

documents in this case until resolution of Defendant's Plea to the Jurisdiction. Morath is filing a Plea to the Jurisdiction this week that asserts that Plaintiffs' claims are barred in their entirety because the Court lacks subject matter jurisdiction. Resolution of Defendant's Plea to the Jurisdiction will dispose of all Plaintiffs' claims at issue in the suit, thereby rendering the discovery sought by Plaintiffs unnecessary. Plaintiffs have served their first sets of discovery. Granting this stay will not prejudice the Plaintiffs and will prevent unnecessary and burdensome litigation by requiring responses to this discovery, in the event that this Court determines that it lacks subject matter jurisdiction because of Morath's sovereign immunity from suit. However, should this Court deny Defendant's plea to the jurisdiction, Morath requests that he be given fourteen (14) days after the Court's denial of its plea to respond the Plaintiffs' discovery requests. Because resolution of the Plea will resolve Plaintiffs' claims, Morath requests that the Court enter a protective order staying discovery in this case pending resolution of Defendant's Plea to the Jurisdiction.

II. BACKGROUND

Plaintiffs are parents of third, fifth, and eighth grade schoolchildren from around the state who complain the standardized tests administered in spring 2015 did not comply with a 2015 legislative directive to "adopt or develop" an assessment designed to be completed within new, shortened time limits.

As set forth more fully in Defendant's Plea to the Jurisdiction, virtually all of Plaintiffs' claims have been rendered moot by the recent action of Morath, waiving the requirement that fifth and eighth graders pass the standardized reading and math assessments for the 2015-16 school year in order to be promoted. In doing so, Plaintiffs now have no legally-redressable injury that can properly form the basis of trial court jurisdiction in this case. Resolution of Defendant's Plea will resolve Plaintiffs' claims and prevent the need for Morath to respond to such discovery

requests. As such, Morath asks that this Court enter a protective order staying all discovery in this case until resolution of Defendant's Plea.

III. ARGUMENT AND AUTHORITIES

Morath is entitled to an order protecting it from responding to Plaintiffs' discovery requests. Generally, the Texas Rules of Civil Procedure govern the discovery process and procedure. TEX. R. CIV. P. 2. Under the Texas Rules of Civil Procedure, a person from whom discovery is sought may move within the time frame permitted to respond to the discovery request for an order protecting that person from the discovery sought. TEX. R. CIV. P. 192.6(a). The Rules also provide that to protect a movant from "undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, "a court may enter any order in the interests of justice that provides:

1. The requested discovery not be sought in whole or in part;
2. The extent or subject matter of discovery be limited;
3. The discovery not be undertaken at the time or place specified; [or]
4. The discovery be undertaken only by such method or on such terms and conditions or at the time and place directed by the court.

TEX. R. CIV. P. 192.6(b).

"Courts may limit discovery pending resolution of threshold issues like, venue, jurisdiction, forum non conveniens, and official immunity." *In re Alford Chevrolent-Geo*, 997 S.W.2d 173, 181 (Tex. 1999). It is well within a court's discretion to stay discovery pending resolution of a plea to the jurisdiction. *Ramon v. Teacher Retirement System of Texas*, No. 01-09-00684-CV, 2010 WL 1241293, at *6 (Tex. App.—Houston [1st Dist.] April 1, 2010, pet. denied).

This Court should protect Morath from responding because Plaintiffs seek discovery regarding claims over which this Court does not have jurisdiction, since the claims are barred by

sovereign immunity. Discovery of claims barred by the absence of jurisdiction is improper. *See In re CMM Const. Co., Inc.*, No. 09-05-096 CV, 2005 WL 913438, at *2 (Tex. App. – Beaumont April 21, 2005, orig. proceeding) (holding that trial court should not permit discovery on matters unrelated to determination of jurisdictional issues, prior to conducting a hearing or ruling on the merits of a motion to abate). Plaintiffs seek extensive discovery regarding STAAR tests administered in the 2015-16 school year, which they allege did not comply with a 2015 legislative directive. As will be shown in Defendant’s Plea to the Jurisdiction, a party’s failure to identify any redressable injury precludes a court from exercising jurisdiction over a cause of action. *Texas A&M University v. Hole*, 194 S.W.3d 591, 592-3 (Tex. App. – Waco 2006, pet. denied) (trial court lacked jurisdiction because students failed to exhaust university’s internal appeal process prior to filing suit). Accordingly, absent subject matter jurisdiction for Plaintiffs’ claims, this Court has no basis upon which to allow the discovery Plaintiffs seek. *See In re CMM Const. Co., Inc.*, 2005 WL 91348, at *2.

Here, Plaintiffs cannot maintain their lawsuit. Defendant’s Plea to the Jurisdiction challenges the subject matter jurisdiction of this Court to consider Plaintiffs’ claims. Therefore, Plaintiffs’ discovery requests should be stayed until this Court hears and determines Defendant’s Plea to the Jurisdiction.

IV. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Morath requests that the Court enter an order protecting him from responding and/or producing documents in response to Plaintiffs’ Request for Disclosure, First Set of Interrogatories, Requests for Production, and Requests for Admission pending resolution of Defendant’s Plea to the Jurisdiction in this matter, and for such other and further relief, at law or in equity, to which Morath may show himself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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