

**No. 23-50668**

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**In the United States Court of Appeals  
for the Fifth Circuit**

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**BOOK PEOPLE, INCORPORATED; VBK, INCORPORATED, doing  
business as BLUE WILLOW BOOKSHOP; ASSOCIATION OF  
AMERICAN PUBLISHERS; AUTHORS GUILD, INCORPORATED;  
COMIC BOOK LEGAL DEFENSE FUND; AMERICAN BOOKSELLERS  
ASSOCIATION,**

*Plaintiffs-Appellees,*

**v.**

**MARTHA WONG, in her official capacity as the Chair of the Texas State  
Library and Archives Commission; KEVEN ELLIS, in his official capacity  
the Chair of the Texas State Board of Education, MIKE MORATH, in his  
official capacity as the Commissioner of the Texas Education Agency,**

*Defendants-Appellants.*

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**On Appeal from the United States District Court  
for the Western District of Texas, Austin Division  
Case No. 1:23-CV-00858-ADA, Judge Alan Albright**

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**PLAINTIFFS-APPELLEES'  
MOTION TO RESCHEDULE ORAL ARGUMENT**

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**ATTORNEYS FOR PLAINTIFFS-APPELLEES**

Appellees respectfully file this Motion to Reschedule Oral Argument and, if rescheduled, to adjust briefing deadlines accordingly.

### **PROCEDURAL HISTORY**

This interlocutory appeal has proceeded at an extraordinary pace. Three weeks ago, on September 18, 2023, Appellants filed a notice of interlocutory appeal. Dkt. 1. On September 20, 2023, Appellants filed a motion for stay pending appeal or alternatively a temporary administrative stay. Dkt. 8. On September 25, 2023, the Court ordered an administrative stay pending further order of the Court. Dkt. 31. On October 5, 2023, the Court ordered that the motion to stay is carried with the case. Dkt. 44. The Court also ordered that the appeal be expedited. *Id.* On October 9, 2023, the Court scheduled oral argument for less than a month away, on November 8, 2023, and ordered expedited briefing over the next few weeks. Dkt. 49.

### **ARGUMENT**

Good cause exists for rescheduling oral argument. Appellees' lead counsel, Laura Prather, has had a long preceding international conflict leading up to and including the oral argument week assigned. As part of her work as a Fulbright Scholar, Prather has been working with the Council of Europe for almost two years on its Anti-SLAPP legislation, which is set to be introduced at the end of this year. This work culminates with Ms. Prather's attendance at Council of Europe expert Anti-SLAPP working group meetings finalizing its legislation and speaking at

international conferences and meetings on October 14 through November 15, 2023. Her presence in Europe during this time period is essential.

Further, as lead counsel throughout the proceedings, Ms. Prather is the proper counsel to present the oral argument in this appeal. As lead counsel, she has been heavily involved in all case proceedings in the District Court, including presenting oral argument at all five District Court hearings and conferences. She continues to be lead counsel for Appellees in this appeal.

A short postponement should not unduly prejudice Appellants. Significantly, during any postponement, Appellants would continue receiving the benefit of their requested administrative stay. Also, Appellants did not request to expedite the appeal. When Appellees' counsel conferred with Appellants' counsel regarding this Motion, Appellants' counsel indicated Appellants were opposed but also stated by email: "Of the three weeks you proposed [November 20, November 27, or December 4], my preference would be the week of the December sitting [sic]. . . ."

Therefore, Appellees respectfully request that the Court reschedule oral argument for the week of December 4, 2023 or, if needed to be scheduled prior to that date, Appellees are available the week of November 20 and November 27, 2023. If rescheduled, Appellees further request that the Court modify the briefing schedule accordingly. This would be a Level 1 extension and is the first extension requested in the appeal.

These requests are sought so that justice may be done in the disposition of this appeal and are not sought for purposes of delay.

**PRAYER**

For all the reasons above, Appellees respectfully request that the Court grant this Motion and reschedule oral argument from the week of November 6, 2023 to the week of December 4, 2023. Alternatively, Appellees request that the Court reschedule oral argument to the week of November 20, 2023 or thereafter. Should the oral argument be rescheduled, Appellees request that the Court modify the briefing schedule in accordance with the rescheduled oral argument date. Appellees further request all such other relief to which they may be justly entitled.

Dated: October 9, 2023

Respectfully submitted,

/s/ Laura Lee Prather

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**ATTORNEYS FOR PLAINTIFFS-  
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### CERTIFICATE OF CONFERENCE

I hereby certify that on October 9, 2023, counsel for Plaintiffs-Appellees conferred with counsel for Defendants-Appellants who stated as follows: “Of the three weeks you proposed, my preference would be the week of the December sitting . . . .”

*/s/ Laura Lee Prather*

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Laura Lee Prather

### ECF CERTIFICATION

I hereby certify that (i) required privacy redactions have been made pursuant to 5th Cir. R. 25.2.13; (ii) the electronic submission is an exact copy of the paper document pursuant to 5th Cir. R. 25.2.1; (iii) the document has been scanned for viruses using the most recent version of Windows Defender and is free of viruses.

*/s/ Laura Lee Prather*

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Laura Lee Prather

### CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of FED. R. APP. P. 27(d)(2)(A) because it contains 572 words, excluding the parts of the motion exempted by FED. R. APP. P. 32(f).

2. Pursuant to FED. R. APP. P. 27(d)(1)(E), this motion complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

*/s/ Laura Lee Prather*

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Laura Lee Prather

## CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2023, I electronically transmitted a true and correct copy of this Motion to Reschedule Oral Argument and Modify the Briefing Schedule to the Clerk of the Court of the 5th Circuit Court of Appeals using the CM/ECF System. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept service of this document by electronic means.

*/s/ Laura Lee Prather*

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Laura Lee Prather

**ATTORNEY FOR PLAINTIFFS-  
APPELLEES**