

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

C.K.-W., et al.,	)	
	)	
Plaintiffs,	)	Case No. 4:22-cv-00191-MTS
	)	
v.	)	
	)	
WENTZVILLE R-IV SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	

**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR STAY**

**I. INTRODUCTION**

Contrary to Plaintiffs' assertions, the District plainly has not and does not propose that a stay of proceedings would "resolve this case" (Doc. 38, p. 1)—nor would total resolution of all claims be required in order for a stay to issue. Reducing the scope of the case by weeding out some unnecessary claims still serves the judicial economy and preserves the resources of the Court and the Parties. Plaintiffs' opposition brief all but concedes that a stay of proceedings pending completion of committee review and Board vote would narrow and simplify the issues for discovery and trial (*see* Doc. 38, p. 1)—*i.e.*, whether the parties need to perform discovery on (and whether the Court needs to adjudicate) the removal of each and every one of the Subject Books<sup>1</sup>—potentially leaving only the legal issue of whether the District's library book review policies and regulations are constitutional. The District has sufficiently demonstrated hardship and inequity

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<sup>1</sup>*The Bluest Eye*, by Toni Morrison; *Fun Home: A Family Tragicomic*, by Alison Bechdel; *All Boys Aren't Blue*, by George M. Johnson; *Heavy: An American Memoir*, by Kiese Laymon; *Lawn Boy*, by Jonathan Evison; *Gabi, A Girl in Pieces*, by Isabel Quintero; *Modern Romance: An Investigation*, by Aziz Ansari; and *Invisible Girl: A Novel* by Lisa Jewell (collectively, the "Subject Books").

absent a stay, and in any event Plaintiffs will not be unduly prejudiced by the proposed stay. The Court should therefore grant the District's Motion for Stay.

## II. 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). "How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Id.* at 254-55. While hardship and inequity to the movant can be one of several "considerations" in granting a stay, such considerations are "counsels of moderation rather than limitations upon power." *Id.* at 255. Thus, the Court's discretion to issue a stay is broad and exercise of this discretion here is warranted and proper based on the specific facts and posture of this case.

The general standard relied upon in *Middleton, Inc. v. Minn. Mining & Mfg.*,<sup>2</sup> and *CRST Expedited, Inc. v. Swift Transp. Co. of Ariz., LLC*,<sup>3</sup> is—at a minimum—instructive and clearly not, as Plaintiffs seem to imply, limited to the specific facts of those cases. *See also Dordt Coll. v. Burwell*, No. C 13-4100-MWB, 2014 U.S. Dist. LEXIS 151538, at \*4 (N.D. Iowa Oct. 27, 2014) (applying the general standard in a case involving a Religious Freedom Restoration Act claim).<sup>4</sup> This Court's sister district court has also applied the same general standard articulated in *Middleton* and *CRST*. *See Comprehensive Health of Planned Parenthood Great Plains v. Lyskowski*, No. 2:16-CV-04313-BCW, 2019 U.S. Dist. LEXIS 230123, at \*7 (W.D. Mo. Apr. 8, 2019) (applying the general test factors in a stay in a case involving substantive due process issues).

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<sup>2</sup> No. 4:03-cv-40493, 2004 U.S. Dist. LEXIS 16812, at \*11 (S.D. Iowa Aug. 24, 2004).

<sup>3</sup> No. 17-CV-25-CJW, 2018 U.S. Dist. LEXIS 139447, at \*8 (N.D. Iowa Aug. 17, 2018).

<sup>4</sup> Cited in *CRST*, No. 17-CV-25-CJW, 2018 U.S. Dist. LEXIS 139447, at \*8.

In contrast, the case law Plaintiffs rely upon, as indicated by the portions they themselves quote, expounds on the standard for a stay in the particular context of where a party seeks to halt a civil action pending resolution of parallel criminal proceedings and is therefore not on point. *See Busey Bank v. Benja Inc.*, No. 4:20CV1473 HEA, 2021 U.S. Dist. LEXIS 33470, at \*3-4 (E.D. Mo. Feb. 23, 2021) (*e.g.*, there is no interest of the public in "pending civil and criminal litigation" for the Court to weigh in the present matter); *Aldridge v. City of St. Louis*, No. 4:18-CV-1677 CAS, 2020 U.S. Dist. LEXIS 6706, at \*9 (E.D. Mo. Jan. 15, 2020).

### III. ARGUMENT

#### A. The District has met its burden (to the extent one exists) to show hardship or inequity absent a stay.

Hardship or inequity to the movant is only a factor when considering a stay if there is at least a "fair possibility" that the stay will damage someone else. *Landis*, 299 U.S. at 255. As demonstrated below, the District's proposed stay will not unduly prejudice Plaintiffs, but even assuming a fair possibility of damage to Plaintiffs, the District has sufficiently shown clear hardship and inequity absent a stay of proceedings—the time and resources expended on the litigation and discovery of matters that soon may no longer be in controversy.<sup>5</sup> Again, contrary to allegations in the Amended Complaint (Doc. 28), access to the *Bluest Eye*, *Modern Romance*, and *Invisible Girl* is currently available to District students—the books have not been "banned." (*See* Doc. 36, p. 1-2). The District would submit that there is no real dispute on these points and that Plaintiffs claims with respect to the removal of these specific books are now moot. This may also ultimately be the case for the remaining Subject Books after completion of committee review and

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<sup>5</sup> Plaintiffs' reliance on *F.T.C. v. Standard Oil Co. of Cal.* is clearly misplaced. 449 U.S. 232 (1980). That case analyzed whether the issuance of an FTC complaint was subject to judicial review under the unique context of the Federal Trade Commission Act; it does not speak to what hardship or inequity may or may not be required for a stay of proceedings. *Id.* at 233-34, 244. Neither the *F.T.C.* opinion nor any other authority cited by Plaintiffs stands for the proposition that the District must show "irreparable harm" in order to for a stay to issue.

Board vote. Plaintiffs' opposition brief does appear to maintain the assertion that *Fun Home*, *All Boys*, and *Heavy* have been permanently removed (*see* Doc. 38, p. 7), but if the Board ultimately votes to retain these books after review by committee (and thereby restoring access to the same), Plaintiffs' claims with respect to the restoration of access to these books will still be moot and the parties need not engage in discovery thereon. Under these circumstances, the District's costs would not, as Plaintiffs suggest, be "routine" or "standard" litigation expenses. Rather, they would be a wholly unnecessary waste of not only the District's time and resources, but the Court's and Plaintiffs' as well.

**B. Plaintiffs will not be unduly prejudiced by a stay.**

Plaintiffs essentially contend that a stay of proceedings would unduly prejudice them because (1) their pending Motion for Preliminary Injunction has been fully briefed but not yet resolved and (2) the proposed stay does not have a hard deadline. (*See* Doc. 36, p. 5-6). First of all, despite Plaintiffs' repeated conclusions on the matter, constitutional injury has not yet been established in this case and is not conceded. Second, the District's proposed stay is not indefinite—the District reasonably anticipates completion of review and Board vote on all of the remaining Subject Books by the end of June 16, 2022 at the latest. The requested stay is specifically with respect to the four remaining Subject Books under committee review and awaiting Board vote, not any future books that may be challenged. (*See* Doc. 35). Additionally, contrary to Plaintiffs' accusations, the District has not delayed review of any of the Subject Books. The reviews are being performed in good faith and were only delayed by circumstances beyond the District's control. Nonetheless, with respect to Plaintiffs' former objection, the District would be agreeable to resolution of this Motion after the Court rules on Plaintiffs' Motion for Preliminary Injunction. As even Plaintiffs appear to at least partially acknowledge (*see* Doc. 36, p. 5-6), taking up the motions

in this order would largely, if not completely, resolve any purported issue arising from any supposed ongoing or potential future injury allegedly caused by the District's policies and regulations. With respect to the latter objection, the District would be amenable to a 30-60 day stay if the Court is not inclined to stay proceedings pending completion of committee review and Board vote on the remaining Subject Books.

**C. A stay is likely to narrow the scope of discovery and simplify the issues to be adjudicated by the Court.**

Plaintiffs argue that a stay of proceedings is not proper here because their lawsuit not only seeks redress for the supposed "permanent removal" of the Subject Books, but also the District policy under which said books were removed. (*See* Doc. 38, p. 1, 7). However, this necessarily concedes by implication that at least some portion of Plaintiffs' claims (*i.e.*, the claims regarding the "permanent removal" of the Subject Books) could be rendered moot (and thus resolved) via a stay of proceedings pending committee review and Board vote on the remaining Subject Books—narrowing the scope and burden of discovery and reducing/simplifying the issues for trial by the Court. Plaintiffs assert that the District could continue and complete review and voting on the Subject Books without a stay, but it would still again be potentially subject to unnecessary discovery and litigation on matters that may no longer be in dispute by June 2022. If access is restored to all of the Subject Books in District's libraries, then evidence regarding the circumstances of their respective removals would have minimal, if any, relevance to the purely legal issue of whether the District's policy itself is constitutional<sup>6</sup>—*i.e.*, whether a school district

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<sup>6</sup> Despite Plaintiffs' insistence that they do not "ask this Court to sit as a super-school-board to evaluate the wisdom of particular decisions the District could make," substantial portions of their Amended Complaint and briefings have been devoted to inviting the Court to do just that—*e.g.*, proclaiming the educational merits of the Subject Books and questioning the Board's discretion and reasoning with respect to its decisions on *The Bluest Eye*. (*See e.g.*, Doc. 6, ¶¶ 30-35, 39-45, 61-70, 74-75; Doc. 19, pp. 4-5).

may temporarily remove access school library books pending committee review and Board vote, and, if so, on what grounds.

**D. A stay is appropriate in this stage of litigation.**

As previously argued, the present procedural posture of this case weighs in favor of granting a stay. This case is still in its early stages—discovery has not been planned nor initiated, and no trial date has been set. Thus, a relatively brief stay of proceedings at this juncture will not unduly delay proceedings nor prejudice either party.

**Conclusion**

Accordingly, for all the reasons set forth above, the Court should grant the District's Motion to Stay.

Respectfully submitted,

EDCOUNSEL, LLC

By: /s/ J. Drew Marriot

J. Drew Marriot, #63059

[dmarriott@edcounsel.law](mailto:dmarriott@edcounsel.law)

Matthew D. Wilson #59966

[mwilson@edcounsel.law](mailto:mwilson@edcounsel.law)

2833B E. Battlefield St., Ste. 100

Springfield, Missouri 65804

(417) 755-7190

(855) 876-4740 (facsimile)

ATTORNEYS FOR DEFENDANT

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