

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MOMS FOR LIBERTY –
BREVARD COUNTY, FL, et. al,

Plaintiffs,

v.

BREVARD PUBLIC SCHOOLS,
et. al,

Defendants.

Case No. 6:21-cv-1849-RBD-GJK

PLAINTIFFS’ MOTION FOR
STAY OF PROCEEDINGS
AND
MEMORANDUM IN SUPPORT

MOTION FOR STAY AND INCORPORATED MEMORANDUM IN SUPPORT

Plaintiffs, Moms for Liberty – Brevard County, FL, Amy Kneessy, Ashley Hall, Katie Delaney, and Joseph Cholewa, by counsel, move for a stay of these proceedings pursuant to the inherent powers of the Court, and state:

INTRODUCTION AND REQUESTED RELIEF

1. “[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. North American Co.*, 299 U.S. 248, 254 (1936); *Arkin v. Innocutis Holdings, LLC*, 176 F. Supp. 3d 1313, 1314 (M.D. Fla. 2016). Those interests now counsel the staying of further proceedings pending the outcome of Plaintiffs’ interlocutory appeal.

2. Proceeding with this case here during the pendency of Plaintiffs’ interlocutory appeal could cause the needless expenditure of time and effort by this Court and the parties, as the core issues in this case are currently before the Court of Appeals. A stay would prejudice no one, but it would allow the Eleventh Circuit to expeditiously resolve this dispute’s substantive issues, and aid the efficient resolution of this case—preserving judicial and litigation resources on both sides.

ARGUMENT AND INCORPORATED MEMORANDUM OF LAW

I. PROCEDURAL HISTORY

Plaintiffs brought this First Amendment challenge to Defendants’ policies, customs and practices in the conduct of school board meetings, and moved for a preliminary injunction. Defendants, in opposing Plaintiffs’ preliminary injunction motion, argued their policies were constitutional both facially and as applied to Plaintiffs, and that the policies were neither unconstitutionally vague nor overbroad. On December 20, 2021, Defendants moved to dismiss the case, repeating the constitutional arguments from their opposition to Plaintiffs’ preliminary injunction motion and also adding nine new arguments, some of which are intertwined with the arguments on appeal.¹

¹ In addition to renewing their earlier arguments, Defendants claim that (1) Plaintiffs’ complaint is a “shotgun” pleading; (2) Plaintiffs cannot sue on behalf of third parties; (3) Plaintiff Moms for Liberty – Brevard, FL lacks standing; (4) the individual Plaintiffs lack standing to bring First Amendment claims; (5) Plaintiffs’ claims against the individual

On January 24, 2022, the Court denied Plaintiffs' motion for a preliminary injunction. Plaintiffs appealed from that order. (Dkt. 47). Defendants' motion to dismiss is the only matter currently pending before the Court.

II. ARGUMENT

A. The Court has broad discretion to stay proceedings in the interests of judicial and litigation efficiency.

“District courts are vested with broad discretion to stay proceedings, which authority is incidental to their inherent powers to control their dockets.” *Sharfman v. Premier Med., Inc.*, No. 20-cv-1278, 2021 U.S. Dist. LEXIS 247446, *2 (M.D. Fla. Dec. 29, 2021) (citing *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *Landis*, 299 U.S. at 254-55; *Advanced Bodycare Sols., LLC v. Thione Int'l, Inc.*, 524 F.3d 1235, 1241 (11th Cir. 2008)). Within that power lies the power to stay litigation pending the outcome of a related proceeding in another forum. *Id.* at *2-*3; *see also Arkin*, 176 F. Supp. 3d at 1314 (citing *Ortega Trujillo v. Conover & Co. Commc'ns, Inc.*, 221 F.3d 1262, 1264 (11th Cir. 2000)). When, as here, “a federal appellate decision ‘is likely to have a substantial or controlling effect on the claims and issues’ in a particular case,

Defendants in their official capacity are redundant to the claim against Defendant Brevard Public Schools; (6) Plaintiffs failed to allege Defendants Susin, Campbell, McDougall, and Jenkins acted under color of law; (7) qualified immunity; (8) Defendant Brevard Public Schools is not vicariously liable for the actions of the individual Defendants; and (9) Plaintiffs failed to state a claim for discriminatory access.

a stay of the case may be warranted.” *Id.* at *3 (quoting *Miccosukee Tribe of Indians v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009)).

“This Court considers several factors when evaluating a request for a stay [of proceedings], including prejudice to the non-moving party, whether the requested stay would simplify and clarify the issues, and whether the potential stay would reduce the burden of litigation on the parties and on the court.” *Tarpon Transp. Servs. v. Total Quality Logistics, LLC*, No. 20-cv-2656, 2021 U.S. Dist. LEXIS 163204, *1 (M.D. Fla. Aug. 30, 2021) (internal quotation marks and citation omitted).² All factors indicate the propriety of staying these proceedings.

B. A STAY WILL NOT PREJUDICE DEFENDANTS.

Because the Court denied Plaintiffs’ request for a preliminary injunction the status quo remains in effect. Defendants did not suffer any prejudice from the Court’s ruling and will continue to function as they did before the suit was filed if a stay is issued. And because there is not “even a fair possibility that the stay” will damage Defendants, Plaintiffs are not required to establish any hardship. *Sharfman*, 2021 U.S. Dist. LEXIS 247446 at *3 (quoting *Landis*).

² The factors for a stay of proceedings pending appeal should be distinguished from the factors for a stay of an order or judgment pending appeal. *See Kimberly Regenesis, LLC v. Lee Cty.*, No. 19-cv-538, 2021 U.S. Dist. LEXIS 215321, *1-*2 (M.D. Fla. Nov. 8, 2021) (listing the factors for staying an order pending appeal); Fed. R. Civ. P. 62; Fed. R. App. P. 8(a)(1).

C. Staying the proceedings will simplify and clarify the issues in this matter.

The questions presented in the interlocutory appeal are the ultimate First Amendment issues that determine the outcome of this case. Regardless of how the Eleventh Circuit rules, its decision will control and streamline the course of litigation in this Court.

D. A stay will promote judicial efficiency and reduce the burdens of litigation on the parties.

Absent a stay, the parties will continue to litigate this matter pursuant to the Uniform Case Management Report, (Doc. 45), and the Court will have to rule on any matter brought before it.

Moreover, the interplay of Defendants' pending motion to dismiss and Plaintiffs' interlocutory appeal counsel for a stay. "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Green Leaf Nursery v. E.I. DuPont de Nemours & Co.*, 341 F.3d 1292, 1309 (11th Cir. 2003) (internal quotation marks omitted). This Court only retains jurisdiction over claims that are unrelated to the issues on appeal. *Id.* (citing *May v. Sheahan*, 226 F.3d 876, 880 n.2 (7th Cir. 2000)).

Accordingly, while this Court could, in theory, proceed to rule on some of Defendants' new arguments, the Court cannot, for the time being, address

Defendants' constitutional arguments. Nor can this Court address whether the Complaint is a "Shotgun" pleading because that could trigger a mandatory repleading remedy, which would impermissibly "alter the status of the case as it rests before the Court of Appeals." *Green Leaf*, 341 F.3d at 1309 (internal quotation marks omitted). Nor can this Court yet reach those of Defendants' new arguments that are intertwined with the constitutional issues (e.g., the questions of whether the claims are adequately pleaded or whether the rights at issue are clearly established could be answered by an appellate decision respecting likelihood of success on the merits). Defendants cannot now obtain a complete dismissal of the complaint. Accordingly, the parties will be left to conduct discovery while the Eleventh Circuit evaluates the broader constitutional issues.

A stay of proceedings avoids these complications and allows the Eleventh Circuit to resolve the case by ruling on Plaintiffs' constitutional claims. Therefore, the "[C]ourt might find it best to stay [the] entire case pending the resolution of [the dispositive issues on] appeal." *May*, 226 F.3d at 880 n.2. *See also Bell v. Macy's Corp. Servs.*, No. 20-cv-60338, 2021 U.S. Dist. LEXIS 35528, *2 (S.D. Fla. Feb. 23, 2021) (citing *May*) (same).

III. CONCLUSION

Plaintiffs' motion for a stay of these proceedings should be granted.

Dated: January 31, 2022

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Respectfully submitted,

/s/ Ryan Morrison

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LOCAL RULE 3.01(G) CERTIFICATION

I HEREBY CERTIFY that on January 31, 2022, I conferred with Gennifer L. Bridges, counsel for Defendants, via email regarding the instant motion. Counsel for Defendants did not take a position, as she needed to consult with Defendants further. Pursuant to Local Rule 3.01(g)(3), Plaintiffs will timely supplement the record when counsel for Defendants notifies us of their position.

/s/ David Osborne
David Osborne

CERTIFICATE OF SERVICE

On January 31, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all attorneys of record.

/s/ Ryan Morrison

Ryan Morrison (*pro hac vice*)

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