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

PLAINTIFFS' MOTION TO STAY PENDING RESOLUTION OF THE APPEAL IN *PENGUIN RANDOM HOUSE, LLC V. GIBSON*

INTRODUCTION

Under the current Supplemental Scheduling Order, "the 'threshold' issues of standing and government speech / applicability of the First Amendment to school library book removals will be briefed separately from the merits of the First Amendment claims," and briefs will be due 21 days from the close of discovery. (Dkt. 200 at 3.) Plaintiffs understand that the Court sought to hear "threshold" issues first based on concerns about judicial efficiency. Since the Court issued the Supplemental Scheduling Order, however, a case raising similar issues has been appealed to the Eleventh Circuit, whose ruling will likely prove dispositive in deciding some or all of the threshold issues in this case. *See Penguin Random House, LLC v. Gibson* ("*Gibson*"), No. 25-13181 (11th Cir.) (appeal from No. 24-cv-1573-CEM-RMN (M.D. Fla.)). Therefore, and especially in light of the interlocutory appeal currently pending in this case (Dkt. 227), the Court should stay summary judgment proceedings until the Eleventh Circuit reaches a decision in *Gibson*.

BACKGROUND

On August 5, 2025, following a case management conference, the Court entered a Supplemental Scheduling Order that set October 15, 2025 as the close of discovery—aside from the outstanding Board member depositions which are, as anticipated, currently being appealed to the Eleventh Circuit—and issued a

schedule that frontloaded summary judgment to address "threshold" issues before the merits. (Dkt. 200.) During the case management conference, the Court noted that, regarding threshold issues, "there has been a lot of law that has come out between the time that I had the motion to dismiss ruling and between the present that is -- is worth considering and worth me thinking about." (Tr. 41:17-20, Aug. 8, 2025, Dkt. 207 Tr..) The Court expressly referenced the Fifth Circuit's recent decision on library books in connection with its decision to frontload threshold issues, reasoning that "if it turns out that this case gets resolved like the Fifth Circuit's case did, then we've spent a lot of time, and, unfortunately, I may have caused us to spend a lot of time by not giving it enough shrift at the outset of the case. But at least we won't spend further time dealing with 190 books." (Tr. 41:24-42:4, Aug. 8, 2025, Dkt. 207.) Accordingly, the Court set the deadline for motions for summary judgment and *Daubert* motions relating to these threshold issues at 21 days after the discovery deadline. (Dkt. 200 at 3.)

On August 25, 2025, Plaintiffs filed a Notice of Supplemental Authority, (Dkt. 216), alerting the Court to a decision in the U.S. District Court for the Middle District of Florida that also addressed book removals in Florida, *Penguin Random House, LLC v. Gibson*, No. 6:24-cv-1573-CEM-RMN, 2025 WL 2408178 (M.D. Fla. Aug. 13, 2025). As in this case, the plaintiffs in *Gibson* include a group of publishers, authors, and the parents of public-school students challenging

content-based book removals from public school libraries. The books were removed under HB 1069. 2025 WL 2408178 at *1. Plaintiffs sued state officials and two county school boards, arguing HB 1069 violates the First Amendment facially and as-applied. All parties moved for summary judgment. *Id.*

On August 13, 2025, Judge Mendoza of the Middle District of Florida granted plaintiffs' motion for summary judgement except as to two counts. He found each class of plaintiffs—authors of removed books, parents of public school students, publishers, and organizations representing authors—had Article III standing to challenge public school library book removals. *Id.* at *3-5. The book removals denied children in public schools the right to receive information, causing injury. *Id.* at *4. In that same vein, the book removals caused injury by circumscribing the ability of publishers and authors of removed books to reach their target audiences, which also gave associational standing to organizations representing those authors. *Id.* at *4-5.

The *Gibson* court also rejected defendants' argument that the book removals were "government speech," an expression of the government's views exempt from regular First Amendment challenges, applying the factors in *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022). *Id.* at *8-10. In so doing, it rejected the Fifth Circuit's approach in *Little v. Llano County*, 138 F.4th 834, 836 (5th Cir. 2025),

cert. filed No. 25-284 (Sept. 9, 2025), where a plurality had concluded library collection decisions are government speech.

Judge Mendoza ultimately addressed the constitutionality of HB 1069, holding it is facially overbroad and 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"). 2025 WL 2408178, at *11-19.

On September 10, 2025 the State Defendants filed an appeal to the Eleventh Circuit. Notice of Appeal, Dkt. 134, *Penguin Random House, LLC v. Gibson*, No. 6:24-cv-01573-CEM-RMN (M.D. Fla. Sept. 10, 2025). Among the issues the Defendants intend to raise on appeal is whether the removal of "obscene" books from a school library is considered government speech under the First Amendment. *See* Civil Appeal Statement, Dkt. 10-1 at 2, *Penguin Random House, LLC v. Gibson*, No. 25-13181 (11th Cir. Sept. 26, 2025) ("Civil Appeal Statement").[1]

[1] The other case against the Escambia County School Board about book removals from public school libraries is also currently on appeal to the Eleventh Circuit. *See Parnell v. Sch. Bd. of Escambia Cnty.*, No. 25-13485 (11th Cir. Oct. 7, 2025). Given that the issues on appeal have not yet been identified and that the district court's order on summary judgment disclaimed any ruling on the government speech argument, *Parnell v. Sch. Bd. of Escambia Cnty.*, No. 4:23-cv-00414, Dkt. 261 at 12 (N.D. Fla. Sept. 30. 2025) ("The good news is I need not decide the difficult government-speech issue to resolve the case."), Plaintiffs do not seek to stay proceedings based on that case.

LEGAL STANDARD

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). A district court "has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). When exercising that judgement, courts "must weigh competing interests and maintain an even balance." *Landis,* 299 U.S. at 254-55.

"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*, 299 U.S. at 255. "Awaiting 'a federal appellate decision that is likely to have a substantial or controlling effect on the claims and issues in the stayed case' is 'at least a good [reason], if not an excellent one' for granting a stay." *Ferrari v. N. Am. Credit Servs.*, 585 F. Supp. 3d 1334, 1336 (M.D. Fla. 2022) (quoting *Miccosukee Tribe of Indians v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009)).

ARGUMENT

I. The Eleventh Circuit's Forthcoming Decision Will Affect Threshold Issues in This Case.

A. The Decision Will Directly Grapple with Government Speech.

As listed in the *Gibson* Civil Appeal Statement, the Eleventh Circuit will directly consider whether "the removal of 'obscene' books in a school library falls within the Government Speech Doctrine of the First Amendment," a threshold question in the case here. Civil Appeal Statement at 2. This issue has proved contentious, causing a circuit split and prompting this Court to solicit further briefing on this issue. In *Little v. Llano County*, the Fifth Circuit plurality held that decisions about public-school library collections are government speech, while the Eighth Circuit held that "if placing these books on the shelf of public school libraries constitutes government speech, the State 'is babbling prodigiously and incoherently.'" *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, 114 F.4th 660, 668 (8th Cir. 2024) (quoting *Matal v. Tam*, 582 U.S. 218, 236 (2017)). The Middle District of Florida followed the Eighth Circuit, and the Eleventh Circuit ruling on appeal will bind this Court on this issue.

Although *Gibson* partially centers on the language of "pornographic" and "obscene" in HB 1069, the arguments presented are practically identical to those at issue in this case. In fact, the defendants in *Gibson* characterized the alleged

government speech at issue as "the government curating the selection of books in the library," 2025 WL 2408178, at *8, an argument Defendants have similarly advanced here, (Dkt. 28 at 23-26). The Eleventh Circuit's ruling in *Gibson*, therefore, will be directly relevant to the issues before this Court.

B. The Decision Will Rest on Interpretations of Standing for Similarly Situated Plaintiffs.

"The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States' and is inflexible and without exception." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998) (cleaned up); *see also Focus on the Family v. Pinellas Suncoast Transit Authority*, 344 F.3d 1263, 1272 (11th Cir. 2003) (noting that standing must be addressed as a threshold matter). Therefore, in deciding *Gibson*, the Eleventh Circuit will, by necessity, make a decision on the plaintiffs' Article III standing, as the district court already has. Given the similarity between the types of plaintiffs, the Eleventh Circuit's ruling will likely serve to clarify whether Plaintiffs here have standing.

The array of plaintiffs in *Gibson* mirror those in this case, as do the nature of the injuries they alleged. For each set of plaintiffs, Judge Mendoza concluded they met the Article III requirements of injury in fact, causation, and redressability. Authors and publishers of removed books were injured by having their ability to reach their target audiences curtailed, giving organizations representing these

authors associational standing. 2025 WL 2408178, at *4-5. The Court ruled that students, represented by parents, were also injured by losing access to the removed books. *Id* at *4. Judge Mendoza then identified "state defendants," including School Board members, as the cause of plaintiffs' injury. Further, the court found that the injuries were redressable by amending the policies and procedures of book removals. The arguments advanced by the court and parties in *Gibson* largely parallel those already, and likely to be, advanced in this case. Therefore, the Court would benefit from appellate guidance on similarly situated plaintiffs before resolving dispositive motions addressing the same threshold question.

II. Awaiting the Eleventh Circuit's Ruling Will Promote Judicial Economy and Consistency.

Proceeding after the Eleventh Circuit's ruling will prevent inconsistent interpretations and duplicative litigation over the same doctrine and similar circumstances. As already noted, the parties, facts, and issues in this case and *Gibson* strongly resemble one another. District Courts within the Eleventh Circuit have entered into stays in similar circumstances, recognizing that staying cases during pending dispositive appellate decisions is beneficial. For example, in the face of the Eleventh Circuit appeals regarding the Circuit's interpretation of threshold issues relevant to the Florida Telephone Solicitation Act and Telephone Consumer Protection Act, several district courts across Florida granted stays. *See, e.g.*, *Simpson v. J.G. Wentworth Co.*, No. 8:23-CV-152-KKM-AEP, 2023 WL

3029820, at *1-2 (M.D. Fla. Apr. 17, 2023) (granting opposed stay motion given pending Eleventh Circuit decision); *Valiente v. BB Entertainment, Ltd.*, No. 1:22-cv-22737-JEM, 2023 WL 3069260, at *1 (S.D. Fla. Apr. 20, 2023) (granting unopposed motion to stay pending the Eleventh Circuit's decision); *see also Garcia v. Spruce Services*, Inc., 662 F. Supp. 3d 1245, 1246 (S.D. Fla. 2023) (granting stay *sua sponte* for the same reason).

The Eleventh Circuit has indicated that granting a stay because an outstanding appeal would address pending issues is an "excellent reason" to do so. In *Miccosukee Tribe of Indians v. S. Fla. Water Mgmt*, the plaintiffs and defendants were engaged in other suits involving the same or similar violations of the Clean Water Act at other pump sites. 559 F.3d at 1193. Acknowledging the "extensive similarities" between the suits and that the counterpart suits were on appeal to higher courts, the district court stayed the case in "the interests of justice and judicial economy, including avoiding inconsistent results, the duplication of efforts, and the waste of judicial resources." *Id* at 1194. The Eleventh Circuit noted that the stay was premised on an "excellent" reason: to await a dispositive ruling from a higher court. *Id* at 1198. Staying proceedings here pending the *Gibson* appeal to the Eleventh Circuit follows this same logic. Similar (and, in the case of Penguin Random House, the same) parties are litigating over analogous sets of facts and the

same dispositive issues the Court has directed be addressed in the forthcoming summary judgment motion.

Proceeding before the Eleventh Circuit resolves the overlapping government speech and standing questions risks a decision inconsistent with forthcoming appellate authority. This Court has itself relied on the judicially economical benefits of a stay pending an interlocutory appeal. (*See* Dkt. 170 at 3-4.) As in that circumstance, a temporary stay would avoid these inefficiencies, safeguard consistency, and preserve judicial resources.

III. A Temporary Stay Will Not Harm Either Party.

As noted above, stays pending the resolution of another case are an accepted practice in the Eleventh Circuit, and they rest in large part on court discretion. Only when stays are found to be "immoderate" are they considered to be improper. *Trujillo v. Conover & Co. Commc'ns*, 221 F.3d 1262, 1264 (11th Cir. 2000). Generally, this standard applies when parallel proceedings in another court have "progressed slowly or no specific date has been set for resolution." *Arenson v. Citizens Property Ins. Corp.*, 2005 WL 2807153, at *4 (N.D. Fla. Oct. 26, 2005) (noting the record in *Trujillo* indicted case was not progressing rapidly). Given that the *Gibson* appeal has already been filed and the issues are not rooted in an especially complex set of facts, the Eleventh Circuit's decision is not expected to take longer than any other appellate decision. Indeed, the current briefing schedule

in *Gibson* has all briefs filed by December 31, 2025. Briefing Notice, Dkt. 21, *Penguin Random House, LLC v. Gibson*, No. 25-13181 (11th Cir. Oct. 14, 2025). Particularly in light of the currently pending interlocutory appeal in this case regarding the Board member depositions, the additional delay—if any—from waiting for resolution of *Gibson* should be minimal.

As the current schedule stands, the forthcoming motion for summary judgment will address threshold issues that will likely be substantially impacted, if not controlled, by the Eleventh Circuit's opinion in *Gibson*. Waiting for the Eleventh Circuit's ruling will provide all parties with guidance to tailor their motions and reach the heart of the threshold issues more efficiently.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grants Plaintiffs' Motion to Stay Proceedings until the resolution of the Eleventh Circuit appeal on *Penguin Random House, LLC v. Gibson*.

RULE 7.1(B) CERTIFICATION

Plaintiffs hereby certify that they conferred with counsel for Defendant by email on September 30, 2025 and October 2, 2025, and counsel for Defendant stated that Defendant did not consent to this motion.

RULE 7.1(F) CERTIFICATION

Plaintiffs certify that this Motion contains 2,491 words, excluding those portions that do not count toward the word limit.

Respectfully submitted,

Dated: October 15, 2025

/s/ Shalini Goel Agarwal

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