

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

BRIANNE DRESSEN, et al.,

Plaintiffs,

v.

ROB FLAHERTY, et al.,

Defendants.

Civil Action No. 3:23-cv-155

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS'
MOTION TO STAY**

Plaintiffs, by and through their undersigned counsel, submit the following Response to Defendants'¹ Motion to Stay Proceedings (ECF No. 11) ("Motion to Stay").

INTRODUCTION

This action is brought by vaccine-injured individuals and their loved ones whose truthful speech has been shadow banned, flagged as false, and suppressed at the government's behest simply because it was deemed inconsistent with the government's narrative. Astonishingly, Defendants have asked this Court to stay these proceedings pending resolution of an appeal in an entirely different case, involving different parties, different claims, and different prayers for relief. Indeed, Defendants seek to compel Plaintiffs to wait out the full course of an appeal in *Missouri v. Biden*² of a preliminary

¹ Defendants Renee DiResta, Alex Stamos, and the Stanford Internet Observatory filed a Joinder to the Motion to Stay on August 25, 2023 (ECF No. 16).

² 2023 WL 4335270 (W.D. La, July 4, 2023), *appeal docketed* Case No. 23-30445.

injunction issued by a court in the Western District of Louisiana. This extraordinary request to paralyze the normal judicial process for the injured Plaintiffs in this lawsuit is unprecedented and should be summarily denied.

The Motion to Stay puts forth three reasons that ostensibly justify the imposition of the requested stay: (1) resolution of the preliminary injunction in *Missouri* will likely provide “significant guidance” on legal issues in this case, including Plaintiffs’ “Article III standing” and the “legal and factual viability of their First Amendment claims”; (2) a stay would conserve “the Court’s and the parties’ resources”; and (3) Plaintiffs would not be prejudiced because the *Missouri* preliminary injunction—if permitted to go into effect—would provide Plaintiffs “substantially the same relief” that they seek in this proceeding.

Defendants’ contentions are both legally and factually incorrect. Indeed, Defendants misrepresent the relevant case law and include virtually no discussion of key considerations that courts in this Circuit use to determine whether a stay is proper pending proceedings in a separate case. The Motion to Stay conspicuously omits any mention of the fact that only in “rare circumstances will a litigant in one case be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both,” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936), or that it is the moving party’s “heavy burden” to show “something close to genuine necessity” for a discretionary stay to be granted. *See, e.g., Devillier v. Texas*, 2023 WL 2870716, at *1 (S.D. Tex. Apr. 10, 2023) (citing *Coastal (Bermuda) Ltd. v. E.W. Saybolt & Co.*, 761 F.2d 198, 203 n.6 (5th Cir. 1985)). Defendants have plainly failed to meet their burden. Accordingly, Defendants’ Motion to Stay should be denied.

ARGUMENT

Defendants' Motion to Stay is premised on the argument that, due to the purported "substantial legal and factual overlap" between this case and *Missouri*, the Court should stay this action pending the Fifth Circuit's ruling on the *Missouri* preliminary injunction, which will provide "significant guidance." That argument fails on multiple fronts.

First, Defendants' characterization of this proceeding as substantively identical to *Missouri* is misleading at best. Plaintiffs do not deny that there are certain similarities between the two cases. At the same time, however, there are numerous critical distinctions, none of which are mentioned in the Motion to Stay, which render this case separate and distinct from *Missouri*.

To begin, the plaintiffs in the two cases are entirely different—not only in identity, but in the interests to be vindicated through litigation and the First Amendment injuries suffered. Each of the Plaintiffs in this proceeding is an individual who was gravely harmed by the Covid vaccine (whether by direct injury or by the loss of a loved one after receiving the vaccination). This lawsuit exclusively concerns the First Amendment rights of members of the vaccine-injured community, including their rights to both speak and receive speech that is entirely non-political, often deeply personal, and, in many instances, nonpublic,³ including discussions of their own pain, experiences, advice, medical information, and sources of hope following trauma.

³ *E.g.*, Complaint, ECF No. 1, ¶¶ 379, 386, 388, 407, 424, 428, 445, 449, 494 (speech censored in private support groups on social media platforms).

Notably, the *Missouri* complaint does not include a single reference to vaccine injuries or vaccine-injured individuals.⁴ This is unsurprising given that *Missouri* is not a lawsuit about the vaccine-injured nor the particular First Amendment injuries that they have suffered (and continue to suffer⁵), including the violation of Plaintiffs’ right to freely speak and associate with other members of the vaccine-injured community—even in private support groups closed to the public. In contrast, the *Missouri* plaintiffs comprise the states of Missouri and Louisiana, presidential candidate Robert F. Kennedy, Jr., and other individual plaintiffs who have used their followings on social media to challenge government policies and exercise political speech. Those interests are in many ways separate and distinct from those of the Plaintiffs in this proceeding. For instance, *Missouri* raises no First Amendment associational claims; nor does it raise claims concerning the censorship of nonpublic speech. These differences are further evidenced by the *Missouri* lawsuit’s focus on political speech and First Amendment claims that are wholly unrelated to the above-captioned case, including: the Hunter Biden laptop story, the lab-leak theory of Covid’s origin, election integrity and the security of voting by mail, the efficacy of mask mandates and societal lockdowns, and the censorship of presidential candidate Robert F. Kennedy, Jr.’s political speech.

Defendants note in the Motion to Stay that all the Government Defendants named in this lawsuit are also defendants in *Missouri*. They fail to mention, however, that the

⁴ *Missouri v. Biden*, No. 3:22-cv-01213, ECF 268.

⁵ As recently as August 19, 2023, Plaintiffs Brianne Dressen and Ernest Ramirez were censored on YouTube for a video post of Ms. Dressen and Mr. Ramirez discussing the vaccine-injured in an interview on KHTS radio. And on August 21, 2023, Mr. Ramirez was again censored—this time on Facebook for posting a Factcheck.org link regarding a “viral video” concerning claims about vaccines and vaccine injuries.

defendants in these two proceedings are far from identical. In addition to the fifteen Government Defendants named in this proceeding, Plaintiffs are also suing as *de facto* government actors Defendants Renee DiResta, Alex Stamos, and the Stanford Internet Observatory (the “SIO Defendants”), none of which are defendants in *Missouri*. The inclusion of the SIO Defendants is yet another example of the differences between the two cases and of this proceeding’s focus on the chilling and suppression of the vaccine-injured community’s speech. Indeed, the SIO Defendants coordinated with the Government Defendants to flag and target for censorship vaccine injury-related speech, including that of Plaintiff Brianne Dressen⁶—a claim that nowhere appears in *Missouri* and which should not have to await an appellate decision concerning a preliminary injunction in a separate case, especially as the censorship is ongoing.

Although the fifteen Government Defendants in this lawsuit also appear as defendants in *Missouri*, the Motion to Stay omits the fact that *Missouri* names nearly seventy government defendants—again, illustrating the differences in scope and issues of concern in *Missouri* that are unrelated to this lawsuit. Not only is the scale of this proceeding narrower and more targeted than *Missouri*, but it is focused exclusively on the non-political speech and association rights of vaccine-injured individuals. Defendants’ contention that final resolution of the preliminary injunction in *Missouri* would help narrow the issues and “inform the scope and contours” of this case is dubious at best. A stay of this litigation pending proceedings in *Missouri* would senselessly halt a lawsuit that will, in all

⁶ *E.g.*, Complaint, ECF No. 1, ¶ 382.

likelihood, proceed more efficiently than *Missouri* given the narrower, more targeted scope of the subject matter, as well as the First Amendment claims and interests at stake.

Second, Plaintiffs have not moved for a preliminary injunction in this case, which raises the question of how final resolution of the *Missouri* preliminary injunction—whether it is upheld, modified, or denied—would resolve any legal questions in this litigation. To reiterate, courts impose discretionary stays only in “rare circumstances.” *Landis*, 299 U.S. at 255. And in assessing whether a stay is appropriate pending the outcome of a separate case, courts consider “the potentiality of another case having a *dispositive effect* on the case to be stayed.” *Tollefson v. Bergaila & Assocs., Inc.*, 2022 WL 2782809, at *1 (W.D. Tex. Jan. 19, 2022) (emphasis added); *see also Alexander v. Navient Sols., Inc.*, 2016 WL 11588317 (W.D. Tex. Feb. 19, 2016) (denying stay where movants could only show possibility of Supreme Court decision in a separate case affecting case before the court); *Seven Seas Petroleum, Inc. v. CIBC World Markets Corp.*, 2011 WL 2604822, (S.D. Tex. June 30, 2011) (denying stay where questionable whether Fifth Circuit's ultimate decision in different case would affect legal issues in case before the court).

Defendants argue that the “legal and factual viability of [Plaintiffs’] claims, both as to the merits and standing” are presented on appeal of the *Missouri* preliminary injunction and that “[r]esolution of these issues by the appellate courts [sic] will have a direct bearing on this lawsuit.” ECF No. 11, at 8. That argument is patently incorrect. Regardless of how the *Missouri* preliminary injunction is resolved, its resolution will not have a dispositive effect on this lawsuit and will not predetermine a single legal issue. That is because a preliminary injunction is of “limited purpose” and serves merely as temporary relief “to

preserve the relative positions of the parties until a trial on the merits can be held.” *Jonibach Mgmt. Tr. v. Wartburg Enterprises, Inc.*, 750 F.3d 486, 491 (5th Cir. 2014). Indeed, any “findings of fact and conclusions of law made by a court granting [or denying] a preliminary injunction are not binding” because the parties will typically not have had “a full opportunity to present their cases nor a final judicial decision based on the actual merits of the controversy.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395-96 (1981) (“Until such a trial has taken place, it would be inappropriate for this Court to intimate any view on the merits of the lawsuit.”).

Accordingly, whatever the final resolution of the *Missouri* preliminary injunction may be, it will not ultimately determine questions of standing nor the merits of the *Missouri* plaintiffs’ legal claims, let alone those of the Plaintiffs in this lawsuit. Thus, any “guidance” that a final resolution of the *Missouri* preliminary injunction might provide the Court and parties in this litigation will be minimal and certainly not dispositive—and the speculative prospect of such guidance in no way qualifies as a “rare circumstance” that would justify a stay of the proceeding.

Third, Defendants misrepresent the relevant case law and rely on inapposite, readily distinguishable cases to support their request for a stay of this proceeding. For example, Defendants claim that “Courts in this Circuit regularly stay matters under similar circumstances.” ECF No. 11, at 9. Yet they cite only two cases in support of that proposition, the first of which, *Washington v. Trump*, is not in this Circuit (decided by a court in the Western District of Washington) and did not involve similar circumstances. 2017 WL 1050354 (W.D. Wash. Mar. 17, 2017). Contrary to Defendants’ representations

otherwise, the *Washington* court never even addressed the question of staying a proceeding. Rather, *Washington* concerned the stay of a motion for a temporary restraining order (TRO), which the court concluded was appropriate given that a nationwide injunction was already in place, providing the same relief that the plaintiffs sought in their TRO motion. *Id.* at *5 (“The stay on Plaintiffs’ TRO motion will remain in place so long as the nationwide TRO or a preliminary injunction of identical scope remains in place”).

The second case to which Defendants cite, *Coker v. Select Energy Servs., LLC*, is at least in this Circuit, but, apart from that, lends Defendants no support. 161 F. Supp. 3d 492 (S.D. Tex. 2015). As discussed above, in evaluating whether a stay is appropriate, courts consider whether a ruling in an unrelated case would have a dispositive effect on legal issues in the case to be stayed. *See, e.g., Tollefson*, 2022 WL 2782809, at *1. The *Coker* court determined that a stay would be appropriate because both the Fifth Circuit and the Supreme Court would imminently rule on matters involving the same legal questions, which would “resolve threshold issues relating to this Court’s jurisdiction to consider [the plaintiff’s] claims.” *Id.* at 495. This bears no resemblance to Defendants’ request to stay this action pending resolution of the *Missouri* preliminary injunction, which would have no dispositive effect on any issues in this case.

For similar reasons, Defendants’ attempt to liken the circumstances of this proceeding to those of *Greco v. Natl. Football League* is equally of no avail. 116 F. Supp. 3d 744 (N.D. Tex. 2015). In *Greco*, the case to be stayed involved over 200 plaintiffs, faced “significant logistical and scheduling issues,” and would imminently proceed with “time-consuming bellwether trials.” *Id.* at 746-47. The court determined that a stay of the

proceeding pending appeal to the Fifth Circuit of a related case would be appropriate because the Fifth Circuit's ruling on the final outcome of that proceeding post-trial would likely have a dispositive effect on the case at hand and would "potentially necessitate a retrial of any bellwether trials conducted" if a stay were not imposed. *Id.* at 761.

To summarize, Defendants' ill-supported claim that courts within this Circuit "regularly stay matters under similar circumstances" is readily disproven by the case law. It is only in "rare circumstances" that a court will stay one proceeding pending the resolution of another, *Landis*, 299 U.S. at 255, and the moving party must meet a "heavy burden" to show "something close to genuine necessity" for a discretionary stay to be granted. *E.g.*, *Devillier v. Texas*, 2023 WL 2870716, at *1 (S.D. Tex. Apr. 10, 2023) (citing *Coastal (Bermuda) Ltd.*, 761 F.2d at 203 n.6). Indeed, the movant "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else." *Dialysis Newco, Inc. v. Cmty. Health Sys. Grp. Health Plan*, 2019 WL 13191609, at *2 (S.D. Tex. Aug. 26, 2019) (citing *Landis*, 299 U.S. at 255). Moreover, courts "must weigh competing interests," including "(1) potential prejudice to plaintiffs from a brief stay; (2) hardship to defendants if the stay is denied; and (3) judicial efficiency in terms of simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *Id.* Courts must also consider "the potentiality of another case having a dispositive effect on the case to be stayed" and "the public welfare." *Tollefson*, 2022 WL 2782809, at *1.

Defendants would plainly face no hardship if the stay is denied because, as discussed above, the resolution of the *Missouri* preliminary injunction will have no

dispositive effect on this lawsuit and will not determine a single legal issue in this case. For similar reasons, a stay of this action would not contribute to judicial efficiency by simplifying issues or questions of law. Further, whatever the ultimate outcome—and whenever that may be given the possibility of subsequent appellate proceedings—Defendants have failed to make out a “clear case of hardship or inequity” in the absence of a stay, whereas Plaintiffs, who suffer ongoing harm, would unquestionably be prejudiced by a stay of unknown duration and with no discernible benefit to the Court or the parties. *See Miller Weisbrod, LLP v. Klein Frank, PC*, 2014 WL 2738231 (N.D. Tex. June 17, 2014) (“A speculative injury does not weigh strongly in favor of imposing a stay”); *Federal Ins. Co. v. CompUSA Inc.*, No. 3:01–CV–0593–D, 2001 WL 1149109, at *2 (N.D. Tex. Sept. 26, 2001) (denying motion to stay where the specific issues before court did not directly “depend on any rulings that may or may not be made in the state appellate or trial court”). With respect to public welfare, the Fifth Circuit has recognized that the public possesses an interest in the “speedy resolution of disputes,” and “allowing parties to stay proceedings every time there is a relevant case pending before the Supreme Court or the Fifth Circuit would not benefit the public welfare.” *Tollefson v. Bergaila & Assocs., Inc.*, 2022 WL 2782809 (W.D. Tex. Jan. 19, 2022) (citing *Weingarten Realty Invs. v. Miller*, 661 F.3d 904, 912 (5th Cir. 2011)). Defendants fail to meet any of the relevant factors to meet their heavy burden. The Motion to Stay should thus be denied.

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants’ Motion to Stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 25, 2023, I electronically filed the foregoing document with the United States District Clerk for the Southern District of Texas and electronically served all counsel of record via the District Court's ECF system.

/s/ Casey B. Norman