

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

STACEY BAILEY,  
PLAINTIFF,

vs.

MANSFIELD INDEPENDENT SCHOOL  
DISTRICT, *et al.*,  
DEFENDANTS.

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CIVIL ACTION NO. 3:18-cv-01161-L

**DEFENDANT VASZAUSKAS' MOTION TO STAY CASE  
PENDING INTERLOCUTORY APPEAL**

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TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Dr. Jim Vaszauskas, with agreement of Defendant Mansfield Independent School District (the “District”), files this motion to stay this case pending interlocutory appeal, and would respectfully show the Court as follows:

### **I. SUMMARY**

Because now former District superintendent Defendant Vaszauskas has filed an interlocutory appeal regarding his qualified immunity from all Plaintiff’s remaining claims against him, jurisdiction over those claims now rests with the Fifth Circuit Court of Appeals. And because all claims Plaintiff asserts against the District are premised on a finding of the same constitutional injury to Plaintiff, those claims are derivative of the claims against Defendant Vaszauskas and are directly implicated in the pending appeal, necessitating a stay. The allegations relating to all claims against all Defendants are inextricably intertwined. Accordingly, and in light of Defendant Vaszauskas’ protection from the burdens of litigation based on the doctrine of qualified immunity, the Court should stay the entire case, including those claims against the District.

### **II. BACKGROUND**

Plaintiff claims that Defendants took adverse action against her because of her sexual orientation and status as a lesbian in violation of federal and state law. Her claims arise from actions allegedly taken by Defendants after Plaintiff admittedly discussed her sexual orientation with second-grade students, and after she later discussed the sexual orientation of various artists with fourth-grade students after being directed not to discuss such age-inappropriate material with the students in her classes. (Doc. 13 at ¶¶ 17, 19, 23–25). Plaintiff asserts various causes of action pursuant to the Fourteenth Amendment and actionable under 42 U.S.C. § 1983 along with causes of action arising under the Texas Constitution. (Doc. 13 at ¶¶ 56–60).

On October 2, 2018, Defendants filed their 12(b)(6) motion to dismiss for failure to state a claim and brief in support, asserting, among other things, qualified immunity for Plaintiff's claims against Defendant Vaszauskas and argued that Plaintiff had failed to state a constitutional violation under the Fourteenth Amendment or the Texas Constitution. (Doc. 14). At the heart of Defendants' motion was their contention that the alleged actions taken against Plaintiff were based on her "refus[al] to follow [the District's] directions regarding age-appropriate conversations with students." (Doc. 14 at Ex. "A"; *see also* Doc. 14 at 1–2; 6 ¶¶ 5, 6; 7–8 ¶ 7; 8 ¶ 8; 16 ¶ 23; 20 ¶ 29; Doc 23 at 7 ¶ 11; 9 ¶ 14 (Defendants' reply brief)). Defendants argued that "[p]rohibiting teachers from discussing age-inappropriate topics with elementary-aged children rationally relates to Defendants' legitimate interest in ensuring the safety of minor children in their care." (Doc. 14 at 20 ¶ 29 (citation omitted)). Defendants also argued that "the prohibition on age-inappropriate discussions furthers the legitimate government interest of protecting the fundamental rights of parents to 'control their children' with respect to the time, manner, and place to discuss topics such as sex and sexual orientation." (Doc. 14 at 20 ¶ 29 (footnote omitted); *see also* Doc 23 at 9 ¶ 14). Because these justifications rationally related to legitimate government interests, Defendants argued, Plaintiff failed to state claims upon which relief could be granted.

On November 21, 2019, the Court entered its memorandum opinion and order, granting in part and denying in part Defendants' motion to dismiss. (Doc. 28). The Court dismissed Plaintiff's Fourteenth Amendment "right to marry" claim against all Defendants and all of Plaintiff's claims asserted against Defendant Dr. Kimberly Cantu in her individual capacity. (Doc. 28 at 16, 33, 33–34). The Court determined that Plaintiff properly stated a claim for relief with respect to her Fourteenth Amendment equal protection claims against Defendants, her Fourteenth Amendment

procedural due process claim against the District, and her claims arising under the Texas Constitution. (Doc. 28 at 24, 25, 28, 34, 35).

Central to the Court's denial in part of Defendants' motion was the Court's determination with respect to Plaintiff's equal protection claim against all Defendants:

Mansfield I.S.D. has failed to advance any justification for placing Bailey on administrative leave for eight months and, ultimately, refusing to allow her to return to her job, other than the "negative" reaction of some members of the community and an interest in allowing parents to decide what is appropriate gender discussion in the classroom.

(Doc. 28 at 23–24; *see also* Doc. 28 at 34 (“For the same reasons the court denied [the District’s] motion to dismiss Bailey’s equal protection claim, it also denies Superintendent Vaszauskas’s motion to dismiss her equal protection claim.”)). Further, the Court determined that the District “failed to argue persuasively how Bailey’s sexual orientation bears any rational relationship to her competency as an elementary school teacher, or her job performance as an elementary school teacher . . . .” (Doc. 28 at 22). Accordingly, the Court held “[a]bsent some rational relationship to a legitimate governmental interest or her job performance, a decision to place Bailey on administrative leave and then transfer her because of her sexual orientation runs afoul of the Fourteenth Amendment’s equal protection guarantee.” (Doc. 28 at 22). Defendant Vaszauskas respectfully disagrees with the Court’s denial of Defendants’ motion to dismiss.

With respect to the Court’s holding related to Plaintiff’s procedural due process and State law claims, the Court borrowed, at least in part, from its equal protection analysis when concluding Plaintiff properly stated claims for relief. (Doc. 28 at 24–25 (determining that Plaintiff’s allegation that the District “developed an exceptional process for gay and lesbian employees, derogating authority over their employment to any individual parent who complains or seeks to exercise a de facto veto power over the job and equal dignity” stated a claim for relief); Doc. 28 at 34–35, 35 n.10 (citing authority that show the “requirements for equal protection claims under the United

States Constitution and the Texas Constitution are substantially the same,” the Court held that “[f]or the reasons previously stated with respect to Bailey’s federal law claims, the court will deny Defendants’ motion to dismiss her state law claims” (citation omitted).

Defendant Vaszauskas respectfully still contends, however, that Plaintiff has failed to state a claim upon which relief can be granted, and that he is thus entitled to qualified immunity. The Supreme Court in *Romer v. Evans* specifically declined to recognize sexual orientation as a suspect class and held that “if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.” 517 U.S. 620, 631 (1996). “In the ordinary case, a law will be sustained if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous.” *Id.* (citations omitted). Further, “a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Heller v. Doe*, 509 U.S. 312, 320 (1993) (quotations and citations omitted). Even if Defendants’ actions established a classification based on sexual orientation—which they do not concede—their actions are “not subject to courtroom factfinding” and the classification “may be based on rational speculation unsupported by evidence or empirical data.” *FCC v. Beach. Commc’ns, Inc.*, 508 U.S. 307, 315 (1993).

Plaintiff did not negate that the alleged disparate treatment in her complaint is rationally related to a legitimate government interest under any conceivable set of facts. Prohibiting teachers from discussing age-inappropriate topics with elementary-aged children rationally relates to Defendants’ legitimate interest in ensuring the safety of minor children in their care. *Cf. Mohamed v. Irving Indep. Sch. Dist.*, 252 F. Supp. 3d 602, 624–25 (N.D. Tex. May 18, 2017) (discussing a

principal's actions were objectively reasonable in light of his duty to keep students safe). Moreover, the Supreme Court has recognized that “the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). Therefore, a prohibition on a teacher's age-inappropriate discussions furthers the legitimate government interest of protecting the fundamental rights of parents to “control their children” with respect to the time, manner, and place to discuss topics such as sex and sexual orientation.

Defendants' actions should have been “presumed to be valid” and should have been “sustained if the classification drawn . . . is rationally related to a legitimate state interest.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Defendants were not required to “articulate [their] reasoning at the moment a particular decision is made. Rather, the burden is on the [Plaintiff] to negative ‘any reasonably conceivable state of facts that could provide a rational basis.’” *Integrity Collision Ctr. v. City of Fulshear*, 837 F.3d 581, 589 (5th Cir. 2016) (quoting *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 367 (2001)); see also *Heller*, 509 U.S. at 320. But Plaintiff failed to negate any reasonable set of facts that could provide a rational basis to support the alleged classification. Moreover, Defendants' proffered justifications—(1) prohibiting teachers from discussing age-inappropriate topics with elementary-aged children rationally relates to Defendants' legitimate interest in ensuring the safety of minor children in their care; and (2) prohibiting teachers from discussing age-inappropriate topics with elementary-aged children rationally relates to protecting the fundamental rights of parents to “control their children” with respect to the time, manner, and place to discuss topics such as sex and sexual orientation—were neither negated by Plaintiff or the Court in its order.

Accordingly, Defendant Vaszauskas filed a notice of appeal with the Court related to the Court's denial of Defendants' motion with respect to Defendant Vaszauskas' assertion of qualified immunity on December 17, 2019. (Doc. 31), and now files this motion to stay this case during the pendency of his appeal.

### **III. ARGUMENT AND AUTHORITIES**

“The filing of a notice of appeal is an event of jurisdictional significance-it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). “Generally, when an appeal is noticed the district court is divested of jurisdiction; the matter is transferred immediately to the appellate court.” *Farmhand, Inc. v. Anel Eng'g Indus., Inc.*, 693 F.2d 1140, 1145 (5th Cir. 1982); *Prater v. Commerce Equities Mgmt. Co.*, No. CIV. A. H-07-2349, 2009 WL 172826, at \*1 (S.D. Tex. Jan. 22, 2009) (“As a general rule, a district court is divested of jurisdiction immediately and automatically upon the filing of a notice of appeal with respect to any matters involved in the appeal.”). Of course, “[t]he district court retains jurisdiction to grant a stay even if a notice of appeal has been filed. *Hosack v. Internal Revenue Serv.*, No. 3:06-CV-1643-P, 2007 WL 9711740, at \*1 (N.D. Tex. Sept. 25, 2007).

Because this case and the very issues on appeal involve Defendant Vaszauskas' entitlement to qualified immunity, which is an immunity not only from liability but also from the burdens of litigation, a stay is critical to protect Dr. Vaszauskas from being subjected to trial, discovery, and other pretrial burdens pending his appeal. As the Fifth Circuit has explained:

Immunity, whether qualified or absolute, is an entitlement to be free from the burdens of time-consuming pre-trial matters and the trial process itself. [Immunity] is effectively lost if a case is erroneously permitted to proceed at the district court level while an interlocutory appeal of a denial of immunity is pending. Thus, the traditional rule that the filing of a notice of appeal divests a district court of jurisdiction applies with particular force in the immunity context.

*Williams v. Brooks*, 996 F.2d 728, 730 n. 2 (5th Cir. 1993) (internal citations and quotations omitted).

This Court has held that discovery and pretrial matters are not precluded “from proceeding on claims not related to those made the subject of an interlocutory appeal.” *Harris v. City of Balch Springs*, 33 F. Supp. 3d 730, 732 (N.D. Tex. 2014). Further this Court has held that “[d]iscovery may proceed on those claims that are legally distinct and for which a party may not assert the defense of qualified immunity.” *Id.* at 733 (citing *Alice L. v. Dusek*, 492 F.3d 563, 565 (5th Cir. 2007)).

However, other courts in the Fifth Circuit have “stayed entire actions even when only certain parties claim qualified immunity, particularly where the claims are closely related.” *Gaalla v. Citizens Med. Ctr.*, No. V-10-14, 2011 WL 23233, at \*1 (S.D. Tex. Jan. 4, 2011) (citing *Erxleben v. Bloomington Indep. Sch. Dist.*, 1996 WL 61490 (S.D. Tex. Jan. 29, 1996)). In *Gaalla v. Citizens Medical Center*, the court determined that in that case, “[t]he same underlying facts are at issue, and the same causes of action under 42 U.S.C. § 1983 are asserted [against the defendants].” *Id.* at \*2. The court determined that “[i]n light of the close relationship between the claims against [entity Defendant] and the other [individual] Defendants, it is appropriate to stay this case in its entirety pending resolution of the qualified immunity issues on interlocutory appeal.” *Id.* In the Northern District of Texas, another court distinguished this Court’s holding in *Harris* because, similar to here, the claims were based on alleging that “all defendants violated [the plaintiffs’ and intervenors’] rights under the United States and Texas Constitutions, and . . . there are no claims that are factually and legally distinct to the City. . . .” *Waller v. City of Fort Worth*, No. 4:15-CV-670-Y, 2015 WL 5836041, at \*6 (N.D. Tex. Oct. 2, 2015).

Here, the claims and underlying allegations are essentially identical with respect to Plaintiff's Fourteenth Amendment equal protection and procedural due process claims and her State law claims. As Defendants noted in their motion to dismiss, Plaintiff alleges that "Defendants" generally are liable under every cause of action except for her Fourteenth Amendment procedural due process claim. Doc. 14 at 5 ¶ 4. The Court also held that for each of Plaintiff's properly stated claims, its determination that Plaintiff stated a Fourteenth Amendment equal protection claim served as a basis to deny Defendants' motion with respect to Plaintiff's procedural due process and State law claims. *See* Doc. 28 at 34 (Defendant Vaszauskas' qualified immunity), 35 (State law claims); *see also* Doc 28 at 15, 27 (holding that Plaintiff properly stated the equal protection *and* procedural due process claims against the District by alleging the District's press release was a policy, even in light of Plaintiff's assertion that the "Statement was issued and/or approved by the Superintendent and/or the Board").

Plaintiff cannot prevail on any of her claims against the District or Defendant Vaszauskas without first establishing a constitutional violation caused Plaintiff's alleged harm. *See Kitchen v. Dallas Cty., Tex.*, 759 F.3d 468, 483 (5th Cir. 2014). Even Plaintiff's procedural due process claim against the District requires establishing a constitutional injury. *Coker v. Whittington*, 858 F.3d 304, 306 (5th Cir. 2017) ("It does not offend the fair notice requirements of due process, especially with regard to discipline that was not itself unconstitutional." (citing *Shawgo v. Spradlin*, 701 F.2d 470, 477–79 (5th Cir. 1983))). Yet the first step the Fifth Circuit will take in its review of this Court's order denying Defendant Vaszauskas' qualified immunity will be to "determine if the plaintiff has stated a violation of a clearly established constitutional right." *Morin v. Caire*, 77 F.3d 116, 120 (5th Cir. 1996) (citation omitted).

Because the factual and legal bases of all of Plaintiff's remaining claims are inextricably intertwined and closely connected, the Court should issue a stay as to all claims against the District and Defendant Vaszauskas. Otherwise, during the pendency of his appeal, Defendant Vaszauskas would be subjected to discovery, including being deposed, and otherwise be required to participate in and monitor the discovery and other proceedings against the District. As the Supreme Court has explained:

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.

Even if petitioners are not yet themselves subject to discovery orders, then, they would not be free from the burdens of discovery.

*Ashcroft v. Iqbal*, 556 U.S. 662, 685–86 (2009).

Additionally, the Court can and should stay the entire case in order to preserve Defendant Vaszauskas' qualified immunity and also for the convenience of all involved. *See Hinojosa v. Livingston*, No. 2:13-CV-319, 2014 WL 3588474, at \*3 (S.D. Tex. July 21, 2014) ("Here, the Court finds that the issues, discovery, and claims are substantially intertwined so as to make proceeding with non-appealed aspects of the case impracticable.") *Gaalla*, 2011 WL 23233, at \*1 ("Nevertheless, this Court and others in this District have stayed entire actions even when only certain parties claim qualified immunity, particularly where the claims are closely related."); *Trent v. Wade*, No. 3:12-CV-01244-P, 2013 WL 12176988, at \*3 (N.D. Tex. Oct. 15, 2013) ("Rather, the Court finds that it is appropriate to stay all discovery in this case pending resolution of the qualified immunity issues on interlocutory appeal.").

If this case is not stayed, Defendant Vaszauskas will suffer irreparable harm as he will be forced to participate in discovery and other pretrial proceedings while his entitlement to qualified

immunity remains unresolved and pending in the court of appeals. (*See* Doc. 32 at 3–4, ¶ 6). Plaintiff will suffer no prejudice other than a slight delay prosecuting her claims against the District, which are based on the same underlying allegations and legal theories that will be considered first on Dr. Vaszauskas’ appeal to the Fifth Circuit. The public interest will be served by preserving resources and having only one trial in this case. And the delay in proceeding to trial against only the District should not trump the many reasons to stay this entire case pending appeal of the qualified immunity issues.<sup>1</sup>

#### **IV. PRAYER**

For the reasons stated, Defendants respectfully seek a complete stay of this action, including of the pending trial date, of all pending pretrial deadlines and obligations, and of all discovery, and for such other and further relief to which the Defendants have shown themselves to be justly entitled.

Respectfully submitted,

/s/ Thomas E. Myers

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<sup>1</sup> For example, in considering stays of civil proceedings in order to preserve a defendant’s Fifth Amendment rights, it has been held that “courts may insist that the plaintiff establish more prejudice than simply a delay in his right to expeditiously pursue his claim.” *Walker v. Wilburn*, 3:13-CV-4896-D, 2015 WL 5873392, at \*7 (N.D. Tex. Oct. 5, 2015).

**CERTIFICATE OF CONFERENCE**

Counsel for Defendants has consulted with counsel for Plaintiff on the merits of this Motion on December 6, 2019 during their scheduling conference and in the process of preparing their Joint Status Report in this case. Counsel for Plaintiff opposes the merits of this Motion as noted in the Joint Status Report. (Doc. 32 at 3–4, ¶ 6).

Defendant Mansfield Independent School District does not oppose this motion.

/s/ Thomas E. Myers  
Thomas E. Myers

**CERTIFICATE OF SERVICE**

I hereby certify that on December 23, 2019, copies of this pleading were served upon counsel for Plaintiff using the court’s CM/ECF system which will provide a notice of electronic filing to the following counsel of record:

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/s/ Thomas E. Myers  
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