

CASE NO. 25-13298-E

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

PEN AMERICAN CENTER, INC., et al.,

Plaintiffs-Appellees,

v.

KEVIN ADAMS, et al.,

Appellants.

Appeal from the United States District Court
for the Northern District of Florida

REPLY IN SUPPORT OF MOTION TO EXPEDITE APPEAL

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for movant hereby certifies that the following is a complete list of the trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the particular case on appeal, including subsidiaries, conglomerates, affiliates, and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party:

1. Adams, Kevin. Appellant.
2. Agarwal, Shalini Goel. Counsel for Appellees.
3. Ballard Spahr LLP. Counsel for Appellees.
4. Bertelsmann Management SE. General partner and manager of Bertelsmann SE & Co. KGaA.
5. Bertelsmann SE & Co. KGaA. Parent corporation of Penguin Random House.
6. Bertelsmann Stiftung. Shareholder of Bertelsmann SE & Co. KGaA.
7. Bertelsmann Verwaltungsgesellschaft (BVG). Voting shareholder of Bertelsmann SE & Co. KGaA.
8. Bolitho, Hon. Zachary C. United States Magistrate Judge. Judge in underlying case.

9. Bouzat, Facundo. Counsel for Appellees.
10. Bowles, Amy. Counsel for Appellees.
11. Brannen, Sarah. Former Plaintiff in underlying case.
12. BVG-Stiftung. Shareholder of Bertelsmann SE & Co. KGaA.
13. Duke, Samantha. Counsel for Appellant.
14. Durtschi, Lindsay. Former Plaintiff, on behalf of herself and her minor children, in underlying case.
15. Escambia County School Board. Defendant in underlying case and former Appellant.
16. Fehlan, Kirsten. Counsel for Appellees.
17. Fetsko, Paul. Appellant.
18. Fields, Goldie F. Counsel for Appellees.
19. Glass, Benjamin. Former Plaintiff, on behalf of himself and his minor child, in underlying case.
20. Grosholz, Jeffrey. Counsel for Appellant.
21. Hightower, Patricia. Appellant.
22. Johnson, George M. Appellee.
23. Kussmaul, Matthew G. Counsel for Appellees.
24. Lev, Ori. Counsel for Appellees.
25. Levithan, David. Former Plaintiff in underlying case.

26. Lukoff, Kyle. Appellee.
27. McDonald, Michael. Counsel for Appellees.
28. Marsey, John. Counsel for Appellants.
29. Moseley, Cayla. Counsel for Appellant.
30. The Mohn Family. Shareholder of Bertelsmann SE & Co. KGaA.
31. Novakowski, Anne. Appellee, on behalf of herself and her minor child.
32. Oberlander, Lynn. Counsel for Appellees.
33. Parker, Sean. Appellee, on behalf of himself and his minor child.
34. PEN American Center, Inc. Appellee.
35. Penguin Random House LLC. Appellee.
36. Pérez, Ashley Hope. Appellee.
37. Petagna, Kristen. Counsel for Appellees.
38. Protect Democracy. Counsel for Appellees.
39. Reinhard Mohn Stiftung. Shareholder of Bertelsmann SE & Co. KGaA.
40. Roy, Erica. Former Plaintiff, on behalf of herself and her minor children,
in underlying case.
41. RumbergerKirk. Counsel for Appellant.
42. Satterwhite, Christopher Scott. Appellee, on behalf of himself and his
minor child.
43. Slayton, William. Appellant.

44. Smith, Caren. Former Plaintiff, on behalf of herself and her minor children, in underlying case.
45. Smith, Nicole Sieb. Counsel for Appellant.
46. Washburn, Taylor. Counsel for Appellees.
47. Wetherell, Hon. Kent T. II. United States District Judge, Northern District of Florida Pensacola Division. Judge in underlying case.
48. Williams, David. Appellant.

Dated: October 27, 2025

/s/ Ori Lev

**APPELLEES’ REPLY IN SUPPORT OF
MOTION TO EXPEDITE APPEAL**

Plaintiffs/Appellees moved to expedite this appeal to ensure that—should this Court affirm the District Court’s order that legislative privilege does not apply to the School Board members’ votes to remove books from school libraries—the depositions of the School Board members can proceed apace and the case can be ready for cross-motions for summary judgment once this Court rules on related substantive issues in *Penguin Random House LLC v. Gibson*, No. 25-13181 (11th Cir.) (“*Gibson*”) and *Parnell v. Sch. Bd. of Escambia Cnty.*, No. 25-13485 (11th Cir.). Appellant School Board members’ opposition to the motion fails to rebut the propriety of expedition, instead obfuscating the status of the case below.

Since the Motion was filed, Appellants sought and received an over-the-phone extension of time to file their opening brief from the clerk. Accordingly, at this juncture Plaintiffs/Appellees seek only expedited oral argument, which this Court granted in the prior interlocutory appeal raising the same issues in this case.

BACKGROUND

This case involves a single issue—whether legislative privilege applies to the votes by Appellant School Board members to remove books from Escambia County Public School libraries. This issue has been briefed by the parties at least three times: when the School Board filed its initial motion for a protective order below; when the School Board filed its renewed motion for a protective order below; and when the

School Board and Appellant School Board members appealed the District Court’s denial of that motion to this Court nearly a year ago. *See* No. 24-23896 (11th Cir.). After that earlier interlocutory appeal was dismissed for lack of jurisdiction, the School Board members themselves filed motions for protective order below, which were also denied and which are the subject of this appeal.

Since Plaintiffs/Appellees’ Motion was filed, the following relevant developments occurred.

First, on October 15, 2025, and as previewed in the Motion, Doc. 13 at 5 n.1, Plaintiffs filed a motion in the District Court to stay the scheduled summary judgment briefing on a subset of substantive issues in light of the separate appeal to this Court in *Gibson*. D.E. 240.¹ The summary judgment briefing scheduled in the District Court had been limited to two “threshold” issues of standing and “government speech / applicability of the First Amendment to school library book removals.” D.E. 200. That is, precisely because the depositions at issue in this appeal are relevant to Plaintiffs’ substantive First Amendment claims, the summary judgment briefing was to be one-sided and address only Defendant’s arguments regarding standing, government speech and applicability of the First Amendment; it was not intended to address Plaintiffs’ First Amendment claims. *See also* Doc. 16 at

¹ Filings in this Court are referenced by Document Number–“Doc.”; filings in the District Court are referenced by Docket Entry–“D.E.”

9 (“This briefing was to be done separate from the merits of Plaintiffs’ First Amendment claims.”).

Second, on October 20, 2025—before filing an opposition to the extant Motion or providing this Court an opportunity to rule on the Motion—Appellants sought and received an over-the-phone extension from the clerk for filing their opening brief, essentially short-circuiting some of the relief sought in the Motion.

Third, on October 21, 2025, after Appellants filed their opposition to the Motion, the District Court granted Plaintiffs’ Motion to stay the partial summary judgment briefing on the “threshold” issues and stayed all “post-discovery deadlines” in the case until this Court rules on the appeals in *Gibson* and *Parnell*. D.E. 249. In so ruling, the district court expressly rejected Defendant School Board’s mischaracterization of Plaintiffs’ stay motion as a motion seeking a “stay of the entire case.” *Id.* at 1-2. The District Court noted that the appeals in *Gibson* and *Parnell* are likely to address the very threshold issues on which partial summary judgment was to be predicated. *Id.* at 2. But the District Court rejected Defendant’s suggestion that *all* discovery be stayed, noting that allowing discovery to proceed “will leave only the school board members’ depositions to be completed before summary judgment briefing commences after the Eleventh Circuit decides *Gibson* and *Parnell*.” *Id.* The District Court’s reference to completing the School Board members’ depositions “before summary judgment briefing commences” makes clear

that the summary judgment briefing envisioned at that time relates not merely to the “threshold issues” but to full cross-motions for summary judgment, including on Plaintiffs’ First Amendment claims. The District Court recognized that while it was possible that this Court’s rulings in *Gibson* and *Parnell* might resolve this case in Defendant’s favor, they also may not do so and “on balance, the incremental burden of completing” discovery is “outweighed by the additional delay that would result from deferring that discovery until after the Eleventh Circuit decides *Gibson* and *Parnell*.” *Id.* at 2-3.

ARGUMENT

Appellants’ opposition to the Motion to Expedite is based on the faulty assumption that the District Court stayed the entire case below to await this Court’s rulings in *Gibson* and *Parnell*. But that is not the case. In fact, the District Court recognized that while *Gibson* and *Parnell* are likely to impact the analysis of certain issues, they may well not determine the outcome of this case; its Order makes clear that the District Court seeks to minimize any delay in full summary judgment briefing once those appeals are decided. Minimizing such delays—in a case that has already been pending for over two years and was stayed for over six months the first time Defendant sought an interlocutory appeal—would require this Court to adjudicate this appeal expeditiously so that, in the event it affirms the District Court’s decision that legislative privilege does not apply, Plaintiffs are able to take

the depositions of the School Board members *before* this Court rules on *Gibson* and *Parnell*. Nothing about Plaintiffs' motion for a stay of the partial summary judgment briefing below, or the District Court's staying of that briefing, therefore, is inconsistent with Plaintiffs/Appellees' Motion to Expedite this appeal.

The rest of Appellants' arguments opposing expedition are equally unavailing. Most importantly, this Court already determined that expedition was appropriate in the first interlocutory appeal in this case—raising the very same issue on behalf of the same Appellants. No. 24-13896, Doc. 26 (granting expedited oral argument). The only things that have changed in the interim are the additional passage of time; the School Board's removal of hundreds more books from school libraries and Plaintiffs' filing of a Second Amended Complaint to challenge those removals, *see* Doc. 13 at 6; and the filing of the appeals in *Gibson* and *Parnell*.² Each of these developments further supports expedition, to minimize the impact from the continued delay and to ensure the case is ready for resolution once *Gibson* and *Parnell* are decided.³

² The Appellees in *Gibson* recently filed a partially unopposed motion to expedite that appeal as well. *Gibson*, Doc. 28.

³ In addition, Plaintiffs have noticed the deposition of two newly-elected School Board members who participated in the Board's recent removal of hundreds of additional books from school libraries. *See* Doc. 16 at 12. Those Board members' motions for protective order based on legislative privilege were denied by the District Court and they have appealed. No. 25-13698 (11th Cir.). Plaintiffs/Appellees agree that new appeal should be consolidated with the instant appeal. *See* Doc. 16 at 12 (noting new Board members intend to seek consolidation).

Appellants' suggestion that Plaintiffs have not diligently litigated this case is false. Doc. 16 at 17-18. Plaintiffs' decision not to seek a preliminary injunction has no bearing on whether there is good cause to expedite this interlocutory appeal so that the case is ripe for resolution; nor does the District Court's earlier denial of Plaintiffs' motion to amend their complaint, which was based solely on the timeliness of that motion and not Plaintiffs' diligence in prosecuting the case. D.E. 155 at 1-3. In any event, those "facts" occurred prior to the last interlocutory appeal, which this Court expedited.

Nor have Appellants shown any prejudice from an order expediting the appeal. Doc. 16 at 18-20. First, the Board Members *have already briefed the very issue before this Court in a brief filed in this Court*. No. 24-13896, Doc. 23 (Initial Brief of Defendants/Appellants in prior interlocutory appeal). Second, the only prejudice the Board Members articulate is the "possibility an unforeseen need would arise, creating good cause for extensions" of the briefing schedule. Doc. 16 at 19. But seeing as how Appellants have already sought and obtained an extension notwithstanding the pendency of the instant Motion, Plaintiffs/Appellees no longer seek an order precluding any extensions. Instead, Plaintiffs/Appellees seek an order

As the appeals raise the same legal issues and Appellants in both cases are represented by the same counsel, and in light of the briefing extension already granted to Appellants in this appeal, Plaintiffs/Appellees would object to any further extension of the briefing schedule as a result of consolidation.

expediting oral argument—the same order entered by this Court on the prior interlocutory appeal.

Requested Relief

Plaintiffs/Appellees respectfully request the Court direct the Clerk to expedite the appeal for merits disposition purposes, including oral argument if the Court deems oral argument warranted.

Dated: October 27, 2025

/s/ Ori Lev

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CERTIFICATE OF COMPLIANCE

This reply complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(C) because it contains 1,531 words. This reply complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)-(6) because it was prepared in a proportionally-based typeface using Microsoft Word 2016, 14-point Times New Roman.

/s/ Ori Lev

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2025, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Ori Lev