IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JOLT INITIATIVE, INC.,

Plaintiff,

v.

KEN PAXTON, in his individual and official capacity as Attorney General of Texas,

Defendant.

CASE NO. 1:25-CV-001808

DEFENDANT'S OPPOSED MOTION TO STAY PENDING APPEAL

Defendant Ken Paxton respectfully requests that the Court enter an order staying all proceedings as to the claims against him while his qualified immunity appeal is pending. The Attorney General's filing of the notice of appeal automatically divested this Court of jurisdiction and stayed discovery and all other deadlines pending resolution of the appeal. *See, e.g.*, *Williams v. Brooks*, 996 F.2d 728, 729 (5th Cir. 1993); *see Coinbase, Inc. v. Bielski*, 599 U.S. 736, 744 (2023) ("[T[he background *Griggs* principle already requires an automatic stay of district court proceedings that relate to any aspect of the case involved in the appeal."). The Attorney General is entitled to immunity from suit—not only liability—and should therefore be protected from the burdens of discovery while the Fifth Circuit considers his appeal. *See Carswell v. Camp*, 54 F.4th 307, 310 (5th Cir. 2022).

Each of Plaintiff's three claims against Attorney General Paxton are "closely intertwined" because they turn on the same set of operative facts. *Bevill v. Wheeler*, No. 23-40321, ECF 56-1 at 9 (July 26, 2023). All proceedings should therefore be stayed pending appeal because moving forward against Attorney General on the two claims not subject to a qualified immunity defense would "interfere with" Attorney General Paxton's appeal of the claim from which he is immune, *Alice L v. Dusek*, 492 F.3d 563, 565 (5th Cir. 2007), and those two claims therefore "relate to . . . aspect[s] of the case involved in the appeal," *Coinbase*, 599 U.S. at 744. That is why the Fifth

Circuit routinely stays district court proceedings while a qualified immunity appeal is pending, including in multi-defendant cases in which not all defendants can assert qualified immunity. *See* Order, *Moctezuma Rivera Castelan v. Taylor*, No. 25-50714, ECF 49-2 (Nov. 5, 2025); *Bevill v. Wheeler*, No. 23-40321, ECF 56-1 (July 26, 2023). This Court should do the same, *a fortiori*, in this case involving three factually overlapping claims against a single defendant.

Given pending discovery matters, including the impending September 11, deadline for the Attorney General to respond to Plaintiff's motion to compel, **the Attorney General respectfully requests a decision by 5pm on Wednesday, September 9**.

BACKGROUND

In this action, Plaintiff Jolt Initiative, Inc., a nonprofit organization that seeks to register new voters in Texas, alleges that it has been wrongfully investigated and sued in violation of the United States Constitution and the Voting Rights Act. *See* First Amended Complaint, ECF No. 39. Jolt alleges that the Attorney General has retaliated against it for the exercise of its First Amendment-protected freedom of speech and association and its right to petition the courts for a redress of grievances, and engaged in unlawful voter intimidation by investigating Jolt and filing a quo warranto proceeding in state court. *See* ECF No. 39. The Attorney General filed a motion to dismiss Plaintiff's claims for lack of jurisdiction and failure to state a claim, in which he asserted qualified immunity. ECF No. 42.While that motion was pending, the Court entered an order preliminarily enjoining the Attorney General from proceeding with the pending quo warranto action in Texas state court. ECF No. 44. Later, Plaintiff filed a motion to compel production of documents and responses; the Attorney General's response is due by September 11, 2026. *See* ECF No. 60.

Just a few days ago, the Court denied the Attorney General's motion to dismiss, rejecting his qualified immunity defense. ECF No. 61. The Attorney General immediately filed his notice of appeal of that order. ECF No. 63. The filing of the notice of appeal divested the Court of jurisdiction to proceed against the Attorney General. *Williams v. Brooks*, 996 F.2d 728, 730 (5th Cir. 1993). The Attorney General now respectfully requests the Court stay all proceedings pending

resolution of the Attorney General's interlocutory appeal.

ARGUMENT

I. The Court Should Stay All Proceedings in the District Court During the Pendency of the Attorney General's Qualified Immunity Appeal.

The Court should stay all district court proceedings as to all claims against the Attorney General. The collateral order doctrine permits immediate appeals of orders denying qualified immunity. *Carswell*, 54 F.4th at 310. And "the filing of a non-frivolous notice of interlocutory appeal following a district court's denial of a defendant's immunity defense divests the district court of jurisdiction to proceed against that defendant." *Williams*, 996 F.2d at 730; *see also Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) ("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."). The "traditional rule that the filing of a notice of appeal divests a court of jurisdiction applies with particular force in the immunity context." *Id.* n.2 (internal citation omitted). "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." *Id.* (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526-27 (1985)). 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." *Id.* (citing *Mitchell*, 472 U.S. at 526).

"Qualified immunity is 'an immunity from suit rather than a mere defense to liability.'" *Pearson v. Callahan*, 555 U.S. 223, 237 (2009) (citing *Mitchell*, 472 U.S. at 526)); *see also Carswell*, 54 F.4th at 310. The qualified immunity doctrine is designed "to free officials from the concerns of litigation, including 'avoidance of disruptive discovery.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 685 (2009) (citing *Siegert v. Gilley*, 500 U.S. 226, 336 (1991)). Orders denying a public official's assertions of immunity are immediately appealable because a defendant's entitlement to qualified immunity must be determined at the earliest possible stage of the litigation to avoid immunity being effectively lost. *See Carswell*, 54 F.4th at 310 (citing *Ramirez v. Guaderrama*, 3 F.4th 129, 133 (5th Cir. 2021)); *Williams*, 996 F.2d at 730. The Attorney General is entitled to resolution of the

threshold immunity issues before discovery proceeds further because immunity from suit encompasses "protection from pretrial discovery, which is costly, time-consuming, and intrusive." *Backe v. Leblanc*, 691 F.3d 645, 647-49 (5th Cir. 2012); *see Siegert*, 500 U.S. at 232.

Even though qualified immunity is a defense to only the First Amendment retaliation claim, a stay as to all proceedings against the Attorney General is warranted. That is because all three claims all arise from the same common set of facts and the two claims not subject to a qualified immunity defense still implicate "aspects of the case involved in the appeal." *Griggs*, 459 U.S. at 58; *see* ECF No. 39, 24-30. Specifically, the circumstances surrounding the Attorney General's institution of the state-court quo warranto proceeding is at the heart of each of Plaintiff's claims. *See* ECF No. 39, 24-30. Plaintiff alleges in its claim for First Amendment retaliation that the "quo warranto proceeding retaliates against Plaintiff for its exercise of its constitutionally protected expression and association and its petitioning the government for redress of grievances." ECF No. 39, 26. In its Voting Rights Act intimidation claim, Plaintiff alleges that the "quo warranto proceeding targets Jolt and its associates as a result of their civic engagement and voter registration efforts… [and] has the purpose and effect of intimidating, or attempting to intimidate, Jolt and its associates from engaging in these federally protected activities." ECF No. 39, 26-27. And in its First Amendment freedom of association claim, Plaintiff alleges that the "discovery requests [served in the quo warranto proceeding] violate the First Amendment." ECF No. 39, 30.

The Attorney General's liability under each of Plaintiff's claims is "closely intertwined" under Plaintiff's theory of its case. *Bevill*, No. 23-40321, ECF 56-1, at 9. The Attorney General would be unfairly prejudiced absent of stay of proceedings as to all claims because discovery as to one claim is discovery as to all claims. The discovery Plaintiff seeks regarding liability focuses on the Attorney General's litigation conduct and motivations for filing the quo warranto proceeding. If proceedings were stayed only as to the First Amendment retaliation claim, the Attorney General would effectively lose his immunity from suit and would be unable to avoid "disruptive discovery," *Ashcroft*, 556 U.S. at 685, as to "the aspects of the case involved in the appeal." *Griggs*, 459 U.S. at 58. Requiring the Attorney General to participate in discovery as to claims that hinge on identical

sets of facts would "turn[] qualified immunity on its head," *Carswell*, 54 F.4th at 314, while causing him to lose "[o]ne of the most salient benefits of qualified immunity," which is immunity from suit. *Backe*, 691 F.3d at 648.

A stay as to each of Plaintiff's claims against the Attorney General is warranted because discovery into liability as to one claim directly implicates all claims. *See Coinbase*, 599 U.S. at 744 ("[T[he background *Griggs* principle already requires an automatic stay of district court proceedings that relate to any aspect of the case involved in the appeal.").

II. Plaintiff's Likely Counterarguments Are Incorrect.

Plaintiff may offer several counterarguments to the foregoing analysis, but none should carry the day.

First, Plaintiff has suggested that it may continue with discovery as to the First Amendment retaliation claim against the Attorney General in his official capacity, but not his individual capacity. The Fifth Circuit has rejected that argument. "The dual-capacity defendant must be particularly careful . . . about how his answers can be used against him in not one but two ways," and a Plaintiff "cannot elide these differences by saying the defendant would have to testify either way." *Carswell*, 54 F.4th at 313. Further, a First Amendment retaliation claim is the exact same claim whether brought against a defendant in his individual or official capacity. The elements of the claim, and therefore the facts needed in discovery to establish liability, are the same *See Batyukova v. Doege*, 994 F.3d 717, 731 (5th Cir. 2021) (listing elements). The only material difference between bringing a claim in an individual versus official capacity is the remedy. *Cf. Lewis v. Clarke*, 581 U.S. 155, 162-63 (2017) (exploring "[t]he distinction between individual- and official-capacity suits"). So there is nothing "legally distinct" about seeking separate remedies for the same claim that alters the requirements for a stay pending appeal. *Alice L*, 492 F.3d at 565.

Second, Plaintiff is likely to rely on *Alice L* to argue that the Court should not grant a stay of proceedings as to the VRA and freedom of association claims because those claims were not asserted against the Attorney General in his individual capacity and were therefore not subject to a qualified immunity defense. But as an initial matter, *Alice L* was a multi-defendant case in which

only one defendant asserted qualified immunity. *Id.* at 565. *Alice L* held that the immunity-asserting defendant could be subject to discovery requests as to a separate claim against a separate defendant. *Id.* Here, of course, Plaintiff's claims are asserted against a single defendant.

In *Alice L*, the Fifth Circuit also held that discovery on different claims could proceed because the claims were "legally distinct," meaning that discovery as to the separate claim would "not interfere with any aspect of [the immunity-asserting defendant's] appeal." *Id.* *Carswell*, however, provides a greater explanation of what those terms mean. *See* 54 F.4th at 313-14. There, the Fifth Circuit explained that immunity-asserting defendants were not required to participate in discovery even as witnesses regarding a factually-overlapping claim against a separate non-immunity asserting defendant. *Id.* at 313. That was true for several reasons, including because what an immunity-asserting individual said in his capacity as a *witness* with respect to one of the claims could easily be used against him in adjudicating the other claim from which he asserted immunity as a *defendant*. *Id.* at 313; *see In re Paxton*, 60 F.4th 252, 257 (5th Cir. 2023) (explaining that the Court has "rejected this gambit"). Subjecting the immunity-asserting defendant to discovery twice—once as a witness for a separate claim against a different defendant before qualified immunity was adjudicated, and then later as a defendant in his personal capacity after immunity was adjudicated—was improper and would "turn qualified immunity on its head by doubling the heavy costs of litigation." *Carswell*, 54 F.4th at 314. This reasoning applies here *a fortiori*, where discovery is being sought against a single defendant on all claims, which turn on the same exact set of operative facts.

III. A Stay Would Not Harm Plaintiff.

Although the balance of equities are not a factor in determining whether to stay district court proceedings while a qualified immunity appeal is pending, *see Bevill*, No. 23-40321, ECF 56-1, at 3, a stay of all proceedings would not harm Plaintiff. The Court has preliminarily enjoined the Attorney General from proceeding with the quo warranto action in Texas state court that is the subject of all three of Plaintiff's claims. ECF No. 44. The preliminary injunction protects Plaintiff from the quo warranto action during the pendency of the appeal. So Plaintiff will suffer no harm

with a stay.

CONCLUSION

The Court should stay all proceedings in the district court while the Attorney General's appeal is pending.

Dated: September 4, 2026

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

ROB FARQUHARSON
Deputy Attorney General for Legal Strategy

MICHAEL COTTON
Chief, Special Litigation Division

/s/ Munera Al-Fuhaid
Munera Al-Fuhaid
Special Counsel
Texas State Bar No. 24094501
Munera.al-fuhaid@oag.texas.gov

OFFICE OF THE
ATTORNEY GENERAL OF TEXAS
Special Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2100

COUNSEL FOR DEFENDANT

CERTIFICATE OF CONFERENCE

The undersigned counsel has conferred with counsel for Plaintiff, who stated that Plaintiff opposes the relief requested in this motion.

/s/ Munera Al-Fuhaid
MUNERA AL-FUHAID

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(a), I hereby certify that on September 4, 2026, a true and correct copy of the above and foregoing document was filed and served electronically via CM/ECF.

/s/ Munera Al-Fuhaid
MUNERA AL-FUHAID