

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

PEN AMERICAN CENTER, INC., ET AL., PLAINTIFFS, VS. ESCAMBIA COUNTY SCHOOL BOARD, DEFENDANT.	CASE NO.: 3:23-CV-10385-TKW- ZCB
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PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs direct the Court’s attention to a decision that addresses important issues in this case and is relevant to Plaintiffs’ pending Motion for Leave (Dkt. 204). On August 13, Judge Mendoza of the U.S. District Court for the Middle District of Florida ruled on summary judgment motions in *Penguin Random House, LLC v. Gibson* (No. 24-cv-1573-CEM-RMN). His opinion is attached as Exhibit A, and may be found at --- F.Supp.3d ----, 2025 WL 2408178 (M.D. Fla. Aug. 13, 2025).

In *Penguin*, as here, a group of plaintiffs including publishers, authors, and the parents of public-school students challenged content-based book removals. The books were removed under HB 1069. 2025 WL 2408178 at *1. Plaintiffs sued state officials and two county school boards, arguing HB 1069 conflicts with the First Amendment. All parties moved for summary judgment. *Id.*

Judge Mendoza rejected defendants’ argument that the book removals were “government speech,” applying the factors in *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022). WL 2408178 at *8–*10. He also addressed the constitutionality of HB 1069, holding it is facially invalid except to the extent it applies to material that is “obscene” under *Miller v. California*, 413 U.S. 15 (1973) and *HM Fla.-ORL, LLC v. Governor of Fla.*, 137 F.4th 1207 (11th Cir. 2025) (applying “*Miller*-for-minors”

test). *Id.* at *13–*18.¹ The state must revise the objection form mandated in HB 1069. *Id.* at *4–*5, *19.

Penguin is relevant to Plaintiffs’ pending Motion because the Motion seeks leave to add allegations and a claim relating to the Escambia County School Board’s recent removal of over 400 books already challenged or removed in other districts under HB 1069, based on objections made using the state-mandated form (Motion at 1–7), and the Board will likely claim the recent removals were government speech. Although this Court is not bound by rulings of other district courts, Judge Mendoza’s careful analysis is relevant to important issues here, and weighs in favor of granting Plaintiffs’ Motion.

RULE 7.1(J) CERTIFICATION

Plaintiffs certify that this Notice contains 350 words, excluding those portions that do not count toward the word limit.

Respectfully submitted,

Dated: August 25, 2025

/s/ Lynn B. Oberlander

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¹ As Judge Mendoza noted, Florida already prohibited obscenity for minors before HB 1069 was enacted. *Id.* at *16.

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