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

JENNIFER COUSINS, et al.,

Plaintiffs

v.

THOMAS R. GRADY

free speech and provides inadequate notice of the conduct it purports to prohibit, in violation of the Due Process Clause of the Fourteenth Amendment. *Id*. ¶¶ 167-179. Third, the Law discriminates against Plaintiff students and parents on the basis of sex in violation of the Equal Protection Clause of the Fourteenth Amendment. *Id.* ¶¶ 180-194.

3. If this Court fails to grant the requested preliminary injunctive relief, Plaintiffs will be subjected to further loss of their constitutional rights. Plaintiffs have already suffered and will face irreparable harm and have no adequate remedy at law. The balance of equities and the public interest favor granting relief because the irreparable constitutional injuries far outweigh any marginal burden on Defendants that might result from enjoining the Law pending an adjudication on the merits.

4. A preliminary injunction will maintain the status quo and is consistent with

W. Va.

State Bd. of Educ. v. Barnette, 319 U.S. 624, 637 (1943).

5. Plaintiffs request that the Court waive the requirement of bond in Fed. R. Civ. P. 65(c). *BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC,*

Public interest litigation is a recognized exception to the bond requirement, especially where, as here, requiring a bond would injure the constitutional rights of Plaintiffs and the relief sought would not pose a hardship to government Defendants. *See Univ. Books & Videos, Inc. v. Metro. Dade Cnty.*, 33 F. Supp. 2d 1364, 1374 (S.D. Fla. 1999).

the law, while denying districts a reciprocal right to recover fees and costs if they prevail in the dispute. § 1001.42(8)(c)(7).

The legislative history shows that legislators understood and intended that schools, children, teachers, and parents

During debate on the bill underlying the Law, Florida House Bill 1557, one Republican legislator proposed an amendment to replace [1] He

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). The bill

Id. at 66 (statement of Sen. Dennis Baxley, Comm. Member). The legislature also rejected an

290096. Lawmakers further rejected amendments that would have specified that the Law did not bar discussions between students. Amendments 734244 and 600607. Perhaps most alarmingly, a proposed amendment to specify that the Law did not prevent

B. Plaintiffs Have Been Harmed by the Law

Plaintiffs Jen and Matt Cousins have four children, N.C., S.C., M.C., and P.C., who all attend Orange County Public Schools OCPS). Among other harms, their non-binary

[1] All amendments available at https://www.flsenate.gov/Session/Bill/2022/1557/?Tab=Amendments.

child S.C. has experienced bullying based on their gender identity since the Law went into effect that they had never experienced at school before. They fear that bullying will continue to increase as long as the Law remains in effect. Ex. 1, Cousins Decl. ¶¶ 19, 28, 30

impacted by the Law, *id.* ¶¶ 15, 32, a reasonable fear, as teachers have already been told to remove safe-space stickers and have been chilled from serving as sponsors of these groups since enactment.[2] *See, e.g.*, Ex. 1, Attach. 2, Camp Legal Clarifications; Ex. 1, ¶¶ 22, 33; Ex. 2, Larkins Decl. ¶ 28, 30; Ex. 4, Watson Decl. ¶ 18; Ex. 8, Woods Decl. ¶¶ 8, 18, 29, 33. Each family member supports and loves S.C. and wants to be able to discuss their family freely and equally at school. Ex. 1, ¶¶ 5, 9-10, 21, 23, 31, 34. The Law inhibits Jen, Matt, N.C., S.C., M.C., and P.C. from fully expressing themselves. For example, Jen and Matt worry that P.C. and M.C., in first and third grades, respectively, will be prevented from completing assignments about their family and made to feel shame if their teacher deems their

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

. Ex. 7, Spivak Decl. ¶¶ 4, 5, 14. Since July 1, 2022, CenterLink staff has had to spend a couple of hours a week responding to member inquiries about questions such as what the law means, what members can or cannot do, and how members can connect to teachers and school board members, including from JASMYN, Compass and OYA. CenterLink also has expended resources on conducting seminars for Florida members, and anticipates these activities to continue as long as the Law is enforceable. *Id.* ¶ 11.

The Law also has directly obstructed services traditionally performed by in tandem with schools, and has caused a corresponding increase in demand for direct services at those centers. Ex. 4, Watson Decl. ¶¶ 15-18; Ex. 6, Seaver Decl. ¶ 15-20; Ex. 8, Woods Decl. ¶ 18. For example, OYA operates facilitated peer-to-peer counseling sessions for LGBTQ+ youth, including those that attend OCPS. Ex. 5, Slaymaker Decl. ¶¶ 6, 10. Since the L at OYA support groups has doubled and staff are struggling to meet the needs of youth and parents who have expressed increased anxiety and distress as a result of the Law. *Id.* ¶¶ 13-15. In Palm Beach County, over 93% of Compass members are enrolled in S DPBC . Ex. 6, ¶ 9. As a result of the Law, some teachers no longer feel comfortable referring students to Compass, especially in light of warnings from SDPBC that they will lose their teaching licenses if they fail to comply with the Law. *Id.* ¶ 21-22; Ex. 8, ¶ 18, 32-33. As the Law decreases the support and level of

adverse to the public interest. *Palmer v. Braun*, 287 F.3d 1325, 1329 (11th Cir. 2002).

A. Plaintiffs Are Likely to Prevail on the Merits

1. Plaintiffs Have Standing to Bring their Claims Against Defendants; They Continue to Suffer Irreparable Injury Traceable to and Redressable by the Defendants.

Each Plaintiff has suffered and will continue to suffer irreparable harm absent an

Cate v.

Oldham, 707 F.2d 1176, 1188 (11th Cir. 1983); *see also Cone Corp. v. Hillsborough Cnty.*, 723 F. Supp. 669, 678 (M.D. Fla. 1989) (irreparable harm shown from continuation of equal protection violation).

or enforc government policy would cause a reasonable would-be speaker to self- *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1120 (11th Cir. 2022). And the injury requirement is most loosely applied

Id. (internal quotation omitted); *see also Dana's R.R. Supply v. Att'y Gen., Fla.*, 807 F.3d 1235, 1241 (11th Cir. 2015) (litigants chilled from speech suffer harm apart from enforcement that forms

harms are traceable to Defendants because they have authority to enforce the Law. On a challenge to constitutionality, traceability and redressability depend on whether law contemplates enforcement by the defendant. *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201-02 (11th Cir. 2021). A plaintiff must

l has the authority to enforce the particular provision that he has challenged. *Id.* at 1201; *League of Women Voters of Fla., Inc. v. Lee*, No. 4:21cv186-

to schools are being blocked from completing their work.[6] Equivalent support guides, trainings, and services for non-LGBTQ+ students have not been targeted under the Law

Defendants continue to issue varied and rapidly-changing guidance under the Law, amplifying confusion and chill. On October 5, 2022, SDIRC revised its Parent Informational Guide *discussion* about sexual orientation or gender identity in certa (Ex. 12). On August 3, 2022, SDPBC adopted a checklist Instructional Materials, Media Center, (PBSD 2671), which makes clear that SDPBC interprets the Law to -based purchases, library media center

(Ex. 13). On October 12, 2022, SBPBC approved for development a policy restricting ; *See also* Rule 6A-

Law is not yet applicable in grades 4-12, on September 20, 2022, the Florida Department of Educat

alleged violation of the Law in *any* grade). Injunctive relief remains necessary to stem these harms in the midst of evolving voluntary state interpretations. Defendants should be enjoined from these and further implementation actions. *See Luckey v. Harris*, 860 that is required [for injunctive relief against a state

An injunction would restore the *status quo ante*, when Plaintiffs were able to speak more freely and without fear of reprisal. *See supra*, Section IB; *See Support Working Animals, Inc.*, 8 F.4th at 1202

decision would amount to a significant increase in the likelihood that the plaintiff would

prevent *all* bullying or other discriminatory actions that could result in chilled speech, it

by non-gay and non-transgender people in school-related settings. It has also been used to target library books and materials that acknowledge LGBTQ+ people.

The Law targets and chills two forms of protected First Amendment expression. First, it chills LGBTQ+ students and parents from disclosing their sexual orientation and

contrast, a female student who is neither a lesbian nor transgender may disclose these facts without consequence. Thus, the Law attaches different consequences to the same speech based on who the speaker is, constituting impermissible viewpoint discrimination. *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). Second, and equally impermissible, the Law chills speech and gendered expressive conduct that reveals or

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to wear a dress). The Law does not similarly chill speech and conduct that reveal or conform to the sexual orientation and gender identity of a heterosexual cisgender person. The Law furthers its goal of suppressing speech by inviting people to pursue legal actions

acknowledgement of the existence of LGBTQ+ people to dictate the scope of the Law. *See* Fla. Stat. § 1001.41(8)(c)(7).

Courts long have held that coming-out speech, including in school settings, constitutes protected First Amendment activity. *See, e.g., Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652 (1st Cir. 1974) (student speech); *Henkle v. Gregory*, 150 F. Supp. 2d 1067, 1075-77 (D. Nev. 2001) (same); *Weaver v. Nebo Sch. Dist.*, 29 F. Supp.

Morse v. Frederick, 127 S. Ct. 2618, 2622 (2007) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). Under the First Amendment, schools may not restrict student speech merely to avoid

Tinker, 393 U.S. at 509. The Constitution allows schools to control student speech only in very narrow circumstances, none of which are present here. *Mahanoy Area School Dist. v. B.L.*, 141 S. Ct. 2038, 2045 (2021) (noting exceptions for 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.

CenterLink

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, as CenterLink member centers do, constitutes protected First Amendment activity. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 27 (2010). Communications that impart a specific skill or convey advice based on specialized knowledge are a form of pure speech. *Id*

i *Sorrell*, 564 U.S. at 568 (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 (1984)). First Amendment protections also cover

discriminatory lines to avoid such extreme applications. The Law

meaningful guidelines permits a

instruction and discussion is prohibited. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (citing *Smith v. Goguen*, 415 U.S. 566, 574 (1974)).

4. Plaintiffs Are Likely to Succeed on the Merits of their Claim that the Law Violates the Equal Protection Guarantee.

The Law violates the Fourteenth Amendment, which equal protection of

U.S. Const. amend. XIV, § 1. Classifications based on sex, sexual orientation, and transgender status all warrant heightened scrutiny. *See*, *e.g.*, *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689-90 (2017) (sex); *Baskin v. Bogan*, 766 F.3d 648, 654-657 (7th Cir. 2014) (sexual orientation); *SmithKline Beecham Corp. v. Abbott Lab'ys*, 740 F.3d 471, 484 (9th Cir. 2014) (sexual orientation); *Windsor v. United States*, 699 F.3d 169, 181-85 (2d Cir. 2012) (sexual orientation), *aff'd*, 570 U.S. 744 (2013);[8] *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610-13 (4th Cir. 2020) (transgender status); *Karnoski v. Trump*, 926 F.3d 1180, 1199-1201 (9th Cir. 2019) (transgender status); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) (transgender status). Because these traits *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985), government must provide an

[8] This Circuit has never independently analyzed the appropriate level of scrutiny for classifications based on sexual orientation. In

persuasive justification for legislation that differentiates on those bases, *United States v. Virginia*, 518 U.S. 515, 531 (1996). Classifications based on sexual orientation and transgender status warrant such scrutiny both in and of themselves and as forms of sex discrimination. As the Supreme Court recognized in *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1747 (2020), discrimination on the bases of sexual orientation and transgender has explicitly recognized that discrimination against a transgender person constitutes sex discrimination under the of sex

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

(balance of equities and public interest weighed in favor of enjoining school board policy restricting proselytizing literature). As here, where constitutional rights hang in the balance, the serious and substantial injury that even a temporary loss of such rights for Plaintiffs must outweigh any potential harm to the Defendants. *Suntrust Bank v. Houghton Mifflin Co.*

III. CONCLUSION

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

Respectfully submitted this 21st day of November 2022.

By: */s/*