

PFLAG, INC.,
Plaintiff,

v.

OFFICE OF THE ATTORNEY
GENERAL OF TEXAS, and WARREN
KENNETH PAXTON, JR., In his official
capacity as Attorney General of Texas,
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261ST JUDICIAL DISTRICT

PROTECTIVE MOTION FOR SUMMARY JUDGMENT

The Office of the Attorney General of the State of Texas (“State” or “Attorney General”) files this Protective Motion for Summary Judgment (“MSJ”) pursuant to Tex. R. Civ. P. 166a against PFLAG, Inc. (“PFLAG”) seeking judgment granting the State’s Counterclaim for Enforcement of Demand for Sworn Written Statement and Civil Investigative Demand.

I. ARGUMENT

1. The above styled matter is currently set for trial on June 10, 2024. The Court reaffirmed the June 10, 2024 trial setting on May 10, 2024. This proceeding, however, does not present any triable issues of fact. Rather, this case is strictly about whether the Attorney General is entitled to documents and information pursuant to administrative subpoenas. Here, just like in federal practice, that question is meant to be “handled *summarily* and with dispatch.” *In re Off. of Inspector Gen. R.R. Ret. Bd.*, 933 F.2d 276, 277 (5th Cir. 1991) (emphasis added). “[A] court’s role” here is “a strictly limited one,” designed to further the “important governmental interest in the expeditious investigation of possible unlawful activity.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977). Trials simply do not exist in this setting. Indeed, even the rules of *discovery* “are simply inapplicable to the . . . enforcement of an administrative subpoena.” *United States v.*

Markwood, 48 F.3d 969, 982 (6th Cir. 1995). To impose normal litigation rules—much less to hold a trial—would impermissibly “destroy the summary nature of such a proceeding.” *Id.* at 983. The States follow the federal lead here. *See, e.g., Kohn v. State by Humphrey*, 336 N.W.2d 292, 295 (Minn. 1983) (State issued administrative subpoena to target on June 29, and by September 8 the District Court had granted motion to compel compliance).

2. For these reasons, the Attorney General will request at the commencement of the June 10 trial that the Court summarily rule on its Counterclaim. The State does not believe an MSJ is necessary to accomplish that goal and is instead filing this MSJ protectively to preserve its rights and to ensure a ruling. Namely, PFLAG has repeatedly indicated that the Attorney General’s Counterclaim cannot be ruled on because the Attorney General has not filed such a motion. *See* Ex. 1. Transcript of May 8, 2024 Court Hearing at 7:9 (In objecting to the Court ruling on the State’s counterclaim during the May 8, 2024 hearing, PFLAG argued “. . . we believe there’s no motion set today.”); *Id.* 8:2-4 (“They haven’t filed a motion for summary judgment pursuant to 166a”). By failing to rule on the Attorney General’s Counterclaim at the last scheduled hearing, it appears the Court agreed with that argument.

3. This Protective MSJ cross-references the Office of the Attorney General’s Plea to the Jurisdiction that provides additional reasons to grant the State’s Counterclaim and to—for the same reason—deny PFLAG’s Petition to Set Aside Civil Investigative Demands.

II. CONCLUSION

4. The Attorney General respectfully submits that the Court should grant the Attorney General’s Counterclaim.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

RYAN S. BAASCH
Chief, Consumer Protection Division

/s/ David G. Shatto

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ATTORNEYS FOR THE STATE OF TEXAS

CERTIFICATE OF CONFERENCE

I, David Shatto, hereby certify that counsel has conferred with (or made reasonable efforts to confer with) all parties about the date and time of the setting. The Parties currently have a trial set for the same date and time.

/s/ David G. Shatto
DAVID G. SHATTO
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May 2024, a copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ David G. Shatto
DAVID G. SHATTO
Assistant Attorney General