

considers parents “to be the foremost authority involving their children”¹ And the State’s Chancellor of K-12 education has declared that parents must be in the “driver’s seat” to ensure that concerns about their children’s education are addressed² Yet when those concerns relate to the availability of books and other material in public schools, Florida’s leaders only welcome input from those parents advocating for removing books from schools

2 In 2023, purportedly as part of the effort to enhance parental rights, Florida’s leaders adopted HB 1069, an expansion of the so-called Parental Rights in Education Act signed in 2022

3

4 Contrary to the bill sponsor's stated commitment that "[t]his legislation will protect the rights of parents to have a say in their children's education"⁴ this legislation only benefits those parents who hold the State's favored viewpoint: agreement with removing books and other material from schools, and disagreement with (and therefore seeking review of) decisions to retain books and other material.

5 Parents who seek to retain materials, a viewpoint disfavored by the State, are excluded from the State Review Process.

6 Plaintiffs are parents of students in Florida public schools whose seek or have sought State administrative review of their school board's decisions to remove materials from local schools.

7 Each of the plaintiff parents has been or reasonably expects to be discriminated against based on their disfavored viewpoint by being denied access to the State Review Process, therefore being denied the opportunity to seek State review of their school board's decisions on whether to remove materials from schools.

8 "[B]anning only speech that endorses [certain] ideas . . . penalizes certain viewpoints—the greatest First Amendment sin”

, 94 F.4th 1272, 1277 (11th Cir. 2024). Yet Florida has done just that

⁴ CBS Miami Team

, CBS News (May 3, 2023), <https://www.cbsnews.com/miami/news/florida-senate-votes-to-expand-parental-rights-in-education-law/>.

Because HB 1069 and its implementing regulations provide a benefit—access to the State Review Process and the corresponding opportunity to petition the State through an administrative system that can provide a remedy—differently depending on a parent's perspective, they violate the First Amendment's ban on viewpoint discrimination and should be invalidated.

PARTIES

I. Plaintiffs

9 Plaintiffs are parents who disagree with local school board determinations on the use of specific materials in schools in the districts where their children attend public schools, and who have filed requests for State review of those determinations or would file such requests but for their reasonable expectation that any such request will be denied.

10 Those requests have been or can reasonably be expected to be denied.

11 Plaintiff Nancy Tray is a St. Johns County resident and parent of three students in St. Johns County School District. Parent Tray disagreed with the school board of St. Johns County's May 28, 2024, decision to restrict use of

magistrate to conduct proceedings concerning the board's decision would be futile, as the Commissioner of Education of Florida will deny any such request.

12 Plaintiff Stephana Ferrell is an Orange County resident and parent of two students in Orange County Public Schools. Parent Ferrell disagreed with the school board's March 10, 2023, decision to discontinue use of _____, by Marilyn Robinson, in Orange County Public Schools, and, on September 5, 2023, and September 26, 2023, requested that the Commissioner of Education initiate the State Review Process by appointing a special magistrate to conduct proceedings concerning that decision. The Commissioner of Education denied her request on February 28, 2024.

13 Plaintiff Anne Watts Tressler is a St. Johns County resident and parent of two students in St. Johns County School District. Parent Tressler disagreed

II. Defendants

14 Defendant Florida State Board of Education (“State Board of Education”) is the chief governing body of nonuniversity public education in Florida. It supervises Florida’s public education system and the Commissioner of Education and leads Florida’s Department of Education (“State Department of Education”). Fla. Const., at IX, § 2; Fla. Stat. § 2015(1). Pursuant to HB 1069

16 Defendant Ryan Petty is the Vice Chair of the State Board of Education He is sued in his official capacity as Vice Chair of the State Board of

**Review Process] deals with objections to the of specific materials and says
nothing of removals”) (emphasis in original).**

27.

**Objections], . . . the school district shall discontinue use of the material [whether
entirely, or] for any grade level or age group for which such use is inappropriate or
unsuitable”).**

29 Other than the Statutory Objections, the statute does not establish any

Rep Hinson There's a method on several pages in your bill for a parent to complain about a book. But is there a method for the other 99% of the parents to request the book?

Rep McClain No there is not.

Rep Hinson Thank you, Mr. Speaker. Would you consider including one?

Rep McClain At this time, no.⁷

II. The State Board of Education's Template Objection Form

37 As required by HB 1089 § 25 in October 2023, the State Board of Education created a template objection form ("Specific Material Objection Template") for parents to use when lodging objections to materials with their local school boards.

38 The Specific Material Objection Template was adopted by the State Board of Education as part of Rule 6A-7074 Fla Admin Code R. 6A-7074(3)(e).

39 The State Board of Education has not released any other form to comply with the requirements of HB 1089.

40 The State Board of Education requires local school districts to see 6A-70-

47 Part II, Section 3 of the Specific Material Objection Template also asks parents to select their desired outcome of the objection from the following options: “Remove or discontinue use of material”; “Limit access to certain grade levels”; “Limit my child’s access”; or “Other.”

48 The Specific Material Objection Template does not provide parents with an option to select a desired outcome of retaining, keeping, or otherwise continuing to use material.

III. The State Board of Education Rule on the State Review Process

49 HB 1069 requires the State Board of Education to promulgate rules and forms necessary to implement the State Review Process ¶¶ 25, 30

50 On May 26, 2023, the State Department of Education announced that it

52 Following the rulemaking process, the Board of Education adopted a final rule (“State Review Process Rule”) that is substantively identical to the Proposed Rule Fla Admin Code R 6A-109126 Proposed Rule 6A-109126 Fla Admin Code (Aug 1, 2023).

53 The State Review Process Rule provides that “the appointment of a

55 Under the State Review Process Rule, in order to request the appointment of a special magistrate, and access the State Review Process, a parent must meet certain prerequisites

(a) Complete the Parental Request form referenced in subsection (10) of this rule;

(b) Demonstrate that before filing the Parental Request, the parent filed an objection with the school board and the school board has either ruled on the objection or has failed to timely process the objection under s. 1006.28(2)(a)2, F.S., and the procedures adopted by the school board;

(c) Describe the nature of the original objection submitted to the district, including the title and ISBN of the specific material objected

So if that parent files an objection, and they disagree with that objection at the local level, that's when that parent can request the appointment of a special magistrate. But let me make sure that general counsel agrees.

74 In OCPS's record of "Requests for Reconsideration" spreadsheet, publicly available on the OCPS website, it linked to that parent's request to remove from the curriculum at Timber Creek High School but no other requests regarding the book **Orange Cty. Pub Schs,** (last updated Sept 22, 2023).¹⁵

75 Without any additional objections filed by a parent, OCPS removed district wide over the summer of 2023

76 OCPS pointed to the original parent's request as the parental request underlying the removal of **across the entire district** ¶ 74 OCPS Requests for Reconsideration

77 On August 27, 2023, Parent Ferrell formally appealed the local school board's decision to remove the book district wide, noting in her appeal that the OCPS "did not need to remove this book under the law" and contending that OCPS had not adhered to its own process for reviewing the objection and removing the book

78 OCPS rejected Parent Ferrell's appeal on August 30, 2023, citing the State Review Process to support its statement that "[o]nly the original challenger can appeal the determination of the School or District to not remove the book to the board. You do not have the standing to file the appeal with this board. . . the statute

¹⁵

<https://docs.google.com/spreadsheets/d/1RcCVJdPjURfbcFTgZEPbfvPDSiGCK1QSEosNcXtU/edit#gid=542222732>

84 OCPS's response contended that pursuant to HB 1089 the State Review Process "can only be utilized by persons objecting to material containing material that is illegal to have in a school media center or material which may not be in a school media center under School Board policy." (citing Fla Stat § 1006.28(2)(a)(b)).

85 OCPS also noted that under the policies it was required to adopt pursuant to HB 1089 Parent Fenell "can only challenge the 'use' of a book, not a separate decision of the District itself to remove a book"

86 OCPS argued that Parent Fenell "does not h] o

Vonregut;

by Erin Gruwell and Freedom Writers,

by Lauren Myrde, and

by Jaycee Lee Dugard

99 The objector did not have children in the SJUSD schools at the time of the May 28, 2024 hearing

100 The objector argued that all four books violated the Statutory Objection that concerns material that allegedly “[d]epicts or describes sexual conduct,” and that they contain “explicit, graphic, violent disturbing scenarios”

101. At the hearing Parent Tray objected to the board reducing access to or removing the books, saying that she wants her children, who are “trying to understand the world, to understand things they’re experiencing and their friends are going through, and the experiences of people and communities outside of their own,” to “have access to relevant books and cautionary tales selected by the experts in our schools who are concerned about all of our kids.”¹⁷

102 Parent Tray also noted that “[i]f there is a parent who doesn’t want their child to read [any of the four books], there are effective ways for them to restrict their child’s access without eliminating availability for every single high school student in St. Johns County.”¹⁸

¹⁷ Comments of Nancy Tray, St. Johns Crty. Special Sch Bd Meeting and Pub Hearing at 1:08:20-1:08:40 (May 28, 2024), <https://www.stjohnsk12fl.us/video/sb-meetings/>

¹⁸ at 1:08:01-1:08:11.

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121 As applied, HB 1069 denies parents who unsuccessfully object to the use of specific material at the local school board level from accessing any process by which the State would review the school board's acceptance of the objection.

122 As applied, because HB 1069 enables parents who disagree with a local school board decision retaining a book to try to impose financial costs on the local school district by initiating the State Review Process, but does not provide that same ability to parents who disagree with a local school board decision removing a book, the statute financially incentivizes local school boards not to retain (, to remove) books.

123 As applied, HB 1069 is not viewpoint neutral, in violation of the First Amendment to the United States Constitution, because it provides or denies access to the State Review Process on the basis of a parent's viewpoint—specifically, by making access to the State Review Process dependent on whether the parent's viewpoint is (1) to disagree with a local school board's decision particular material, or (2) to disagree with a local school board's decision particular material.

Court II
First and Fourteenth Amendments to the United States Constitution Under
42 U.S.C. § 1983 Viewpoint Discrimination (State Review Process Rule
Facial)

124 Plaintiffs reallege and incorporate by reference the paragraphs written above as if fully restated and set forth herein

125 The State Review Process Rule, on its face, allows the appointment of a special magistrate to be considered “for parental objections to any type of material,” empowers special magistrates to review local school board determinations and make recommendations on resolution to the State Board of Education, and limits special magistrate appointments to requests from parents who “filed an objection with the school board,” limited to the Statutory Objections

126 Under the State Review Process Rule, only a parent who objects to the of particular material may file an “objection” while a parent who the use or opposes the removal of particular material cannot file an “objection”

127 Only for the purpose of the State Review Process Rule www.fda.gov

129 On its face, the State Review Process Rule is not viewpoint neutral, in violation of the First Amendment to the United States Constitution, because it provides or denies access to the State Review Process on the basis of a parent's viewpoint—specifically, by making access to the State Review Process dependent on whether the parent's viewpoint is (1) to disagree with a local school board's decision particular material, or (2) to disagree with a local school board's decision particular material.

Court III

First and Fourteenth Amendments to the United States Constitution Under 42 U.S.C. § 1983 Viewpoint Discrimination (State Review Process Rule, As Applied)

130 Plaintiffs reallege and incorporate by reference the paragraphs written above as if fully restated and set forth herein

131. The Parental Request Form adopted by the State Board of Education is incorporated by reference into the State Review Process Rule Fla Admin Code R 6A-1.091123(10).

132 The Parental Request Form's instructions state that “the special magistrate process is available to determine whether a district considered a parental objection to materials under procedures that are required under the law”

133 The Parental Request Form requires parents to describe how they “attempted to resolve objection” (emphasis added) and to detail whether and

how the local school board failed to establish or follow procedures in “considering objection” (emphasis added).

134 The Parental Request Form only solicits information from parents who have objected to the retention, or continued use, of books. It does not solicit information from parents who object to book removals. Nor does it provide any flexibility in completing the form.

135 A parent who did not file an objection to material, including a parent who disagrees with a local school board's decision to remove material following an objection, cannot accurately complete the Parental Request Form, and therefore cannot request access to the State Review Process.

Idem. This interpretation of the State Review Process Rule's facially neutral language is not

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants for each of the causes of action raised herein. Plaintiffs respectfully request that this Court enter judgment in their favor and that the Court

A. Declare that the relevant portion of HB 1069 as applied, the State Review Process Rule, including the Parental Request Form, and the actions described in this complaint violate the First and Fourteenth Amendments to the United States Constitution

B. In a way that the Court can review and enforce

(Florida Bar No 102882)
American Civil Liberties Union