

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

AMY PICKETT,
Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER; BARBARA CHERRY,
individually and in her official capacity as
Department Chair of Leadership Studies; and
MICHAEL EVANS, individually and in his
official capacity as Dean of School of Nursing,
Defendant.

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Civil Action No. 5:20-CV-00232-H-BQ

**DEFENDANTS' REPLY IN SUPPORT OF
OPPOSED MOTION TO STAY DISCOVERY**

TO THE HONORABLE D. GORDON BRYANT, JR.

Defendants Texas Tech University Health Sciences Center (TTUHSC), Barbara Cherry, individually and in her official capacity as Department Chair of Leadership Studies, and Michael Evans, individually and in his official capacity as Dean of School of Nursing respectfully file this Reply in Support of their Opposed Motion to Stay Discovery, and respectfully show the Court as follows:

I. INTRODUCTION

On March 26, 2021, Defendants filed their Opposed Motion to Stay Discovery pending resolution of their threshold claims regarding both sovereign and qualified immunities. As a state entity, and state employees sued in their official capacities, Defendants assert sovereign immunity to suit under the Eleventh Amendment. *See* Dkt. 12 at 16–18. Defendants Cherry and Evans also asserted the defense of qualified immunity from suit. *Id.* at 15–16.

Plaintiff filed her Response to Defendants' Opposed Motion to Stay Discovery (Response) on April 2, 2021, asserting her opposition to the relief requested by Defendants—a stay of discovery prior

to resolution of the threshold issues asserted in the Motion to Dismiss, in which Defendants have demonstrated that dismissal of the claims against them is proper.

Because Plaintiff has not addressed the legal and factual justifications underlying Defendants' Opposed Motion to Stay Discovery, and instead appears to respond to Defendants' qualified immunity defense and whether they have violated "clearly established" constitutional rights, Plaintiff has not given the Court any basis to deny the relief requested and should proceed with the stay of discovery.

II. ARGUMENT

Defendants have presented argument asserting both factual and legal considerations that weigh in favor of the Court staying discovery while it considers Defendants' arguments in their Motion to Dismiss. Plaintiff's Response appears to mainly oppose the defense of qualified immunity asserted by Defendants Cherry and Evans. But Defendants' Motion to Dismiss and the associated response and reply have already been fully briefed and presented to this Court—further argument about why the qualified immunity defense does not protect Cherry and Evans should not be considered by this Court. Without citation to any authority, Plaintiff appears to argue that the mere fact she accuses Defendants of violating her constitutional rights should be enough for this Court to overrule Defendants' request for a stay of discovery. Because Plaintiff has presented no valid justifications for refusing the relief Defendants request, the Court should order a stay of discovery.

A. Plaintiff offers no authority in response to Defendants' arguments supporting a stay.

Instead of stating any immediate need for discovery that cannot await a stay while the Court addresses the threshold issues asserted in the Motion to Dismiss, Plaintiff continues her line of attack against what she casts as an unfair entitlement to sovereign and qualified immunities on the part of Defendants. The only mentions of discovery in the Response vaguely allude to Plaintiff's desire for "accountability" and "justice," but do not cite to any governing authority. There is no case made here

for why discovery needs to occur prior to a ruling on Defendant's asserted immunities. Defendants have asserted that staying discovery is prudent and justified at this juncture under binding case law. *See, e.g., Mitchell v. Forsyth*, 472 U.S. 511, 525–26 (1985) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 817 (1982)) (“even such pretrial matters as discovery are to be avoided if possible, as ‘[i]nquiries of this kind can be peculiarly disruptive of effective government’”); *Zapata v. Melson*, 750 F.3d 481, 484–85 (5th Cir. 2014) (quoting *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012)) (“One of the most salient benefits of qualified immunity is protection from pretrial discovery, which is costly, time-consuming, and intrusive.”) (internal quotation marks omitted). Plaintiff's conclusory assertions that qualified and sovereign immunities should not preclude discovery are not responsive to these arguments and should be rejected by the Court.

B. Discovery will not aid in determining whether the allegedly illegal actions of Drs. Cherry and Evans violated a “clearly established” constitutional right.

Whether a violation of Plaintiff's constitutional rights, as alleged, is “clearly established” under the principles of qualified immunities can easily be resolved without result to discovery. When, as here, a defendant raises immunity from suit as a defense, “[d]iscovery . . . must not proceed until the district court *first* finds that the plaintiff's pleadings assert facts which, if true, would overcome the [immunity] defense[.]” *Wicks v. Miss. State Emp't Servs.*, 41 F.3d 991, 994 (5th Cir.1995) (reversing a district court's denial of a protective order intended to prevent discovery prior to consideration of a defendant's motion to dismiss on qualified immunity grounds).

Plaintiff has pleaded specific factual allegations that allow this Court to easily determine on the pleadings whether the alleged violations amount to a violation of clearly established law—they do not. *See Reichle v. Howards*, 566 U.S. 658, 664 (2012). As Defendants asserted in their Brief in Support of their Motion to Dismiss, dismissal from a higher education program on academic grounds will very rarely implicate the strictures of due process. *See Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 86

(1978) (academic dismissals, as opposed to disciplinary dismissals, require “far less stringent procedural requirements” under the Due Process Clause). Accordingly, Plaintiff has not demonstrated that a stay of discovery should not be granted.

III. CONCLUSION & PRAYER

Defendants Texas Tech University Health Sciences Center (TTUHSC), Barbara Cherry, individually and in her official capacity as Department Chair of Leadership Studies, and Michael Evans, individually and in his official capacity as Dean of School of Nursing pray that this Court stay discovery pending resolution of Defendants’ Motion to Dismiss.

Date: April 16, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2021, a true and correct copy of the foregoing document was served in compliance with the Federal Rules of Civil Procedure to the following:

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