

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

PENGUIN RANDOM HOUSE LLC, LAURIE)
HALSE ANDERSON, JOHN GREEN,)
MALINDA LO, JODI PICOULT, SCOTT BONZ)
as parent and next friend of H.B., IOWA STATE)
EDUCATION ASSOCIATION, MARI BUTLER)
ABRY, ALYSON BROWDER, AND DANIEL)
GUTMANN,)

Plaintiffs,)

v.)

JOHN ROBBINS in his official capacity as)
President of the Iowa State Board of Education,)
MCKENZIE SNOW in her official capacity as)
Director of the Iowa State Department of)
Education, CHAD JANZEN in his official)
capacity as Chair of the Iowa State Board of)
Educational Examiners, URBANDALE)
COMMUNITY SCHOOL DISTRICT BOARD)
OF DIRECTORS, ROSALIE DACA in her)
official capacity as Urbandale Community School)
District Superintendent, NORWALK)
COMMUNITY SCHOOL DISTRICT BOARD)
OF DIRECTORS, AND SHAWN HOLLOWAY)
in his official capacity as Norwalk Community)
School District Superintendent,)

Defendants.)

Case No. 4:23-cv-00478-SHL-SBJ

**PLAINTIFFS' BRIEF IN
SUPPORT OF THEIR MOTION
FOR LEAVE TO FILE
THEIR SECOND AMENDED
COMPLAINT WITH THE
CONSENT OF DEFENDANTS'
COUNSEL**

On November 30, 2023, Plaintiffs commenced this action seeking declarations that two provisions of Senate File 496 were unconstitutional and seeking a preliminary and permanent injunction barring enforcement of those provisions: the Library Restriction, which prohibits school library books with any description of a sex act, and the Identity And Orientation Prohibition, which prohibits, among other things, the promotion of gender identity or sexual orientation. On December 29, 2023, this Court held that both the Library Restriction and the Identity And

Orientation Prohibition were likely unconstitutional, granted Plaintiffs' motion for a preliminary injunction, and enjoined enforcement of those provisions. (ECF No. 56.)

Following the issuance of the preliminary injunction, the State Defendants appealed to the Eighth Circuit. While the appeal was pending, this Court granted Plaintiffs leave to file a first amended complaint to add allegations concerning the School District Defendants. (ECF No. 73.) Plaintiffs' first amended complaint was substantially similar to their original complaint. (*See* ECF No. 74.)

On August 9, 2024, the Eighth Circuit entered an order vacating the preliminary injunction and remanding the case back to this Court. (ECF No. 83.) The Eighth Circuit issued its mandate on August 30, 2024. (ECF No. 84.)

As a result of the Eighth Circuit's decision and to streamline this case, Plaintiffs seek leave to file a second amended complaint. Plaintiffs' proposed amendments include:

- Adding additional plaintiffs who have been harmed by the overbreadth and vagueness of the Library Restriction;
- Simplifying the claims against the School District Defendants in light of statements made by the State Defendants and the School District Defendants;
- Not bringing claims related to the Identity And Orientation Prohibition due to the State Defendants' confirmation in their appellate briefing that the Prohibition does not apply to school library books; and
- Not bringing claims on behalf of some of the plaintiffs as a result of the State Defendants' confirmation that the Prohibition does not apply to library books.

LEGAL STANDARD

Federal Rule of Civil Procedure 15(a)(2) permits a party to amend its pleading with the court's leave, which the court "should freely give . . . when justice so requires." Denial of leave to amend is appropriate only where the non-moving party can demonstrate "undue delay, bad faith on the part of the moving part[y], futility of the amendment, or unfair prejudice to the non-moving

party.” *Roberson v. Hayti Police Dept.*, 241 F.3d 992, 995 (8th Cir. 2001). No such concerns exist here.

ARGUMENT

This Court should grant Plaintiffs leave to file their proposed second amended complaint. The proposed second amended complaint narrows the claims and legal issues that are at issue in the lawsuit and modifies the parties that are named as plaintiffs and defendants in the lawsuit.

First, the proposed second amended complaint adds as named plaintiffs publishers Hachette Book Group, Inc.; HarperCollins Publishers LLC; Macmillan Publishing Group, LLC; and Simon & Schuster, LLC, each of which has published books that have been identified for removal in Iowa school libraries under the Library Restriction in violation of their First Amendment rights, and the Authors Guild, whose members have written books that have been identified for removal in Iowa school libraries under the Library Restriction in violation of their First Amendment rights. The proposed second amended complaint also removes student-plaintiff Hailie Bonz, who has since graduated from high school, and adds as a plaintiff Meggan Van Gundy as parent and next friend of G.V.G., a high school senior in Urbandale High School who has been unable to access books that she wanted to read in her school library as a result of the Library Restriction. In addition, the proposed second amended complaint removes educator plaintiffs Mari Butler Abry, Daniel Guttman, and Alyson Browder (whose allegations focused primarily on the Identity And Orientation Prohibition) and adds new educator plaintiffs Emily House and Lisa Petrie.

Second, the proposed second amended complaint narrows the claims and legal issues that are at issue in this lawsuit. In their Eighth Circuit briefs, the State Defendants expressly stated that the Identity And Orientation Prohibition does not apply to school and classroom libraries. *See*,

e.g., May 4, 2024 Reply Brief of State Defendants-Appellants at 29, *GLBT Youth in Iowa Schools Task Force v. Reynolds*, Nos. 24-1074 and 24-1082 (reaffirming that the Identity And Orientation Prohibition “does not include all school ‘programs’ like the Library Program”). Because the State Defendants have confirmed that the Identity And Orientation Prohibition does not require the removal of books from school and classroom libraries, the proposed second amended complaint no longer asserts claims concerning the Identity And Orientation Prohibition.

Third, the proposed second amended complaint simplifies Plaintiffs’ claims against the School District Defendants. In an effort to streamline this case, the proposed second amended complaint focuses on the School District Defendants’ mandatory implementation and enforcement of the Library Restriction as agents of the State rather than the separate policies and customs that the School District Defendants have implemented above and beyond the Library Restriction. This is consistent with the School District Defendants’ representations in their motions to dismiss that they lack discretion concerning implementation and enforcement of the Library Restriction. Because the School District Defendants are now sued in their capacity as state actors rather than municipal actors, the proposed second amended complaint names as defendants the individual district school board members rather than the school districts themselves.¹

These proposed amendments are made in good faith to narrow Plaintiffs’ claims to account for the State Defendants’ proffered interpretation of the Identity And Orientation Prohibition and to modify the parties given changes in the claims. Those amendments are neither futile nor prejudicial. Rather, the proposed amendments will streamline the case for all parties. Plaintiffs have not unduly delayed in seeking leave to amend their complaint. Since the Eighth Circuit’s

¹ When school districts act solely as agents of a state, they may have sovereign immunity. In this circumstance, bringing claims against school district officials in their official capacity is permitted under *Ex Parte Young*, 209 U.S. 123 (1908).

mandate vacating the preliminary injunction issued on August 30, 2024, Plaintiffs have worked diligently to identify actions taken by school districts, including the School District Defendants, to implement and enforce the Library Restriction.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court grant them leave to file the proposed second amended complaint attached to their Motion as Exhibit A.

Dated: September 26, 2024

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy all attorneys of record on September 26, 2024 via CM/ECF.

By: /s/ Maura McNally-Cavanagh