

THE ANTI-DEFAMATION LEAGUE	§	IN THE DISTRICT COURT
AUSTIN, SOUTHWEST, AND TEXOMA	§	
REGIONS; COMMON CAUSE TEXAS;	§	
and ROBERT KNETSCH;	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY
	§	
GREG ABBOTT, in his official capacity as	§	
the Governor of Texas; RUTH HUGHS, in	§	
her official capacity as Texas Secretary of	§	
State,	§	
<i>Defendants.</i>	§	353 <sup>rd</sup> JUDICIAL DISTRICT

**DEFENDANTS’ NOTICE OF ACCELERATED INTERLOCUTORY APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant Governor Greg Abbott in his official capacity as the Governor of Texas and Defendant Ruth Hughs in her official capacity as Texas Secretary of State (hereafter “Defendants”) who respectfully appeal the Court’s interlocutory orders: denying Defendant[] [Abbott’s] Plea to the Jurisdiction, denying Defendant Secretary Hughs’s Plea to the Jurisdiction, and granting Plaintiffs’ Application for Temporary Injunction against both Defendants, entered on October 15, 2020. Defendants exercise their right to seek an accelerated appeal to the Third Court of Appeals in Austin, Texas. *See* TEX. R. APP. P. 28.1(a) (“Appeals from interlocutory orders (when allowed by statute) . . . are accelerated appeals.”); TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4), (a)(8).

**NOTICE OF AUTOMATIC STAY**

Please note this “interlocutory appeal . . . stays all other proceedings in the trial court pending resolution of that appeal.” *See* TEX. CIV. PRAC. & REM. Code § 51.014(b). This

interlocutory appeal meets all the prerequisites for the automatic stay to apply. Section 51.014 of the Texas Civil Practice & Remedies Code governs interlocutory appeals on a plea to the jurisdiction:

(a) **A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:**

...

(4) **grants or refuses a temporary injunction** or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

...

(8) **grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;**

...

(b) An interlocutory appeal under Subsection (a) . . . stays the commencement of a trial in the trial court pending resolution of the appeal. **An interlocutory appeal under Subsection (a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.**

TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4), (a)(8), (b) (emphasis added).

Defendants are authorized to file an interlocutory appeal under this provision, including its automatic stay of all other proceedings pending resolution of the appeal. *See* TEX. CIV. PRAC. & REM. Code §§ 51.014(a)(8), (b), 101.001(3); *Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 845 (Tex. 2007) (holding that “[a] person sued in an official capacity should be able to appeal the denial of a jurisdictional plea in the same way as his employing governmental unit because both defendants’ interests in pleading sovereign immunity are identical”); *In re Griffith*, 485 S.W.3d 529, 532–33 (Tex. App.—Houston [14th Dist.] 2015, org. proceeding) (holding that the appellate court had jurisdiction to consider an order denying a plea to the jurisdiction against an official capacity defendant, even though the plaintiffs argued that the official acted *ultra vires*).

The filing of a notice of appeal immediately stays all other proceedings, including discovery and hearings. *In re Geomet Recycling LLC*, 578 S.W.3d 82 (Tex. 2019) (orig. proceeding) (issuing

mandamus where court of appeals lifted stay to allow temporary injunction hearing to proceed); *id.* at 91–91 (“The court of appeals committed an error of law and thereby clearly abused its discretion when it authorized the trial court to conduct further trial-court proceedings in violation of the legislatively mandated stay of ‘all other proceedings in the trial court.’”).<sup>1</sup>

#### **NOTICE THAT DEFENDANTS NEED NOT FILE A COST BOND**

Defendants further respectfully notify the Court that, as governmental officers, they are not required to file a bond for court costs. *See* TEX. CIV. PRAC. & REM. CODE § 6.001. Defendants’ appeal is therefore perfected upon the filing of the notice of appeal.

#### **NOTICE REGARDING SUPERSEDEAS**

Defendants further respectfully notify the Court that, upon the filing of this instrument, the temporary injunction is superseded pursuant to Texas Civil Practice and Remedies Code Section 6.001(b) and Texas Rules of Appellate Procedure 24.2(a)(3), 29.1(b).

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<sup>1</sup> *See also In re Tex. Educ. Agency*, 441 S.W.3d 747, 750 (Tex. App.—Austin 2014, org. proceeding) (“[T]he stay set forth in section 51.014 is statutory and allows no room for discretion.”) (collecting cases applying stay to orders granting, among other things, severance and leave to file an amended petition); *City of Galveston v. Gray*, 93 S.W.3d 587, 592 (Tex. App.—Houston [14th Dist.] 2002, org. proceeding) (granting conditional mandamus where trial court ordered discovery ahead of ruling on a plea to the jurisdiction because it would defeat purpose of interlocutory appeal); *In re Univ. of the Incarnate Word*, 469 S.W.3d 255, 259 (Tex. App.—San Antonio 2015, org. proceeding) (“We conclude the trial court’s order compelling discovery responses was an abuse of the district court’s discretion because it violated the automatic stay of ‘all other proceedings in the trial court’ under section 51.014(b).”); *In re I-10 Colony, Inc.*, No. 01-14-00775-CV, 2014 WL 7914874, at \*2 (Tex. App.—Houston [1st Dist.] Feb. 24, 2014, orig. proceeding) (mem. op.) (holding that discovery order violated stay even though the trial court made an oral ruling on a motion for discovery prior to the imposition of the automatic stay); *In re Kinder Morgan Prod. Co., LLC*, No. 11-20-00027-CV, 2020 WL 1467281, at \*4 (Tex. App.—Eastland Mar. 26, 2020, org. proceeding) (holding that an order consolidating three cases for purposes of discovery violated the stay because “[a]ll proceedings, including discovery, are stayed pending the resolution of the interlocutory appeal”).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the electronic-filing manager in compliance with Texas Rule of Civil Procedure 21a on this the October 15, 2020, to:

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