

ENTERED

July 13, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

STATE OF TEXAS, *et al.*,

§

Plaintiffs.

§

§

VS.

§

CIVIL ACTION NO. 3:21-cv-00065

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§

JOSEPH R. BIDEN, JR., *in his
official capacity as President of the
United States, et al.*,

§

§

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Defendants.

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ORDER

Pending before me is a discovery dispute. *See* Dkt. 70. In short, Defendants request that discovery be stayed until a ruling is issued on their motion to dismiss. Meanwhile, Plaintiffs maintain that discovery should proceed immediately.

I have carefully reviewed the joint written submission outlining the dispute, each side’s position, and the efforts made to resolve it. I also conducted a lengthy oral hearing at which time the parties were given every opportunity to fully detail their respective positions.

Although my general practice is to allow discovery to proceed while a motion to dismiss is pending, this case presents unique circumstances. For starters, Defendants are seeking discovery against the President and Vice-President of the United States. Given separation of powers concerns, avoiding unnecessary burdens on the executive branch “is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery.” *Clinton v. Jones*, 520 U.S. 681, 707 (1997). I also have serious concerns about the expansive scope of the proposed discovery, especially because it appears as if this case presents a purely legal question about the President’s authority. Finally, TC Energy’s recent announcement that it has terminated the Keystone XL Pipeline Project raises

legitimate mootness issues, which I think should be resolved before discovery moves forward.

For these reasons, I order that discovery be STAYED until Defendants' Motion to Dismiss is decided.

SIGNED this 13th day of July 2021.

A handwritten signature in black ink, appearing to read 'Andrew M. Edison', written over a horizontal line.

ANDREW M. EDISON
UNITED STATES MAGISTRATE JUDGE