

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

SCHYLER Z. GRODMAN, M.D.,
Plaintiff

v.

TEXAS TECH UNIVERSITY
HEALTH SCIENCES CENTER and
DR. SAMER ZAID-KAYLANI
Defendants

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Civil Action No. 5:23-cv-00210-H

DEFENDANTS' JOINT MOTION TO STAY

Defendants Texas Tech University Health Sciences Center ("TTUHSC") and Dr. Samer Zaid Kaylani ("Dr. Zaid Kaylani") jointly file this Motion to Stay Discovery. Certain claims against TTUHSC are barred by sovereign immunity or fail as a matter of law, based solely on the pleadings, and should be dismissed. *See* (ECF No. 22). The claim against Dr. Zaid Kaylani is barred by qualified immunity and fails as a matter of law. Accordingly, TTUHSC and Dr. Zaid Kaylani request this Court stay discovery, the Rule 26(f) conference, and the joint report until Defendants' immunity defenses and other potentially dispositive legal arguments have been resolved.

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

Plaintiff was a former medical resident of TTUHSC. Plaintiff filed this lawsuit against TTUHSC only on September 7, 2023. *See* (ECF No. 1) ("Plaintiff's Original Complaint"). Defendant timely filed a Partial Motion to Dismiss Plaintiff's Americans with Disabilities Act claims. (ECF No. 5). Plaintiff responded by filing an untimely First Amended Complaint, which the court struck on November 29, 2023. (ECF Nos. 10, 13). Plaintiff then filed a motion for leave to file a First Amended Complaint, which was granted on January 17, 2024. (ECF Nos. 14, 20).

The First Amended Complaint, which was entered on the same day, brought claims against TTUHSC under the Rehabilitation Act. (ECF No. 21). It also asserted claims, for the first time, against both TTUHSC and Dr. Zaid Kaylani under the due process clause, pursuant to 42 U.S.C. § 1983. (ECF No. 21). On January 31, 2024, TTUHSC filed its Partial Motion to Dismiss the First Amended Complaint, raising sovereign immunity and failure to state a claim. *See* (ECF No. 22). Defendant Dr. Zaid Kaylani filed his Motion to Dismiss, based on qualified immunity and failure to state a claim, on February 20, 2024. (ECF No. 23). Because both Defendants have raised sovereign immunity, qualified immunity, and other dispositive defenses, this Court should stay discovery until the resolution of both Defendants' Motions to Dismiss.

ARGUMENT AND AUTHORITIES

Generally, “[a] trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.” *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987). The Supreme Court “has described immunity as a threshold question, to be resolved as early in the proceedings as possible.” *Boyd v. Biggers*, 31 F.3d 279, 284 (5th Cir. 1994) (per curiam) (citing *Siegert v. Gilley*, 500 U.S. 226, 231-33 (1991)). The Fifth Circuit follows the well-established principle that “[j]urisdiction is always first.” *Carswell v. Camp*, 37 F.4th 1062, 1065 (5th Cir. 2022) (citing *Arulnanthy v. Garland*, 17 F.4th 586, 592 (5th Cir. 2021)). This is because both sovereign immunity and qualified immunity are an immunity from suit, not merely an immunity from liability. *See Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144–46 & n.5 (1993). As the Fifth Circuit explained, “[t]he Supreme Court has now made clear that a plaintiff asserting claims against an officer must survive the motion to dismiss (and the qualified immunity defense) *without any discovery*. Our prior decisions to the

contrary are overruled.” *Carswell*, 37 F.4th at 1066 (emphasis in original).¹ The rule has no exceptions. *Id.* at 1067 (“[W]e now make clear the rule admits of no exceptions.”).

One of the “central benefits” of immunity from suit is “avoiding the costs and general consequences of subjecting public officials to the risks of *discovery* and trial.” *Puerto Rico Aqueduct and Sewer Auth.*, 506 U.S. at 143–44 (emphasis added). Of course, the “central benefit” of avoiding the burden of discovery is irreparably lost when defendants are forced to move forward with discovery before their immunity defenses have been resolved. *See id.* at 145 (“[T]he value to the States of their Eleventh Amendment immunity, like the benefit conferred by qualified immunity to individual officials, is for the most part lost as litigation proceeds past motion practice.”).

Consistent with these basic principles regarding immunity, it is well-established in the Fifth Circuit that immunity defenses raised by state defendants should be resolved before discovery is permitted. *See, e.g., Wells v. State Attorney Generals of La.*, 469 F. App’x 308, 310 (5th Cir. 2012) (per curiam) (“[D]iscovery generally is not allowed until the resolution of immunity issues in the case.”); *Nieto v. San Perlita Indep. Sch. Dist.*, 894 F.2d 174, 177 (5th Cir. 1990) (“[U]ntil resolution of the threshold question of the application of an immunity defense, discovery should not be allowed.” (internal quotation marks omitted)); *Williamson v. U.S. Dep’t of Agric.*, 815 F.2d

¹ While *Carswell* dealt specifically with qualified immunity, its reasoning applies with equal force to assertions of sovereign immunity, as the interests at stake are the same. *See, e.g., P.R. Aqueduct & Sewer Auth.*, 506 U.S. at 145 (explaining that sovereign immunity from suit—just like qualified immunity from suit—is “forfeited” and “effectively lost” if a trial court allows discovery or trial to proceed before resolving the immunity issue); *see also Helton v. Clements*, 787 F.2d 1016, 1017 (5th Cir. 1986) (per curiam) (a “refusal to rule on a claim of immunity” deprives a defendant of his “entitlement under immunity doctrine to be free from suit and the burden of avoidable pretrial matters”).

368, 383 (5th Cir. 1987) (“The district court acted properly in staying discovery in this case pending resolution of the immunity issues.”).

District courts consistently follow the Fifth Circuit’s direction to stay discovery where state defendants argue they are immune from suit. *See, e.g., J.A. b/n/f Alvarez v. Texas Educ. Agency*, No. 1:19-CV-921-RP, 2020 WL 3270834, at *2 (W.D. Tex. June 17, 2020) (granting discovery stay where state defendant had filed motion to dismiss arguing sovereign immunity); *Hutchings v. Cty. of Llano, Tex.*, No. 1:20-CV-308-LY-SH, 2020 WL 2086553, at *2 (W.D. Tex. Apr. 30, 2020) (granting discovery stay where state judicial defendants had filed motion to dismiss arguing judicial and qualified immunity); *Carlisle v. Normand*, Civil Action No. 16-3767, 2018 WL 3474715, at *2–4 (E.D. La. July 19, 2018) (granting discovery stay where state defendant had filed motion to dismiss arguing sovereign, absolute, and qualified immunity); *LeClerc v. Webb*, No. Civ. A. 03-664, 2003 WL 21026709, at *6–7 (E.D. La. May 2, 2003) (granting discovery stay where state defendants argued they were protected by judicial, legislative, and sovereign immunity).

Based on the fundamental principles of immunity and the well-established precedent applying those principles to discovery stays, this Court should stay discovery in this matter until after the Defendants’ immunity defenses have been resolved. Although Defendant TTUHSC has not specifically raised an immunity defense against Plaintiff’s Rehabilitation Act claims, that is not a reasonable basis for permitting discovery to proceed in this case, pending the resolution of the sovereign immunity defense raised against all Plaintiff’s due process claim against both Defendant. It would be practically unworkable to attempt to conduct discovery *only* on Plaintiff’s Rehabilitation Act claim.

Defendants should be entitled to avoid the burdens of discovery pending the resolution of their immunity defenses. Further, the Court should, in its prudential discretion, stay discovery on Plaintiff's Rehabilitation Act claims. Finally, the Court should also stay discovery on the remaining claims—retaliation and discrimination—under the Rehabilitation Act, for which TTUHSC has partially sought dismissal. As an initial matter, it would be practically infeasible for Plaintiff and TTUHSC to conduct discovery on the Rehabilitation Act claims without implicating Plaintiff's due process claim, which asserts he was terminated, without any meaningful opportunity to respond in violation of the Fourteenth Amendment, because of discrimination against his disability or in retaliation for requesting accommodations. (ECF No. 21, ¶¶ 38, 76). The factual allegations asserted in Plaintiff's First Amended Complaint relate to both the Rehabilitation Act claims, as well as the due process claim. *See* (ECF No. 21, ¶¶ 79, 89) (showing that Plaintiff's allegation that the result (termination/expulsion from the program) was predetermined implicates not only the disability discrimination, retaliation, and accommodation claims; but also as the due process claims). Since the due process claim is so closely intertwined with the Rehabilitation Act claims that discovery cannot be feasibly bifurcated, then granting discovery on the Rehabilitation Act claims would essentially defeat any benefit sovereign immunity could serve in this case.

The opposite conclusion leads to the same result. Even if discovery could be bifurcated, permitting discovery to proceed would run counter to the interests of judicial economy and efficiency, since bifurcating discovery would likely require duplicative depositions and written discovery requests—separately seeking information only relevant to the due process claim and, subsequently, discovery directed at the remaining claims not dismissed after Defendant's Partial Motion to Dismiss is ruled upon. Thus, the Court should, as in *Carswell*, require Plaintiff to

respond to and wait for a ruling on the partial motion to dismiss “without *any* discovery.” 54 F. 4th at 311. Discovery should not be conducted piecemeal in this case but should await this Court’s resolution of TTUHSC’s Partial Motion to Dismiss, as well as Defendant Dr. Zaid Kaylani’s Motion to Dismiss.

CONCLUSION

For all the foregoing reasons, TTUHSC and Dr. Zaid Kaylani request this Court issue an order staying all discovery in this matter, including staying a Rule 26(f) conference and joint report, until after TTUHSC’s and Dr Zaid Kaylani’s motions to dismiss have been resolved.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

I hereby certify that on March 7, 2023, I conferred with Enrique Ramirez, counsel for Plaintiff, via e-mail regarding whether Plaintiff would agree to a stay of discovery until after the resolution of Defendants' motions to dismiss. Mr. Ramirez informed me that Plaintiff opposes a stay discovery.

/s/ Joseph Keeney
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed via the *CM/ECF system* on March 8, 2024, to:

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