IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ELIZABETH VAN DUYNE *and* THE STATE OF TEXAS *Plaintiffs*,	§	
v.	§	Civil Action No. . 4:22-cv-00122-O
CENTERS FOR DISEASE CONTROL AND PREVENTION *et al.*, *Defendants*.	§	

THE STATE OF TEXAS'S RESPONSE REGARDING FEDERAL RULE OF CIVIL PROCEDURE 65(a)(2) CONSOLIDATION

Pursuant to the Court's March 17, 2022 Order, the State of Texas respectfully submits the following response to the submissions by the parties to Plaintiff Van Duyne's motion for preliminary injunction. For the substantive reasons explained in Plaintiff Van Duyne's briefs, ECF. Nos. 18, 20, which the State joins and incorporates herein, a trial is not necessary to resolve the legal questions presented by this dispute. The Court should proceed to the merits of this matter without delay, as every day that passes results in the continued infringement of both Plaintiff Van Duyne's rights and Texas's authority to determine the appropriateness of pandemic response measures within its borders. The claims before the Court are almost entirely legal in nature, and a hearing and additional briefing under Federal Rule of Civil Procedure 56(f) would permit the Court to quickly resolve these issues of pressing importance. Indeed, all parties to this case appear to agree that summary disposition is appropriate in this matter—so the Court should proceed to a summary judgment hearing without delay.

Defendants' arguments against consolidation and prompt resolution are unconvincing. Although Defendants make much of the State's determination not to seek a preliminary injunction, that is irrelevant to the question of Rule 65(a)(2) consolidation, which is committed to the court's discretion. *See, e.g.*, *Bowles v. Bennett*, 629 F.2d 1092, 1094 (5th Cir. 1980); *Drummond v. Fulton Cnty. Dep't of Family & Children's Servs.*, 563 F.2d 1200, 1204 (5th Cir. 1977). Both Plaintiffs seek speedy resolution of the issues presented, and Plaintiff Van Duyne's request for a preliminary injunction is no less urgent as a result of the State's position. Moreover, for the reasons explained by Plaintiff Van Duyne, ECF No. 20 at 4-5, the State's standing is also irrelevant to this question. Although the State certainly has standing because it continues to suffer a sovereign injury due to Defendants' unlawful actions, Defendants' arguments to the contrary present no barrier to urgent and summary disposition of this case; they would remain free to raise any such arguments in their merits brief. Finally, Defendants' argument that they may voluntarily withdraw their unlawful mask orders, and therefore the Court need not act, ECF No. 19 at 5, ring hollow. The promise of "ongoing deliberations" does not retroactively cure Defendants' APA violations, and Defendants have not promised to cease their illegal conduct—nor would it moot this matter even if they had. *See, e.g.*, *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc.*, 528 U.S. 167, 174 (2000) ("A defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case.").

No party has advanced any compelling reason why the Court cannot advance this matter quickly to a summary judgment hearing, and the Court should do so under any procedural mechanism that it deems appropriate. The State of Texas agrees with Plaintiff Van Duyne that the Court should order Defendants to respond to the merits of Plaintiffs' claims immediately and schedule a hearing thereon as soon as possible.

Dated: April 6, 2022

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

/s/ Christopher D. Hilton
CHRISTOPHER D. HILTON
Texas Bar No. 24087727
Chief, General Litigation Division

Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 | FAX: (512) 320-0667
christopher.hilton@oag.texas.gov

COUNSEL FOR THE STATE OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent by electronic notification through ECF by the United States District Court, Northern District of Texas, Fort Worth Division, on April 6, 2022 to all counsel of record.

/s/ Christopher D. Hilton
CHRISTOPHER D. HILTON