

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BRITNEE KENYON,	)	
	)	
Plaintiff,	)	No. 24-cv-09878
	)	
v.	)	Judge Sharon Johnson Coleman
	)	
BOARD OF EDUCATION OF TOWNSHIP	)	Magistrate Judge Beth W. Jantz
HIGH SCHOOL DISTRICT 113, DANIEL	)	
STRUCK, THOMAS KRIEGER,	)	
MICHELLE HAMMER BERNSTEIN	)	
	)	
Defendants.	)	

**ORDER**

Defendant Michelle Bernstein’s (“Bernstein”) Motion to Stay Discovery [47] is granted. The Court will revisit the issue of discovery against Bernstein once her motion to dismiss [25] is decided. Discovery will continue against the remaining Defendants, and the status hearing on 2/26/25 remains set.

Plaintiff was employed as the Theatre Director at Deerfield High School (“DHS”), when she reposted an Instagram Story on her personal Instagram account “concerning the military conflict in Israel and Gaza.” (Dkt. 1-1 at ¶¶ 1, 42.) Defendant Bernstein allegedly responded to Plaintiff’s Instagram Story by authoring several Facebook posts, which claimed that Plaintiff was antisemitic and had “slandered” Israel; Bernstein recommended that people contact the superintendent of the school district to voice their displeasure with Plaintiff’s social media post. (*Id.* at 1-1 at ¶¶ 49-55, 97.) Plaintiff’s Amended Complaint brings causes of action against Bernstein for defamation *per se*, false-light invasion of privacy, and tortious interference with contractual relations. (Dkt. 1-1 at ¶¶ 150-178.) Bernstein has filed a motion to dismiss, arguing,

*inter alia*, that she is “entitled to immunity pursuant to Illinois’ Citizen Participation Act, 735 ILCS 110/1 *et seq.*” because her posts on social media were “calling for the electorate to take action regarding the conduct of a government employee.” (Dkt. 25-1 at 3-5.) In the instant motion, she moves to stay discovery against her until her motion to dismiss is decided.

When determining whether to stay discovery during the pendency of a motion to dismiss, courts consider: (1) whether a stay will prejudice or tactically disadvantage the non-moving party; (2) whether a stay will simplify the issues in the case; and (3) whether a stay will reduce the burden of litigation for the parties or the court. *Liggins v. Reicks*, Case No. 3:19-cv-50303, 2021 WL 2853359, at \*1 (N.D. Ill. Jul. 8, 2021).

Here, Plaintiff does not argue that the stay will prejudice her or tactically disadvantage her in any way. Nor does the Court believe that it would. Although discovery would be stayed against Bernstein, discovery would continue apace against the other Defendants in this case and Plaintiff would be able to fully litigate the significant majority of the claims in her Amended Complaint. Moreover, if the motion to dismiss is denied, Plaintiff will be able to pursue her claims against Bernstein, and this Court – which has discovery management authority over the case – will ensure that such discovery is completed expeditiously.

Although a closer call, the Court finds that a stay is likely to streamline the issues. “[W]hile the filing of a motion to dismiss does not automatically stay discovery, staying discovery during the pendency of such a motion is ‘not disfavored and [is] often appropriate where the motion to dismiss can resolve the case.’” *Vital Proteins, LLC v. Ancient Brands, LLC*, No. 22-cv-02265, 2023 WL 5671857, at \*3 (N.D. Ill. Sept. 1, 2023) (quoting *Bilal v. Wolf*, No. 06 C 6978, 2007 WL 1687253, at \*1 (N.D. Ill. June 6, 2007)) (internal citations omitted). “Stays are often deemed appropriate where the motion to dismiss can resolve a threshold issue such as jurisdiction,

standing, or qualified immunity or where . . . discovery may be especially burdensome and costly to the parties.” *See Liggins*, 2021 WL 2853359, at \*1 (granting motion to stay where defendant moved to dismiss on the basis of qualified immunity).

Bernstein’s pending motion to dismiss argues that her alleged conduct is immune from suit pursuant to the Illinois Citizen Participation Act, 735 ILCS 110/1 *et seq.* (Dkt. 25-1 at 3-5.) This argument about potential immunity is the type of “threshold issue” for which a stay is appropriate. The relevant statute states that “[a]cts in furtherance of the constitutional rights to petition, speech, association, and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome.” 735 ILCS 110/15. Thus, the assertion raised in Bernstein’s motion to dismiss is a threshold immunity issue similar to qualified immunity; and as described above, qualified immunity is the type of issue that courts have relied on to grant motions to stay. *See Liggins*, 2021 WL 2853359, at \*3.

Plaintiff argues that immunity under the Illinois Citizen Participation Act is distinct because “the qualified immunity of a government official is a much easier task for the Court and parties to analyze, and it can be determined at the outset of a case,” whereas “[i]n this case, whether the Act applies is an analysis which still needs certain facts exposed.” (Dkt. 56 at 3.) The Court respectfully disagrees. First, qualified immunity is not always easy to determine, and often requires significant analysis. Second, whether analysis of the Illinois Citizen Participation Act requires additional facts is one of the issues that will be decided in the pending motion to dismiss, *i.e.*, whether the facts as alleged in Plaintiff’s operative complaint demonstrate that Bernstein’s conduct is immune from suit. If the motion is granted, then by definition no additional facts need to be exposed. And if the motion is denied, the facts will be developed through discovery once the

stay is lifted. Ultimately, because Bernstein’s motion to dismiss raises a threshold immunity question, the Court believes that granting a stay may simplify the issues. *See Liggins*, 2021 WL 2853359, at \*3. (“The Court will not speculate about the outcome of the motion to dismiss but does note that if the motion is granted, it could dispose of the entire case or narrow the issues significantly”).<sup>1</sup>

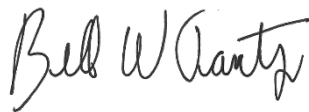
Finally, Bernstein has shown that a stay is likely to reduce the burden on her. For the Court and Plaintiff, the stay does not meaningfully affect their burden. Plaintiff will continue to litigate against the remaining Defendants and the Court will manage any discovery issues that arise as the case moves forward. However, the stay may significantly reduce the burden to Bernstein. While Plaintiff’s discovery requests do not appear to be unduly burdensome, litigating in federal court is almost always time-consuming and expensive; requiring Bernstein to respond to these discovery requests while her motion to dismiss is pending on a threshold issue will be burdensome, and staying discovery will reduce that burden for the time being.

For the reasons discussed above, Defendant Michelle Bernstein’s (“Bernstein”) Motion to Stay Discovery [47] is granted.

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<sup>1</sup> The Court also rejects Plaintiff’s argument that staying discovery will not simplify the case because she will seek discovery from Bernstein even if Bernstein is dismissed from this action (presumably through subpoena). (Dkt. 56 at 5.) The Court does not believe that that necessarily has any bearing on whether a stay will simplify the issues in the case – removing a party and multiple claims from this action will undoubtedly simplify the issues before the Court, even if Plaintiff has to engage in some third-party discovery from Bernstein. The Court also does not reach the issue of whether Plaintiff was posting as a government official. (*Id.* at 4-5.) That goes to the merits of Bernstein’s immunity argument and is for the District Judge to decide on the pending motion to dismiss.

**Dated: 1-21-25**



A handwritten signature in black ink, appearing to read "Beth W. Jantz". The signature is written in a cursive style with a large initial "B".

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BETH W. JANTZ  
United States Magistrate Judge