

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**Book People, Inc., VBK, Inc.,  
American Booksellers Association,  
Association of American Publishers,  
Authors Guild, Inc., Comic Book  
Legal Defense Fund**

***Plaintiffs,***

**v.**

**Martha Wong, Keven Ellis, Mike  
Morath,**

***Defendants.***

**Civil No.  
AU: 23-CV-00858-ADA**

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**Defendants' Notice of Appeal**

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Defendants Martha Wong, in her official capacity as Chair of the Texas State Library and Archives Commission, Keven Ellis, in his official capacity as Chair of the Texas State Board of Education, and Mike Morath, in his official capacity as Commissioner of the Texas Education Agency appeal to the United States Court of Appeals for the Fifth Circuit from the trial court's Order issued on September 18, 2023, which denied Defendants' sovereign immunity defense, standing defense, and granted Plaintiffs' preliminary injunction. EFC No. 43. This appeal is authorized under *Puerto Rico Aqueduct & Sewer Auth. V. Metcalf v. Eddy, Inc.*, 506 U.S. 139, 147 (1993) (holding that "an order denying a motion to dismiss a suit against a named State would be immediately appealable"); *Planned Parenthood Gulf Coast, Inc. v.*

*Phillips*, 24 F.4<sup>th</sup> 442, 450 (5th Cir. 2022) (finding that an assertion of sovereign immunity gives rise to jurisdiction of an interlocutory appeal); 28 U.S.C. § 1292(a)(1).

The denial of immunity raised in the Defendants' Motion to Dismiss is immediately appealable. *See* 28 U.S.C. § 1291. This Notice of Appeal also divests the District Court of jurisdiction regarding the Defendants. "[N]otice of interlocutory appeal following a district court's denial of a defendant's immunity defense divests the district court of jurisdiction to proceed against that defendant." *Williams v. Brooks*, 996 F.2d 728, 729-30 (5th Cir. 1993)(per curiam); *see also Wooten v. Roach*, 964 F.3d 395, 412 (5th Cir. 2020). Because all claims are subject to Defendants' sovereign immunity defense, proceedings in District Court on Plaintiffs' claims against the Defendants are thus suspended pending resolution of this interlocutory appeal.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2023, a true and correct copy of the foregoing document was served on all counsels of record.

/s/ Christina Cella

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