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

APPELLEES' RESPONSE IN OPPOSITION TO MOTION TO STAY APPEAL

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for Appellees 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 Appellants.

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 Appellants.

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 Appellants.

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 Appellants.

42. Satterwhite, Christopher Scott. Appellee, on behalf of himself and his minor child.

43. Slayton, William. Appellant.

44. Smith, Carin. Former Plaintiff, on behalf of herself and her minor children, in underlying case.

45. Smith, Nicole Sieb. Counsel for Appellants.

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 30, 2025 /s/ *Ori Lev*

APPELLEES' RESPONSE IN OPPOSITION TO MOTION TO STAY APPEAL

Plaintiffs/Appellees oppose Appellants' motion to stay this interlocutory appeal. As the District Court recognized in rejecting a stay on discovery, "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*." D.E. 249 at 2-3.[1] The District Court's logic applies equally to this appeal. While the pending appeals in the other matters before this Court may impact the District Court's analysis of the substantive claims and defenses below (thus justifying a stay of summary judgment briefing), those appeals do not provide a basis to stay resolution of this interlocutory appeal involving a single question of law. A decision on this appeal will allow the parties to complete discovery and expeditiously proceed to summary judgment once this Court decides *Gibson* and *Parnell*. For the reasons set forth below, and in support of Plaintiffs/Appellees' Motion to Expedite this appeal, Docs. 13, 19, the Court should deny the Motion to Stay.

BACKGROUND

This case involves a single legal issue concerning a discovery dispute—

[1] Filings in this Court are referenced by Document Number–"Doc."; filings in the District Court are referenced by Docket Entry–"D.E." Citations to page numbers are to the pdf page number from the e-filing caption at the top of the document.

whether legislative privilege applies to the votes by Appellants School Board members to remove books from Escambia County Public School libraries such that the Board members should not be deposed.

In 2024, after the School Board moved for a protective order to stop the noticed depositions of its members on legislative privilege grounds, the District Court held that legislative privilege did not apply. D.E. 155 at 5-7. The Board and the Board members appealed, and this Court dismissed for lack of jurisdiction in part because the Board members had not participated in the proceedings below. *See* Op., *Pen Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, No. 24-23896 (11th Cir. July 15, 2025), Doc. 52. On remand, the Board members themselves filed renewed motions for protective orders, which the District Court again denied. D.E. 226. But the District Court stayed the depositions to allow the Board members to appeal to this Court. *Id.* at 2. That is the present appeal, which the Appellant Board members now wish to stay.

When the District Court decided to allow the Board members to file renewed motions for protective order, it recognized that the forthcoming appeal of that order would mean that the District Court could not resolve Plaintiffs' claims pending resolution of this appeal. So the District Court decided to bifurcate two "threshold" issues that were not dependent on the resolution of this appeal—"standing" and "government speech/applicability of the First Amendment to school library book

removals" (hereinafter, "government speech")—"to allow the case to move towards resolution while the Board members' expected interlocutory appeal is pending." D.E. 200 at 3 & n.3. 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 and government speech; it was not intended to address Plaintiffs' First Amendment claims. *See also* Doc. 16 at 11 ("This briefing was to be done separate from the merits of Plaintiffs' First Amendment claims.").

Subsequently, final judgment was entered in two other cases involving library book removals, and appeals to this Court were filed in each case: *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.). Given the overlap in issues in this case with those in the *Gibson* case in particular, and recognizing that resolution of Plaintiffs' claims would be stayed in any event pending resolution of this interlocutory appeal, Plaintiffs filed a motion in the District Court to stay the scheduled partial summary judgment briefing on the two "threshold" issues pending resolution of the appeal in *Gibson*. D.E. 240. The motion was expressly predicated on the facts that (1) any additional delay from the stay would be minimal "in light of the currently pending interlocutory appeal in this case regarding the Board member depositions" and (2) this Court's ruling in *Gibson* "will provide all parties

with guidance to tailor their [summary judgment] motions and reach the heart of the threshold issues more efficiently." *Id.* at 12.

Defendant School Board did not oppose that stay motion, although its non-opposition was "premised on the (mis)understanding that Plaintiffs requested a stay of the entire case and not just summary judgment briefing." D.E. 249 at 1-2. The District Court, recognizing that "the appeals in *Gibson* and … *Parnell* … are likely to resolve the main 'threshold' issue in this case," granted Plaintiffs' motion to stay the partial summary judgment briefing on those "threshold" issues until this Court rules on the appeals in *Gibson* and *Parnell*. *Id.* at 2-3. But the District Court expressly stayed only all "*post-discovery* deadlines" in the case. *Id.* at 3 (emphasis added).

Indeed, the District Court expressly considered and rejected Defendant School Board's invitation to stay the entire case. *Id.* at 1-2. In rejecting a complete stay, the District Court, which began its opinion by noting that "[t]his case was filed 2½ years ago," *id*. at 1, held that "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. The District Court also noted that the case management plan it had established before the motion to stay "still makes sense because it 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.* at 2. The District Court's reference to completing the School Board members' depositions "before summary judgment briefing commences" makes clear that the District Court recognized that, whatever this Court holds in *Gibson* and *Parnell*, the parties would complete discovery and then brief summary judgment not merely on the "threshold issues" but rather full cross-motions for summary judgment, including on Plaintiffs' First Amendment claims.

Accordingly, the current state of the case below is that the District Court denied Appellant School Board members' motion for protective order on legislative privilege grounds, but stayed the depositions to allow them to appeal that ruling to this Court (the instant appeal); recognizing that this interlocutory appeal would delay summary judgment on Plaintiffs' claims, the District Court initially bifurcated summary judgment briefing to address only "threshold" issues; the District Court then stayed all "post-discovery deadlines" in the case—including the partial summary judgment briefing on "threshold" issues—pending this Court's resolution of the appeals in *Gibson* and *Parnell* given the connection between those appeals and the "threshold" issues; and the District Court expressly declined to stay the entire case, reasoning that it made sense to complete discovery so that the parties can proceed to summary judgment once the *Gibson* and *Parnell* appeals are decided.

LEGAL STANDARD

"Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). And "the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else." *Id. See also Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983) ("The party seeking a stay bears the burden of justifying a delay tagged to another legal proceeding."). "Being required to defend a suit … does not constitute a 'clear case of hardship or inequity' within the meaning of *Landis*." *Dependable Highway Express, Inc. v. Navigator Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (cleaned up); *see also CTF Hotel Holdings, Inc. v. Marriott Int'l, Inc.*, 381 F.3d 131, 139 (3rd Cir. 2004) ("The opposing party must state a clear countervailing interest to abridge a party's right to litigate.").

ARGUMENT

Resolution of this appeal will allow the parties to complete discovery in a case that has been pending for 2½ years and be ready to proceed to full cross-motions for summary judgment once this Court resolves the appeals in *Gibson* and *Parnell*. While the resolution of those two appeals is likely to inform the ultimate disposition of Plaintiffs/Appellees' substantive First Amendment claims in this case, that does

not provide a basis to further delay the conclusion of discovery in a case that has already been pending for years—and stayed for over 6 months because of the School Board's first failed attempt at an interlocutory appeal. Every day of further delay is another day that the books at issue are off the shelves of school libraries and Plaintiffs' First Amendment rights are violated.

Appellants have utterly failed to meet their burden of demonstrating a "clear case of hardship or inequity in being required to go forward" with their appeal, *Landis*, 299 U.S. at 255, and their motion should be denied for that reason alone. Indeed, Appellants have demonstrated no hardship whatsoever from briefing the interlocutory appeal that they themselves brought. Even setting aside that "[b]eing required to defend a suit"—or, as here, to prosecute an appeal—"does not constitute a 'clear case of hardship or inequity' within the meaning of *Landis,*" *Dependable Highway Express*, 498 F.3d at 1066 (cleaned up), any hardship on Appellants is appreciably lessened by the fact that they *have already briefed this exact issue before this Court* in the prior appeal that was dismissed. No. 24-13896, Doc. 23. By contrast, staying this appeal will result in further delay in resolution of this case, which has been delayed enough.

Appellants' motion should be denied for other reasons as well. First, staying this appeal would effectively disregard the District Court's case management order. As noted above, the District Court expressly declined to stay the entire case and

determined that discovery should proceed so that summary judgment motions can be filed once the *Gibson* and *Parnell* appeals are decided. D.E. 249 at 2-3. While the District Court only addressed other discovery pending between the parties, its rationale was clear: to advance the case so that it is ready for resolution once *Gibson* and *Parnell* are decided.

Moreover, the district court allowed the Board members to file renewed motions for protective order and stayed the Board members' depositions precisely so that this Court would have an opportunity to rule on the legislative privilege issues before the depositions take place. D.E. 226 at 2; *see also* D.E. 207 at 25 (transcript of case management conference; District Court expressing "frustrat[ion]" and "disappoint[ment]" in dismissal of prior appeal and lack of guidance from this Court on legislative privilege issue), 40 ("I think this is an important enough issue in this case and broader than this case, that warrants the Eleventh Circuit to weigh in"). Staying this appeal would effectively overrule the District Court's case management plans.

Second, the appeals in *Gibson* and *Parnell* will not obviate the need for this Court to hear this appeal. Appellants' motion to stay is predicated on the notion that, in their words, "The Same Reasons Supporting a Stay in the District Court Support a Stay in this Court." Doc. 18 at 15; *see also id.* at 14 ("same arguments that militate in favor of a stay below exist here"), 21 ("the same relief Plaintiffs requested below

… staying this matter pending this Court's decisions in Parnell and Gibson—should be implemented here"). But that is incorrect. The stay in the District Court was focused solely on the summary judgment briefing regarding threshold issues (of standing and government speech) precisely because this Court's decisions in *Gibson* and *Parnell* will likely impact the analysis of those issues before the District Court in this case. D.E. 249 at 2; *see also* D.E. 240 at 12. The same is not true of the instant appeal. The issue of the applicability of legislative privilege to the School Board's actions has already been decided by the District Court and now awaits this Court's decision. The rationale for the stay below—to allow the parties and the District Court to benefit on summary judgment briefing and decision from this Court's resolution of similar issues in *Gibson* and *Parnell*—is inapplicable to this discovery dispute.

To the contrary, a stay here would only serve to further delay summary judgment briefing below, with little gain. Notably, Appellants have not cited a single case in which an *appellate court* stayed an *appeal*—every case cited involves a stay of *district court* proceedings. Doc. 18 at 14-15, 18-21 (citing *Landis*, 299 U.S. at 254–55 (district court stay vacated); *Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009) (district court stay "to await a federal appellate decision"); *Ferrari v. N. Am. Credit Servs.*, 585 F. Supp. 3d 1334, 1336 (M.D. Fla. 2022) (district court stay pending *en banc* ruling by Court of Appeals); *Trujillo v. Conover & Co. Commc'ns, Inc.*, 221 F.3d 1262, 1264 (11th

Cir. 2000) (district court stay pending resolution of case in Bahamas)).

Appellants do not argue that *Gibson* or *Parnell* will decide the very issue raised by this appeal. Instead, they argue only that the resolution of those cases may "inform" or "affect" resolution of the substantive issues in this case that are ultimately to be decided on summary judgment. *See* Doc. 18 at 14-15, 19 n.4. A ruling in *Gibson* or *Parnell* that "informs" or "affects" the resolution of the underlying issues in this case, however, is no reason to stay this appeal. However such a ruling may "inform" ultimate resolution of Plaintiffs' claims or the Board's defenses, this Court would still be called upon to decide this appeal, so that the parties can complete discovery below and then brief the substantive issues, informed by *Gibson* or *Parnell*.

Indeed, even if this Court were to affirm *Parnell*'s ruling that the Board's decision to remove a particular book from a school library is not subject to First Amendment scrutiny—by no means a sure thing—Plaintiffs would be still be entitled to be heard before the district court as to the impact of such a ruling on *Plaintiffs'* claims in *this case*, including but not limited to Plaintiffs' First Amendment–Due Process claim that was not at issue in *Parnell*. *See* D.E. 219, ¶¶ 244-48. *See* Doc. 18 at 20 (arguing without support that affirmance in *Parnell* would obviate need to decide this appeal). That is, regardless of the outcome of *Parnell* and *Gibson*, the parties will be back before the district court, at which point cross-

motions for summary judgment would be the most expeditious way to proceed. But a stay of this appeal would delay that result.

Appellants make the leap that *Gibson* or *Parnell* "may moot this appeal" or "may obviate the need for this Court to consider this appeal," *id.* at 14, 18; *see also id. at* 19 n.4, but they do not explain why that is the case given the sole issue on appeal here is the interlocutory question of legislative privilege and *Gibson* and *Parnell* involve appeals of final judgment that are likely to inform the "threshold" summary judgment issues the District Court has stayed. Appellants have failed to articulate a scenario in which this appeal would be "mooted" solely based on the rulings in *Gibson* or *Parnell*: the merits of *this* case are not currently on appeal, and Plaintiffs would be entitled to an opportunity to brief the impact of *Gibson* and *Parnell* on the facts of this case in the District Court. But before they do that, Plaintiffs are entitled to complete discovery, including the deposition of the Board members should this Court affirm the District Court. This inconvenient fact also negates Appellants' arguments about resources. Staying this appeal will not obviate the need to decide the issue before the Court; it will only delay it.

And if this appeal *were* dismissed in light of *Gibson* or *Parnell*, either by this Court or by Appellants themselves, as Appellants suggest would be appropriate, Plaintiffs would still be entitled to take the School Board members' depositions before summary judgment briefing, in light of the District Court's denial of the

Board members' motions for protective orders. The District Court's prior bifurcation of the "threshold" issues for separate briefing was driven solely by the impending pendency of this appeal, which rendered full summary judgment briefing impossible. *See* Doc. 207 at 26 ("I think there are other opportunities that we have to do other components of this case, get them completed, get them postured, have legal argument on some of the broader substantive issues while we wait to get a ruling from the Eleventh Circuit that will allow the parties to tidy up that last little piece of discovery"). Should this appeal be dismissed, in the words of the District Court, that would "leave only the school board members' depositions to be completed before summary judgment briefing commences." D.E. 249 at 2.

Moreover, even if affirmance in *Parnell* would somehow moot this appeal—a point that Plaintiffs/Appellees vigorously contest—the mere chance of such affirmance is not sufficient reason to stay this appeal. Appellants themselves recognize, as they must, that this Court's decisions in *Gibson* and *Parnell* only "may" have such effect. Doc 18 at 10 ("may be dispositive"); 13 ("certain standing requirements may be resolved"). There mere possibility of such an outcome does not "make out a clear case of hardship or inequity in being required to go forward." *Landis*, 299 U.S. at 255.

CONCLUSION

For the reasons discussed above, Appellants motion to stay should be denied.

Dated: October 30, 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)(A) because it contains 2,995 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, 14-point Times New Roman.

/s/ *Ori Lev*

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 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*