mitchell.law)

*Counsel for Defendant Mark Lee Dickson*

**CERTIFICATE OF CONFERENCE**

On July 27, 2021, I conferred via telephone with Marc Hearn, counsel for Plaintiffs, regarding whether Plaintiffs would agree to the stay requested in this motion. Mr. Hearn informed me that Plaintiffs did not agree to the stay.

/s/ Benjamin S. Walton

**BENJAMIN S. WALTON**

Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that on July 27, 2021, a true and correct copy of this document was electronically filed using the Court's CM/ECF system, which will send notification of such filing to the following counsel of record:

<p>Christen Mason Hebert Johns &amp; Hebert PLLC 2028 East Ben White Blvd Suite 240-1000 Austin, TX 78741 (512) 399-3150 chebert@johnshebert.com</p> <p><i>Attorney for all Plaintiffs</i></p>	<p>Julie Murray Richard Muniz Planned Parenthood Federation of American 1110 Vermont Ave., NW Ste 300 Washington, DC 20005 (202) 973-4997 Julie.murray@ppfa.org Richard.muiniz@ppfa.org</p> <p><i>Attorneys for Planned Parenthood of Greater Texas Surgical Health Services, Planned Parenthood South Texas Surgical Center, Planned Parenthood Center for Choice, and Dr. Bhavik Kumar</i></p>
<p>Stephanie Toti LAWYERING PROJECT 41 Schermerhorn Street #1056 Brooklyn, NY 11201 (646) 490-1083 stoti@lawyeringproject.org</p> <p><i>Attorneys for The Ajiya Center, Frontera Fund, Fund Texas Choice, Jane's Due Process, Lilith Fund for Reproductive Equity, North Texas Equal Access Fund</i></p>	<p>Rupali Sharma LAWYERING PROJECT 197 Pine Street, Apt. 23 Portland, ME 04102 (908) 930-6445 rsharma@lawyeringproject.org</p> <p><i>Attorneys for The Ajiya Center, Frontera Fund, Fund Texas Choice, Jane's Due Process, Lilith Fund for Reproductive Equity, North Texas Equal Access Fund</i></p>
<p>Molly Duane Kirby Tyrrell Melanie Fontes Center for Reproductive Rights 199 Water Street, 22nd Floor New York, NY 10038 (917) 637-3631 mduane@reprorights.org ktyrrell@reprorights.org</p>	<p>Julia Kaye Brigitte Amiri Chelsea Tejada American Civil Liberties Union Foundation 125 Broad Street, 18<sup>th</sup> Floor New York, NY 10004 (212) 549-2633 jkaye@aclu.org</p>

<p>mfontes@reprorights.org</p> <p>Jamie A. Levitt J. Alexander Lawrence Morrison &amp; Foerster LLP250 W. 55th Street New York, NY 10019 (212) 468-8000 jlevitt@mofocom alawrence@mofocom</p> <p><i>Attorneys for Whole Woman's Health, Whole Woman's Health Alliance, Marva Sadler, Southwestern Women's Surgery Center, Allison Gilbert, MD., Brookside Women's Medical Center PA d/b/a Brookside Women's Health Center and Austin Women's Health Center, Alamo City Surgery Center PLLC d/b/a Alamo Women's Reproductive Services, Houston Women's Reproductive Services, Reverend Daniel Kanter, and Reverend Erika Forbes.</i></p>	<p>bamiri@aclu.org ctejada@aclu.org</p> <p>Lorie Chaiten American Civil Liberties Union Foundation 1640 North Sedgwick Street Chicago, IL 60614 (212) 549-2633 rfp_lc@aclu.org</p> <p>Adriana Pinon David Donatti Andre Segura ACLU Foundation of Texas, Inc. 5225 Katy Freeway, Suite 350 Houston, TX 77007 Tel. (713) 942-8146 Fax: (713) 942-8966 apinon@aclutx.org ddonatti@aclutx.org asegura@aclutx.org</p> <p><i>Attorneys for Houston Women's Clinic</i></p>
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/s/ Benjamin S. Walton  
**BENJAMIN S. WALTON**  
Assistant Attorney General

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<i>Defendants.</i>	§	

**ORDER GRANTING DEFENDANTS’ OPPOSED MOTION TO STAY  
SUMMARY JUDGMENT AND CLASS CERTIFICATION PROCEEDINGS**

On this date, the Court considered Defendants’ Opposed Motion to Stay Summary Judgment and Class Certification Proceedings (the “Motion”). After considering the Motion, any related responses and replies filed by the parties, and the other pleadings in this matter, the Court is of the opinion that the Motion is meritorious and should be **GRANTED**.

**IT IS THEREFORE ORDERED** that all further briefing and proceedings relating to Plaintiffs’ motion for summary judgment and motion for class certification are hereby stayed until after the Defendants in this matter have filed their initial responsive pleadings and the Court has had reasonable time and opportunity to consider any jurisdictional arguments that may be raised therein.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE