

**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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**THE STATE DEFENDANTS’<sup>1</sup> OPPOSED MOTION FOR EXPEDITED  
RULING ON THEIR MOTION TO RECONSIDER ORDER DENYING THE  
DEFENDANTS’ MOTION TO STAY SUMMARY-JUDGMENT AND  
CLASS-CERTIFICATION PROCEEDINGS**

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On July 27, 2021, all Defendants jointly moved to stay the summary-judgment and class-certification proceedings until their various jurisdictional objections were resolved. ECF No. 39. The Court denied that motion on August 4, 2021. ECF No. 47. On August 6, 2021, all Defendants filed a joint motion to reconsider the Court’s order denying their motion to stay summary-judgment and class-certification proceedings. ECF No. 52. The Court has not ruled on Defendants’ motion for reconsideration, and the current scheduling order—which the Court entered without the benefit of Defendants’ motions to dismiss for lack of subject matter jurisdiction—requires a

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<sup>1</sup> For purposes of this motion, “the State Defendants” includes the State Agency Defendants (Defendants 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, all in their official capacities) and Defendant Austin Reeve Jackson in his official capacity.

response on the summary-judgment and class-certification briefing at noon on August 11, 2021. ECF No. 47.

On August 7, 2021, Defendants Clarkston and Dickson filed a petition for mandamus and motion for emergency stay with the Fifth Circuit. Plaintiffs responded by filing a motion for preliminary injunction and temporary restraining order in this Court. ECF No. 53. Hours later, the Fifth Circuit granted those Defendants' motion for stay and ordered a response to the petition for mandamus. Order, *In re Clarkston*, No. 21-50708 (5th Cir. filed Aug. 7, 2021) (per curiam) (attached as Exhibit A). The State Defendants are similarly situated and therefore should receive the same relief.

The State Defendants respectfully request that the Court act quickly to grant Defendants' motion for reconsideration and address the threshold question of jurisdiction before requiring onerous merits and class-certification responses. By staying any proceedings other than those related to the issue of the Court's jurisdiction, the Court can ensure that Defendants' rights to be free from the burdens of this litigation are preserved. Defendants' objections to the Court's jurisdiction should be quickly and easily resolved in the Defendants' favor, and there is no need to burden the parties or the Court with merits or class-certification briefing that the Court has no jurisdiction to consider.

Accordingly, the State Defendants respectfully request that the Court rule on the pending motion for reconsideration no later than the afternoon of August 9, 2021, to allow the State Defendants to seek further relief if necessary.

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/ Christopher D. Hilton*

**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**

Texas Bar No. 24036918

Beth.Klusmann@oag.texas.gov

**NATALIE D. THOMPSON**

Texas Bar No. 24088529

Natalie.Thompson@oag.texas.gov

Assistant Solicitors General

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 the State Defendants*

**CERTIFICATE OF CONFERENCE**

I hereby certify that on August 7 and August 8, 2021, I conferred with counsel for the other parties to this litigation. Marc Hearn indicated that Plaintiffs are opposed to the relief requested herein. Counsel for Defendants Clarkston and Dickson are unopposed to the relief requested herein.

/s/ Christopher D. Hilton  
**CHRISTOPHER D. HILTON**  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2021, a true and correct copy of this document was electronically filed using the Court's CM/ECF system, and therefore served on all counsel of record.

/s/ Christopher D. Hilton  
**CHRISTOPHER D. HILTON**  
Assistant Attorney General

# United States Court of Appeals for the Fifth Circuit

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No. 21-50708

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IN RE: PENNY CLARKSTON; MARK LEE DICKSON,

*Petitioners.*

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Petition for a Writ of Mandamus  
to the United States District Court  
for the Western District of Texas  
USDC No. 1:21-CV-616

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Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that a stay of the obligation of Penny Clarkston and Mark Lee Dickson to file a response to the pending motion for summary judgment is GRANTED until further order of this court. The Respondents are ORDERED to file a response to the two Petitioners' petition to this court by 5:00 p.m. central time on August 10, 2021.

As allowed under F.R.A.P. 21(b)(4), the District Judge is invited to respond to the petition for writ of mandamus. If a response is filed, we urge the District Judge to state whether it is his intention to rule on properly filed motions to dismiss based on an absence of jurisdiction before ruling on any merits issues in the case.

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

August 07, 2021

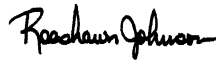
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-50708      In re: Penny Clarkston  
USDC No. 1:21-CV-616

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Roeshawn Johnson, Deputy Clerk  
504-310-7998

Ms. Jeannette Clack  
Mrs. Molly Rose Duane  
Ms. Heather Gebelin Hacker  
Mr. Marc A. Hearron  
Mr. Joseph Alexander Lawrence  
Mr. Jonathan F. Mitchell  
Ms. Julie A. Murray  
Mr. Andre Segura  
Ms. Rupali Sharma