

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JENNIFER COUSINS, et al.,

Plaintiffs

**Challenge to
Constitutionality of
§**

v.

SCHOOL BOARD OF ORANGE
COUNTY, FLORIDA, et al.,

Defendants.

Case No.: **6:22-cv-01312-
WWB-LHP**

violation of the Due Process Clause of the Fourteenth Amendment. *Id.* ¶¶ 120-128. Third, HB 1557 discriminates against Plaintiff students and parents on the basis of sex in violation of the Equal Protection Clause of the Fourteenth Amendment. *Id.* ¶¶ 129-137.

4. Plaintiff students and parents have engaged in affirming speech and expression of the nature prohibited by HB 1557, and wish to continue to do so, but as a result of the implementation of HB 1557, they have been chilled and/or forced to self-censor, and Plaintiff students have been deprived of access to information and ideas.

5. Plaintiff members have engaged in speech that affirms

school boards, have no legitimate interest in enforcing an unconstitutional law. An injunction will further the public interest in that it will protect and preserve the exercise of protected First Amendment activity and ensure equal protection and due process of law.

8. A preliminary injunction will maintain the status quo and is consistent with reason for scrupulous protection of Constitutional freedoms of the individu

discriminatory lines in their attempts to implement the law. The law combines this vague text with a private right of action that empowers parents to sue the school district directly if they are dissatisfied with where the school has drawn that line. The impact of HB 1557 has been immediate and severe, and significant constitutional harm will persist absent injunctive relief to restore the status quo ante.

A. HB 1557 Was Enacted with Intentionally Undefined Terms

HB

-appropriate or developmentally appropri

other grades. Fla. Stat. § 1001.42(8)(c)(3). It also requires parental notification for

Transcript: Hearing on H.B. 1557 Before the S. Comm. on Appropriations, 2022 Leg. R. Sess. 52-53 (Fl. Feb. 28, 2022) (statement of Sen. Jeff Brandes, Comm. Member). HB

and the amendment failed. *Id.* at 66 (statement of Sen. Dennis Baxley, Comm. Member).

heterosexuality. Amendment 290096. Lawmakers rejected amendments to specify that the law did not bar discussions between students. Amendments 734244 and 600607.

Perha

Student Union. *Id.* Following enactment of HB 1557, Will created and delivered a presentation on the Stonewall riots to his class on the significance of the uprising to LGBTQ+ history. *Id.*

Plaintiff CenterLink is a member-based coalition that supports the development of sustainable LGBTQ+ community centers across the country, including the Orlando Youth

more likely to experience depression, anxiety, suicidal ideation, and psychological distress, and are more likely to drop out of school. *Id.* ¶ 20.

1329 (11th Cir. 2002).

A. Plaintiffs Are Likely to Prevail on the Merits

Plaintiffs are likely to succeed on the merits of their claims as demonstrated below. Success on the merits is all the more likely because the enforcement of HB 1557 already

1. Plaintiffs Are Likely to Succeed on the Merits of their Claim that HB 1557 Violates the First Amendment.

a. Targeting LGBTQ+ speech and content for special restriction impermissibly chills and restricts protected speech and expression based on content and viewpoint.

HB 1557 is a one-sided law that restricts protected speech based on content and viewpoint. The law impermissibly chills LGBTQ+ people from engaging in speech disclosing their sexual orientation and gender identity and that of their family members

-out s

sexual orientation and gender identity, but does not suppress comparable speech and expressive conduct by non-gay and non-transgender people in school-related settings. It has also been us

Texas v. Johnson, 491 U.S. 397, 412 (1989) (citation omitted). Such

lewd student speech, speech advocating for illegal drug use, and speech bearing the imprimatur of the school). Indeed, schools have a strong interest and obligation to protect

Id. at 2046.

with students who seek information about sexual orientation and gender identity, including mental health resources and referrals, and they communicate with school district partners to create policies to address bullying. Providing training, expert advice or assistance, referrals, and other services, a

materials

in a school library. *Id.* (quoting *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)). Restrictions on this right constitute a cognizable First Amendment injury. *Id.*

-be speaker to self-

Speech First, Inc. v.

Cartwright, 32 F.4th 1110, 1120 (11th Cir. 2022), but Plaintiffs already have been silenced and disciplined, have censored themselves or their children, and have lost access to library materials that acknowledge the existence of LGBTQ people. *See supra*, Section I(C).

See

Speech First, 32 F.4th at 1122. This is especially true for young students who would not

families when students discussing their non-LGBTQ+ families would not be. *See id.* at 1124 (it is reasonable, even absent direct threat of punishment, that student would not

to any legitimate interest, let alone the narrow tailoring required in service of a compelling interest, *see infra* Section II(A)(3)(a), it violates the First Amendment.

b. HB 1557 Is Unconstitutionally Overbroad.

orientation or gender ide

FF Cosmetics FL, Inc. v. City of Miami

Beach, 866 F.3d 1290, 1302 (11th Cir. 2017) (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612-13 (1

the ambiguous as well as the unambiguous scope of the enactment [because] ambiguous

meanings cause citizens to steer far wider of the unlawful zone than if the boundaries of the forbi *Am. Booksellers v. Webb*, 919 F.2d 1493, 1505-06 (11th Cir. 1990) (internal quotations omitted). Such a chilling effect already has occurred. In addition to the struggles Plaintiffs are facing regarding whether they can speak about themselves and their families, *see supra* Section I(C), students have reported that they are unsure if they can use their own pronouns or if they can report bullying based on their LGBTQ+ identity. Ex. 8, Woods Decl. ¶¶ 8, 29.

The I *Speech First*, 32 F.4th at 1121; *see infra* Section II(A)(2).

2.

Even under the lowest level of scrutiny, governmental action must not disadvantage a disfavored group for its own sake, *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973), and must bear at least a rational relationship to a legitimate governmental interest, *City of Cleburne*, 473 U.S. at 446. In *Romer v. Evans*, 517 U.S. 620 (1996), the Supreme Court struck down a statewide referendum that precluded state or local government from taking actions to protect the status of persons based on sexual orientation. The Court held that protecting the interests of people with personal or religious objections to gay people was not a valid rationale for the law, finding that the law -based enactment divorced from any factual context from which [the Court] could discern a relationship to legitimate state interests; it is a classification of persons *Id.*

at 635.

proper legislative end but to make

Florida may no more legislatively make LGBTQ+ people unequal than Colorado could. HB 1557 was enacted with the purpose and effect of discriminating against LGBTQ+ students and students with LGBTQ+ family members, subjecting them to differential and adverse treatment, including through an invitation to arbitrary enforcement and a private right of action for hostile parents.

Nor may the State justify the law as . See Fla. Stat. § 1001.42(8)(c)(1). The government may not enact a law endorsing the hostility of certain parents to acknowledging in school that LGBTQ+ people exist. *Palmore v. Sidoti*, 466 U.S. 4

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enjoin enforcement of HB 1557 until the present matter is resolved.

Respectfully submitted this 26th day of August 2022.

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