

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between and among Plaintiffs and the State of Florida. As used in this Agreement, “Plaintiffs” refers to Equality Florida, Family Equality, Amber Armstrong and her child, M.A., Ivonne and Carl Schulman and their child, S.S., Lindsay McClelland and her child Jane Doe, Rabbi Amy Morrison, Cecile Houry, Dan and Brent VanTice, Lourdes Casares, Kimberly Feinberg, Lindsey Bingham Shook, Anh Bolmer, Scott Berg, and Myndee Washington. As used in this Agreement, “the State of Florida” and “the State” refer collectively to the Florida Department of Education, the Florida State Board of Education, and the members of the Florida Board of Education in their official capacities.

RECITALS

A. On or about March 31, 2022, Plaintiffs commenced an action in the United States District Court for the Northern District of Florida, Tallahassee Division (the “Court”), Case No. 4:22-cv-134-AW-MJF (the “Case”), challenging the constitutionality of Section 1001.42(8)(c)3., Florida Statutes (the “Statute”), which limits “[c]lassroom instruction by school personnel or third parties on sexual orientation or gender identity” in Florida’s public schools “in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.”

B. On May 25, 2022, Plaintiffs filed their First Amended Complaint. DE47.

C. The State of Florida defended the litigation and sought dismissal in part because, in the State’s view, all the conduct and speech that Plaintiffs alleged they sought to engage in was not covered by the Statute’s restriction of “classroom instruction” “on sexual orientation or gender identity.”

D. On or about September 29, 2022, the Court dismissed Plaintiffs’ complaint for lack of standing in part because the Court agreed with the State that Plaintiffs’ “asserted future actions” did not “involve classroom instruction on sexual orientation or gender identity,” which is all the Statute restricts. DE120 at 11. The

Court gave Plaintiffs another opportunity to amend their complaint. Plaintiffs took that opportunity and filed their Second Amended Complaint. DE123.¹

E. On or about November 30, 2022, the State sought dismissal of the Second Amended Complaint because its view that the Statute restricts only “classroom instruction” “on sexual orientation or gender identity” had not changed.

F. In both sets of publicly filed briefs arguing that the conduct and speech that Plaintiffs engaged in, or sought to engage in, was not covered by the Statute’s restriction of “classroom instruction” “on sexual orientation or gender identity,” the State explained that the scope and meaning of the Statute is as follows:

Background

- “As legislative staff noted,” the Statute was enacted against the background that “multiple school districts in Florida maintain[ed] policies that exclude[d] parents from discussions and decisions on sensitive topics related to students.” DE 68 at 5.
- “[S]ome Florida school boards had published ‘Guidelines for Curriculum’ that . . . referred to, for example,” an “infographic . . . designed to teach young children the concepts of sexual orientation and gender identity.” *Id.* at 7.
- “Broward County was directing teachers to respond to kindergarteners ‘when answering classroom questions that may arise’” that “[t]ransgender people change their gender once they are old enough to explain to others how they feel about their own gender. This person may change their name or pronoun.” *Id.* at 10.
- “The Florida Legislature responded by enacting H.B. 1557,” *id.* at 11, which restricts “[c]lassroom instruction by school personnel or third parties on sexual orientation or gender identity.”

¹ Plaintiffs originally named the Governor and Commissioner of Education as defendants in their official capacities. DE1. Plaintiffs later withdrew their claims against the Governor (DE91 at 30 n.11), and the district court dismissed the Commissioner as an improper defendant (DE120 at 20). Plaintiffs did not appeal that ruling.

“Classroom Instruction”

- “Instruction” is “the action, practice, or profession of teaching.” DE68 at 17. And the Statute restricts only “instruction” that occurs in a “classroom” setting. *Id.*
- “Classroom instruction” is “the formal work of teaching that occurs in a classroom setting,” and the Statute restricts “classroom instruction” only if it is “*on* sexual orientation or identity.” DE134 at 16. Accordingly, the Statute restricts only teaching on the topics of sexual orientation and gender identity in a classroom *setting*. *Id.*
- The Statute restricts only classroom instruction on particular subjects—“sexual orientation” and “gender identity.” That means that teachers must not “teach[] the subjects of sexual orientation or gender identity.” DE 68 at 19. Those subjects are “naturally understood in terms of the underlying concepts.” *Id.* The Statute would thus limit “teaching an overview of modern gender theory or a particular view of marriage equality.” *Id.*
- The Statute “thus restricts *instruction* on particular *subjects* (sexual orientation and gender identity), not mere discussion of them.” *Id.* at 18. Consistent with that view, the Legislature rejected a restriction on ‘encourag[ing] classroom instruction about’ the prescribed subjects in favor of a limited restriction on “classroom instruction.” *Id.* at 18-19.
- “[T]ypical class participation and schoolwork are not ‘instruction,’ even if a student chooses to address sexual orientation or gender identity.” *Id.* at 20.
- The Statute would also leave teachers free to “respond if students discuss . . . their identities or family life,” “provide grades and feedback” if a student chooses “LGBTQ identity” as an essay topic, and answer “questions about their families.” *Id.* For kindergarten through grade three, “they simply must not handle these situations by teaching the subjects of sexual orientation or gender identity.” *Id.*

Classroom References

- Moreover, “just as no one would suggest that references to numbers in a history book constitute ‘instruction on mathematics,’” the Statute “would not prohibit[] incidental references in literature to a gay or transgender person or to a same-sex couple. Such references, without more, are not ‘instruction on’ those topics.” *Id.* at 19.
- The Statute “does not prohibit stories where a prince and princess fall in love; it does not prohibit instruction against bullying people with one mom or two; and it does not prohibit mere references to moms and dads (or any combination thereof).” DE105 at 5-6.
- The Statute restricts the use of books “to instruct” “students on the concepts of sexual orientation or gender identity.” DE134 at 22-23. But the Statute does not restrict mere “literary references to a gay or transgender person or to a same-sex couple.” *Id.* at 17. “[R]eferences to LGBTQ identity” do not violate the [S]tatute, as they are not ‘instruction on’ sexual orientation or gender identity any more than a math problem asking students to add bushels of apples is ‘instruction on’ apple farming.” DE152 at 5.

Non-Discrimination

- The Statute does not target “sexual *orientations* and gender identities that differ from heterosexual and cisgender identities.” DE68 at 17. “To the contrary, instruction on the ‘normalcy of opposite-sex attraction’ would equally be ‘instruction on sexual orientation.’” *Id.* The Statute “is neutral on the proscribed subjects.” *Id.*
- The Statute “applies equally, regardless of viewpoint.” DE134 at 17. Put differently, the Statute “restricts classroom instruction on ‘sexual orientation’ and ‘gender identity,’ not homosexuality and transgender identity.” DE152 at 5. “For example, it would violate the statute to instruct students that heterosexuality is superior or that gender identity is immutable based on biological traits.” DE134 at 17-18.

“Third Parties”

- The Statute’s reference to “third parties” in addition to “school personnel” simply means that “schools cannot evade the [Statute’s] limits by delegating ‘classroom instruction’ on the prescribed topics to an individual other than a teacher, be it a parent, student, guest lecturer, or anyone else.” DE68 at 20.
- The Statute restricts classroom instruction by “school personnel” as well as “third parties,” but only third parties “to whom the school has delegated responsibility for such teaching—*i.e.*, agents of the public school system, not parents or students acting in the ordinary course.” DE134 at 18.

Debate

- The Statute “does not restrict ‘debate,’ only ‘classroom instruction.’” DE68 at 31. For instance, the Statute does not restrict “student-to-student speech.” *Id.* at 49.

Families

- The Statute “does not prohibit … mere classroom references to a person’s family—whether gay or straight, transgender or cisgender.” *Id.* at 3.
- The Statute does not restrict gay and transgender teachers from “put[ting] a family photo on their desk” or “refer[ring] to themselves and their spouse (and their own children).” DE68 at 17.

Bullying

- The statute does not “prohibit intervention against LGBTQ bullying.” DE68 at 18.
- The Statute does not “require[] the removal of ‘safe space stickers,’” which are not “classroom instruction.” DE134 at 20-21.

Extracurricular Activities

- The statute does not “prohibit participation in extracurricular activities (such as ‘Gay-Straight Alliances’ or book fairs)” or “after-hours tutoring.” ECF68 at 18.

- Likewise, the Statute does not restrict “lines referring to LGBTQ issues” in “musicals,” “dancing between persons of the same gender” at a school dance, or “wearing clothing inconsistent with students’ gender assigned at birth.” DE134 at 20-21 (cleaned up). “None of that is ‘classroom instruction.’” *Id.* at 21.

Library Books

- “Library books, without more, are not ‘classroom instruction’ and thus are not covered by the [S]tatute.”²

G. On or about February 15, 2023, the Court dismissed the Case, concluding again that Plaintiffs lacked standing. DE158.

H. On or about March 15, 2023, Plaintiffs filed a Notice of Appeal in the United States Court of Appeals for the Eleventh Circuit, Case No. No. 23-10866-B (the “Appeal”).

I. The Parties have reached an agreement that resolves the need for further proceedings in this matter. In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Conditioned upon paragraph (2) below, Plaintiffs agree to:
 - a. Dismiss the Case and their Appeal with prejudice as to all Defendants no later than seven (7) days after the State, through counsel, confirms in writing that its obligations under paragraph (2) have been satisfied and provides copies of such transmittals to Plaintiffs’ counsel; and
 - b. Release and forever discharge the State of Florida and any officers thereof for any claims or causes of action that any Plaintiff raised or could have raised in the Case, including any claim that Section 1001.42(8)(c)3., Florida Statutes is facially unconstitutional.

² Library materials are separately governed by Section 1006.28, Florida Statutes.

2. Through counsel, the Florida Department of Education shall provide a copy of this Agreement, including the Recitals set forth above, to the school board of each of Florida's school districts. In so doing, counsel shall note that Recital F above sets forth considered positions the State of Florida has taken in court about the scope and meaning of the Statute and shall encourage the school districts to send a copy of this Agreement to the principals of the schools within their respective districts.

3. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

4. Each Party to this Agreement represents that it freely and voluntarily entered into this Agreement without any degree of duress or compulsion.

5. This Agreement is governed by the laws of the State of Florida. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of Florida.

6. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

7. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

8. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

9. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

10. This Agreement is binding on Plaintiffs' successors, transferees, heirs, and assigns.

11. All Parties consent to each other's disclosure of this Agreement, and information about this Agreement, to the public.

12. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.



Date: March 5, 2024

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Date: March 11, 2024

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