

**CASE NO. 25-13298-E**

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

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**PEN AMERICAN CENTER, INC., et al.,**

**Plaintiffs-Appellees,**

**v.**

**KEVIN ADAMS, et al.,**

**Appellants.**

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

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**APPELLEES' PARTIALLY UNOPPOSED  
MOTION TO CONSOLIDATE APPEALS**

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**Attorneys for Appellees**

## **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. Bergosh, Carissa. Appellant in related appeal.
5. Bertelsmann Management SE. General partner and manager of Bertelsmann SE & Co. KGaA.
6. Bertelsmann SE & Co. KGaA. Parent corporation of Penguin Random House.
7. Bertelsmann Stiftung. Shareholder of Bertelsmann SE & Co. KGaA.
8. Bertelsmann Verwaltungsgesellschaft (BVG). Voting shareholder of Bertelsmann SE & Co. KGaA.
9. Bolitho, Hon. Zachary C. United States Magistrate Judge. Judge in

underlying case.

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

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

minor child.

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

Dated: November 5, 2025

/s/ Ori Lev

**APPELLEES' PARTIALLY UNOPPOSED MOTION  
TO CONSOLIDATE APPEALS**

Plaintiffs/Appellees move to consolidate this interlocutory appeal (*PEN American Ctr., Inc. v. Adams*, No. 25-13298 (“*Adams*”)) with the related interlocutory appeal arising from the same pending district court case, *PEN American Ctr., Inc. v. Bergosh*, No. 25-13698 (“*Bergosh*”).

This case involves a challenge by Plaintiffs/Appellees to Defendant Escambia County School Board’s removal of books from public school libraries. D.E. 219 (Second Amended Complaint).<sup>1</sup> In 2024, as part of discovery, Plaintiffs/Appellees noticed the depositions of the then-members of the School Board. The School Board moved for a protective order to stop the depositions on legislative privilege grounds. The District Court denied the motion, holding 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

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<sup>1</sup> 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.

Court stayed the depositions to allow the Board members to appeal to this Court. *Id.* at 2. Those Board members then filed the interlocutory appeal in *Adams*.

Plaintiffs then noticed the depositions of two new Board members who had been elected to the School Board after the original appeal, and who recently voted to remove hundreds of books, including dozens at issue in this case, from school libraries. Those new Board members filed motions for protective order on legislative privilege (and other) grounds. The District Court denied those motions as they relate to legislative privilege on the same grounds it had previously denied the original Board members' motions, and similarly stayed the depositions to allow the new Board members to appeal. D.E. 246. The new Board members then filed the related interlocutory appeal that is pending in this Court. *See Bergosh*, No. 25-13698 (11th Cir.).

Both interlocutory appeals raise the same legal question: whether the Board members' votes to remove specific books from public school libraries are administrative actions not subject to the legislative privilege, as the District Court found, or legislative actions that are subject to the privilege. *Compare Adams*, Doc. 4 (Civil Appeal Statement identifying issues proposed to be raised on appeal as "Whether school board members voting to remove library books is an act covered by legislative privilege.") *with Bergosh*, Doc. 5 (Civil Appeal Statement identifying same issue). *See also id.* (identifying *Adams* as arising from substantially the same

case or controversy and involving an issue that is substantially the same, similar, or related to an issue *Bergosh*). See *Legal Envtl. Assistance Found., Inc. v. United States Envtl. Prot. Agency*, 400 F.3d 1278, 1279 (11th Cir. 2005) (*sua sponte* consolidating appeals that are “factually similar and procedurally identical”); *Symonette v. United States*, 2021 WL 3186792, at \*2 (11th Cir. April 30, 2021) (consolidating where “[b]oth pending appeals relate to the same issue”).

The Plaintiffs below are Appellees in each appeal. And while the two appeals involve different Board member Appellants—the Appellants in *Adams* are the five Board members whose depositions were noticed in 2024, and the Appellants in *Bergosh* are two new Board members elected in the interim—the Appellants in both appeals are represented by the same counsel (who also represented the Board and the original Board members in the initial interlocutory appeal last year that was dismissed on jurisdictional grounds, No. 24-23896). To date, the pendency of these two separate appeals has already resulted in the Appellants in each appeal filing nearly identical motions to stay the appeals, *compare Adams*, Doc. 18 *with Bergosh*, Doc. 9, and Appellees filing nearly identical oppositions, *compare Adams*, Doc. 21 *with Bergosh*, Doc. 19. Such duplicative briefing is a waste of both counsel’s and the Court’s time.

Appellants in *Adams* had initially indicated that “[t]he new Board members anticipate ... seeking to consolidate [their] appeal with the instant one, pursuant to



Federal Rule of Appellate Procedure 3(b).” *Adams*, Doc. 16 at 12. Counsel for Appellants more recently informed the undersigned that Appellants no longer intend to move to consolidate.

Plaintiffs/Appellees have moved to expedite the appeal in *Adams*. *Adams*, Doc. 13. In the event this motion to consolidate is denied, Plaintiffs/Appellees anticipate filing a similar motion to expedite the appeal in *Bergosh*. If this motion to consolidate is granted, Plaintiffs/Appellees respectfully request that the Court retain the existing briefing schedule in *Adams*. That briefing schedule already reflects a 30-day extension for Appellants to file their opening brief. *See Adams*, Docket Entry, Oct. 20, 2025 (providing over-the-phone extension with opening brief due Dec. 3, 2025). As the Appellants in both appeals are represented by the same counsel, who will be briefing the very same issue (and who previously briefed this issue in the Board’s first unsuccessful interlocutory appeal, No. 24-23896, Docs. 23, 39), no further extension of the briefing schedule should be necessitated by consolidation.

Counsel for Appellants has stated that Appellants do not oppose consolidation but do oppose Appellees’ request to align the briefing schedule with the schedule set in *Adams*.

### CONCLUSION

For the reasons discussed above, Plaintiffs/Appellees request that *Bergosh*, No. 25-13698, be consolidated with *Adams*, No. 25-13298, and that the briefing

schedule in *Adams* be retained for the consolidated appeals.

Dated: November 5, 2025

/s/ Ori Lev

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**CERTIFICATE OF COMPLIANCE**

This motion complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains fewer than 5,200 words. This motion 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 November 5, 2025, I electronically filed the foregoing response 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