

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STACIE RAY, et al.)	CASE NO.: 2:18-cv-00272-MHW-CMV
)	
Plaintiffs,)	JUDGE MICHAEL WATSON
)	
vs.)	MAGISTRATE JUDGE CHELSEY
)	VASCURA
LANCE HIMES, et al.)	
)	
Defendants.)	

DEFENDANTS’ EMERGENCY MOTION FOR INTERIM STAY

Defendants Lance Himes, in his official capacity as Director of the Ohio Department of Health, Karen Sorrell, in her official capacity as Chief of the Office of Vital Statistics, and Judith Nagy, in her official capacity as State Registrar of the Office of Vital Statistics (collectively “Defendants”), hereby submit this emergency motion to stay all discovery in this action until the Court rules on Defendants’ pending Motion to Stay Discovery (Doc. 21). The grounds for this motion are fully set forth in the accompanying memorandum.

A proposed order is attached hereto and incorporated herein by reference.

Dated: July 20, 2018

Respectfully submitted,

/s/ Kimberly Moses
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**DEFENDANTS’ MEMORANDUM IN SUPPORT OF
THEIR EMERGENCY MOTION FOR INTERIM STAY**

I. INTRODUCTION

Currently pending before this Court are two additional motions submitted by Defendants: Defendants’ Motion to Dismiss and Defendants’ Motion to Stay Discovery. Docs. 18 and 21, respectively. In their Motion to Dismiss, Defendants seek to terminate Plaintiffs’ Complaint in its entirety on purely legal grounds. This Court’s forthcoming decision on that motion will determine which part of this action will survive, if any. To avoid unnecessary and potentially burdensome discovery, Defendants filed a Motion to Stay Discovery while the Court considers the Motion to Dismiss.

During the Preliminary Pretrial Conference on July 18, 2018, this Court asked Plaintiffs if they would consent to a short stay while the Court considers the relief sought in Defendants’ Motion to Stay. Plaintiffs declined to consent to the short stay. The Court then suggested Defendants file an Emergency Motion for Interim Stay and indicated that it is the Court’s routine practice to grant such relief.

The emergency relief sought in this motion should be granted. Briefly staying discovery maintains the status quo while the Court resolves Defendants’ pending Motion to Stay. Granting

the interim stay also serves the dual interests of judicial economy and the preservation of taxpayer funds (since the citizens of Ohio are funding the defense of this litigation).

Nor will Plaintiffs be prejudiced by the requested interim stay of discovery. Plaintiffs' claims are primarily legal in nature and the Motion to Dismiss focuses on purely legal issues, so staying discovery on an interim basis will not impact Plaintiffs' ability to oppose the Motion to Dismiss. And because the length of the stay will be very short, granting the interim motion will not impact Plaintiffs' ability to ready the case for trial.

Accordingly, this Court should grant Defendants' motion for interim stay until the Court rules on Defendants' pending Motion to Stay Discovery. Defendants request that the Court's Order granting the motion for interim stay should apply to initial disclosures under Rule 26(a), as well as any pending discovery requests.

II. ARGUMENT

The Court should exercise its broad discretion to enter an Order staying discovery while the pending Motion to Stay Discovery is resolved. Trial courts have broad discretion in granting a motion to stay discovery. *See Cochran v. UPS*, 137 Fed. App'x 768, 772 (6th Cir. 2005). "In assessing a motion to stay discovery, the Court must weigh the burden of proceeding with discovery upon the party from whom discovery is sought against the hardship which would be worked by a denial of discovery." *Brown v. Danson Inc.*, 2012 U.S. Dist. LEXIS 117631, at *4 (S.D. Ohio Aug. 21, 2012).

A. Granting An Interim Discovery Stay Furthers The Interests Of Judicial Economy And Protects Limited Party Resources.

It will take the parties approximately 45 days to fully brief Defendants' Motion to Stay, and a short period thereafter for the Court to consider the Motion to Stay and render a decision. If the Court were to allow discovery in the interim, it would have the effect of denying the

Motion to Stay sought by Defendants without proper consideration by the Court. To avoid this inequitable result, Defendants request that the Court enter a short interim stay of discovery until the Court can decide the broader Motion to Stay Discovery.

Granting the interim stay will also have the benefit of temporarily avoiding the cost of discovery that might prove unnecessary. Defendants' Motion to Dismiss could (and should) terminate the case on legal grounds. For this reason, and as explained more fully in the Motion to Stay, discovery is premature and should be postponed until the Motion to Dismiss is decided. Granting the interim stay will temporarily maintain the status quo until the Court can decide if a broader stay is warranted.

B. Plaintiffs Will Not Be Prejudiced By An Interim Stay Of Discovery.

Plaintiffs cannot show that they will be prejudiced by a stay of discovery while the broader Motion to Stay is being considered. Briefing on the pending Motion to Stay will be completed by September 24, 2018. At that time, the Motion to Stay will be ready for adjudication. Thus, any interim stay is likely to be for a short period of time, making it unlikely that Plaintiffs will suffer any prejudice.

Moreover, allowing discovery to proceed in the interim will not benefit Plaintiff in any meaningful way. This case is at an early stage. Discovery will not help Plaintiffs in responding to the pending Motion to Dismiss, as that motion focuses exclusively on the legal sufficiency of Plaintiffs' constitutional challenges to Ohio's birth record laws. *See generally* Doc. 18. Moreover, if a broader stay is ultimately denied, Plaintiffs will have ample opportunity to complete any discovery they need in the case. And there is no risk that any records will be spoliated, as the interim stay is short and all relevant records are already being preserved by the Ohio Department of Health.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully submit that their Motion for Interim Stay should be granted. This Court should enter an Order staying discovery during the pendency of Defendants' Motion to Stay. A proposed order is attached hereto and incorporated herein by reference.

Dated: July 20, 2018

Respectfully submitted,

/s/ Kimberly Moses

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Kimberly. Moses

One of the Attorneys for Defendants

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LANCE HIMES, et al.)	
)	PROPOSED ORDER
Defendants.)	

Defendants have filed an emergency motion for interim stay to discovery pending resolution of Defendants’ broader Motion to Stay Discovery (Doc. 21). In their emergency motion, Defendants request a stay to all discovery, including a stay to the initial disclosure deadline set forth in this Court’s Preliminary Pretrial Order (Doc. 20). Based on the papers submitted and for good cause shown, Defendants’ motion is granted. Discovery in this case, including the initial disclosure deadlines set forth in the Court’s Preliminary Pretrial Order, is stayed pending resolution of Defendants’ Motion to Stay Discovery (Doc. 21).

IT IS SO ORDERED.

Date

Magistrate Judge Chelsey Vascura