

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

RAJIN PATEL, §
 Plaintiff, §
v. §
§
TEXAS TECH UNIVERSITY; DUANE §
JONES, individually and in his official §
capacity as adjunct professor; §
WILLIAM PASEWARK, INDIVIDUALLY §
and in his official capacity as TTU §
Rawls College of Business Associate §
Dean of Graduate Programs and §
Research; ROBERT RICKETTS, §
individually and in his official capacity §
as Area Coordinator in Accounting; §
and BRITTANY TODD, individually §
and in her individual capacity as §
Associate Director of the Office of §
Student Conduct; §
 Defendants. §

CIVIL ACTION NO. 5:17-cv-174-C

**DEFENDANTS' NOTICE OF PARTIAL AUTOMATIC STAY
AND OPPOSED MOTION TO STAY FURTHER PROCEEDINGS**

TO THE HONORABLE JUDGE SAMUEL RAY CUMMINGS:

Defendants Texas Tech University, Duane Jones, William Pasewark, Robert Ricketts, and Brittany Todd (*collectively*, the “Defendants”), file this Notice of Partial Automatic Stay and Motion to Stay Further Proceedings, providing notice to this Court and the parties to this action that the Defendants have filed a Notice of Appeal relating to all but the Official Capacity claims pending before this Court. Additionally, the Defendants respectfully move this Court to order a stay on any further proceedings pending resolution of their appeal.

The claims subject to interlocutory appeal and the remaining claims not appealed involve matters factually intertwined and distinguishable only in the relief sought;

subjecting the Texas Tech University and individually-named defendants to discovery, a preliminary injunction hearing, or any additional proceedings in this cause while the issues of sovereign and qualified immunity remain on appeal would effectively deprive them of their entitlement to the same. *See, e.g., Trent v. Wade*, No. 12-CV-1244, 2013 WL 12176988, at *2 (N.D. Tex. Oct. 10, 2013) (stay of all proceedings warranted pending outcome of qualified immunity appeal where, as is true in this case, the unappealable claims were “inexorably intertwined” with the issue in the interlocutory appeal and the remaining constitutional violations were also the subject of the interlocutory appeal).

Therefore, the Defendants now request a stay of all proceedings pending resolution of the Defendants’ interlocutory appeal of the Court’s denial of their motion to dismiss.

I. Procedural facts relevant to this Notice and Request for Stay.

Plaintiff Rajin Patel (“Plaintiff”) filed the instant litigation alleging violations of his constitutional rights to substantive due process and equal protection and breach of contract after the university imposed sanctions following completion of the University’s administrative investigation and hearings involving allegations that Plaintiff cheated on a final exam in his business law class. *See* Dkt. No. 1.

The Defendants filed a motion to dismiss each of his claims under Federal Rule of Civil Procedure 12 asserting—among other things—sovereign and qualified immunity. Dkt. No. 9-10. The Court granted in part and denied in part the motion to dismiss in an order dated September 26, 2017, permitting Plaintiff to proceed on—

- Official Capacity claims against the individually-named defendants under an *Ex Parte Young* theory. Dkt. No. 25 at p. 4;
- A breach of contract against Texas Tech University. Dkt. No. 25 at p. 5; and,
- Constitutional tort claims arising under the Fourteenth Amendment to the United States Constitution under substantive due-process and equal

protection theories. Dkt. No. 25 at p. 6.

On October 17, 2017, the Defendants filed a Notice of Interlocutory Appeal to the U.S. Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. § 1291, appealing the Court's denial of sovereign immunity from Plaintiff's breach of contract claim and qualified immunity from Plaintiff's constitutional tort claims arising under 42 U.S.C. § 1983. *See* Dkt. No. 32.

II. This Court should stay all further proceedings pending resolution of the appeal.

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes of its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). Accordingly, district courts are afforded “broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997).

Filing the notice of interlocutory appeal on the issues of sovereign and qualified immunity divests this Court of jurisdiction to proceed against the defendants with respect to all matters involved in the appeal.¹ Having now filed the notice of appeal, only one set of claims remains: Official Capacity claims against the individually-named defendants.

While the Defendants recognize that this Court has jurisdiction to proceed on the Official Capacity claims pending appeal, because the individual and official capacity claims made against Defendants are identical except for the nature of the relief sought,

¹ *See, e.g., Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (interlocutory appeal “divests the district court of its control [jurisdiction] over those aspects of the case involved in the appeal”); *Williams v. Brooks*, 996 F.2d 728, 730 (5th Cir. 1993) (“notice of interlocutory appeal following a district court’s denial of a defendant’s immunity defense divests the district court of jurisdiction to proceed against that defendant”); *Thomas v. Capital Sec. Services, Inc.*, 812 F.2d 984, 987 (5th Cir. 1987) (“filing of a notice of appeal transfers jurisdiction from the district court to the court of appeals with respect to all matters involved in the appeal”).

judicial economy weighs strongly in favor of staying all proceedings so that discovery and hearings on all claims can take place at the same time, if it is ultimately deemed necessary. *See, e.g., Gaalla v. Citizens Med. Ctr.*, No. 10-CV-14, 2011 WL 23233, at *2 (S.D. Tex. Jan. 4, 2011) (stay of all proceedings warranted pending outcome of qualified immunity appeal where, as is true in this case, the unappealable claims were “based largely upon the conduct” at issue in the interlocutory appeal, the “same underlying facts [were] at issue,” and “the same causes of action under 42 U.S.C. § 1983 [were] asserted”).

Further, proceeding on the Official Capacity claims will necessarily impinge on the State’s entitlement to sovereign immunity and the individually-named defendants’ entitlement to qualified immunity by requiring them to participate in proceedings before this Court involving the same claims, facts, discovery, and witnesses. *E.g., Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (“The very object and purpose of the eleventh amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties.”); *Ashcroft v. Iqbal*, 556 U.S. 662, 681-86 (2009) (“It is no answer to these concerns to say that discovery for petitioners can be deferred while pretrial proceedings continue for other defendants. It is quite likely that, when discovery as to the other parties proceeds, it would prove necessary for petitioners and their counsel to participate in the process to ensure the case does not develop in a misleading or slanted way that causes prejudice to their position.”).

Thus, permitting this case to proceed to a preliminary injunction hearing and discovery pending appeal will effectively deprive the State and the individually-named

defendants of their entitlement to immunity from suit and trial.² See *Porter v. Valdez*, 424 Fed. App'x 382, 385 (5th Cir. 2011) (citing *Hill v. City of Seven Points*, No. 00–41436, 2002 WL 243261, *4 (5th Cir. Jan. 17, 2002) (“Such appellate review is premised upon the reality that, in some instances, if an order is not reviewed before the issuance of a final judgment, the practicality of reviewing that order is lost.”)); Cf. *Stewart v. Donges*, 915 F.2d 572, 576 (10th Cir. 1990) (“an interlocutory appeal from an order refusing to dismiss on...qualified immunity grounds relates to the entire action and, therefore, it divests the district court of jurisdiction to proceed with any part of the action against an appealing defendant”).

Until the U.S. Court of Appeals for the Fifth Circuit reaches a decision on the Defendants’ appeal, this Court should protect the immunities at issue and not permit any further proceedings in this Court.

CONCLUSION

For the foregoing reasons, Defendants respectfully file this Notice of Stay, advising the Court that the pending appeal has served to stay all proceedings in this matter subject to the Notice of Appeal. To the extent that this Court retains jurisdiction, the Defendants respectfully request an order staying further proceedings while this matter is pending on appeal.

Dated: October 18, 2017.

² It bears noting that Federal Rule of Civil Procedure 65 expressly contemplates that “evidence that is received on the [preliminary injunction] motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. Fed. R. Civ. P. 65(b)(2).

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that I conferred via electronic mail on October 17 & 18 and via telephone on October 18 with Plaintiff's counsel of record regarding the substance of this motion. Plaintiff's counsel informed me that he opposes the relief sought through this motion.

/s/ Rola Daaboul-----
Rola Daaboul
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the electronic-filing manager on this the 18th day of October, 2017, to:

Jason J. Bach
The Bach Law Group, LLC
2802 Flintrock Trace, Suite 255
Austin, Texas 78738

/s/ Rola Daaboul-----
Rola Daaboul
Assistant Attorney General