

No. 21-1027

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**In the Supreme Court of Texas**

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OFFICE OF THE ATTORNEY GENERAL OF TEXAS,  
*Petitioner,*

*v.*

JAMES BLAKE BRICKMAN, ET AL.,  
*Respondents.*

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On Petition for Review  
from the Third Court of Appeals, Austin

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**JOINT MOTION TO ABATE BY PETITIONER OFFICE OF  
THE ATTORNEY GENERAL AND RESPONDENTS J. MARK  
PENLEY, DAVID MAXWELL, AND RYAN M. VASSAR**

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Counsel for Petitioner

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**TO THE HONORABLE SUPREME COURT OF TEXAS:**

Petitioner and the three above-captioned respondents jointly move the Court to defer consideration of the petition for review pending the outcome of their ongoing settlement negotiations.

Petitioner filed the petition for review on January 5, 2022. The Court requested a response on February 18 and briefs on the merits on May 27. Petitioner's brief on the merits was filed on July 27, respondents' brief on the merits was filed on September 15, and petitioner's reply was filed on September 30. The petition for review remains under consideration by the Court.

Petitioners and three of the four respondents are actively engaged in settlement discussions, with mediation tentatively planned for February 1, 2023. Uncertainty regarding whether this Court will grant the petition for review is a material factor in the parties' negotiations, so abatement will facilitate settlement of the underlying matter. Should the parties reach a settlement, they anticipate moving for disposition of the case pursuant to Texas Rule of Appellate Procedure 56.3. The parties therefore respectfully ask this Court to abate consideration of the petition until February 9, 2023 at 5:00 p.m. Should negotiations appear fruitful but require additional time, the above-captioned parties may jointly request an additional limited abatement. Should negotiations prove unsuccessful, the parties will move to lift the abatement order for the Court to recommence consideration of the petition for review.

**PRAYER**

The Court should abate the petition for review until February 9, 2023, at 5:00 p.m.

Respectfully submitted.

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**CERTIFICATE OF CONFERENCE**

On January 26, 2023, I conferred with Thomas A. Nesbitt, lead counsel for plaintiff James Blake Brickman, via tnesbitt@dnaustin.com; Don Tittle, counsel for plaintiff J. Mark Penley, via don@dontittlelaw.com; T.J. Turner, counsel for plaintiff David Maxwell, via tturner@cstrial.com; and Joseph R. Knight, counsel for plaintiff Ryan M. Vassar, via jknight@ebbklaw.com. Respondents Penley, Maxwell, and Vassar agree with the relief requested and join the motion. Respondent Brickman opposes the relief requested.

/s/ Judd E. Stone II  
JUDD E. STONE II

**CERTIFICATE OF SERVICE**

On January 26, 2023, this document was served electronically on Thomas A. Nesbitt, lead counsel for plaintiff James Blake Brickman, via tnesbitt@dnaustin.com; Don Tittle, counsel for plaintiff J. Mark Penley, via don@dontittlelaw.com; T.J. Turner, counsel for plaintiff David Maxwell, via tturner@cstrial.com; and Joseph R. Knight, counsel for plaintiff Ryan M. Vassar, via jknight@ebbklaw.com.

/s/ Judd E. Stone II  
JUDD E. STONE II

**CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this document contains 246 words, excluding exempted text.

/s/ Judd E. Stone II  
JUDD E. STONE II

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### Associated Case Party: David Maxwell

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