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Anti-LGBT Legislation in Florida: A Prime Example of States Mentally Harming LGBT Youth

Kyla Tinsley*

While there has been a growing societal acceptance of LGBT individuals throughout the decades, anti-LGBT bills and laws within the states are on the rise—in particular, bills against LGBT youth. The most famous anti-LGBT law currently in place is Florida’s “Parental Rights in Education” law. The prevalence and inconsistent application of such legislation raises constitutional questions surrounding the rights of LGBT youth, as well as the negative effects the legislation has had on LGBT youth’s mental health and their perception of the legal system they are supposed to trust in and rely on. This Article discusses the impact state anti-LGBT legislation will have on LGBT youth and concludes with an emphasis and the need for a federal solution that could protect LGBT youth at large.

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PART I: INTRODUCTION

On December 13, 2022, President Joe Biden signed the Respect for Marriage Act, which protects the recognition of same-sex marriages on a federal level if Obergefell v. Hodges is overturned by the Supreme Court.1 The passage of this Act allows citizens of the United States to observe and experience a power Congress has had since the drafting of the United States Constitution: the power to protect the rights of citizens who belong to a minority group.2 Yet, while they do have that power, members of Congress struggle to come to a consensus on when and how to protect those citizens. This struggle leaves that power and responsibility to the states, in which they can draft bills and policies for their citizens to follow. However, that power can become corrupt when given to legislators and policymakers who decide to pass state laws that burden a class of citizens who belong to a minority group. This can especially be seen in Florida’s “Parental Rights in Education” law (hereinafter “the Law”), also called “Don’t Say Gay” in popular culture.3

The Law, as passed by Floridian legislators with its vague language and terminology, has reinforced the pushback and stigma that lesbian, gay, bisexual, and transgender (hereinafter “LGBT”) individuals face by silencing, discriminating, and erasing the experiences of LGBT youth and their families.4 The Law prevents LGBT youth from speaking about their experiences and identities as LGBT, takes away protective school policies protecting LGBT youth, and forces families with LGBT members to silence themselves from speaking about their LGBT members, lest they—or the teachers and school district they interact with—face legal or academic consequences.5

A prime example can be seen with a Floridian nonbinary student who is filing suit against the Law.6 A year before the Law, the student recently “came out” and was able to be active in her school’s Gay-Straight Alliance (“GSA”) and be protected from bullying for her gender identity due to her


5. Cousins Second Amended Complaint, supra note 4, at 5.

6. Cousins Second Amended Complaint, supra note 4, at 24.
school’s protective policies.\textsuperscript{7} When the Law was implemented and the 2022-23 school year began, she began to experience bullying and harassment by her peers based on her gender identity as her school took away protection policies to comply with the Law.\textsuperscript{8} She believes that she cannot go to a teacher for aid because the Law may prevent the teacher from helping, and would instead encourage her peers to continue their bullying and disempower her.\textsuperscript{9}

The Law is just one of many state laws that disempower and discriminate against LGBT youth, and the need for a uniform, simple federal solution is paramount to prevent such disservice against LGBT youth.\textsuperscript{10} Congress has made attempts in the past with bills such as the Strengthening America’s Schools Act, the Student Non-Discrimination Act ("SNDA"), and the Safe Schools Improvement Act ("SSIA"), but these bills have continuously failed in the committee stage of bill drafting.\textsuperscript{11} Without a federal intervention to protect LGBT youth, they will continue to face conflicting, confounding treatment within their school districts that will degrade their physical, mental, and emotional health, as well as their faith in the legal system as a whole.

A. TERMINOLOGY

Terminology must be established before discussing the issues and discussions within this article. “Gay” and “lesbian” refer to individuals who are attracted to their same gender, while “bisexual” refers to individuals who are attracted to more than one gender.\textsuperscript{12} “Heterosexuality” refers to those who are attracted to a gender different from themselves, while “cisgender” refers to those whose gender identity—the way they present themselves to the world or choose to self-identify—coincides with their biological sex—the identity they are given at birth based off their physical body.\textsuperscript{13} The term “transgender” can be used to describe an individual whose biological sex does not coincide with their gender identity.\textsuperscript{14} “Transgender” can be used as an umbrella term to include those who identify with multiple gender identities at once, multiple gender identities at various times, or with no gender

\textsuperscript{7} Id.
\textsuperscript{8} Id. at 27.
\textsuperscript{9} See generally id.
\textsuperscript{11} See Phariss, supra note 10, at 264-65.
\textsuperscript{12} See Kevin L. Nadal, Queering Law and Order: LGBTQ Communities and the Criminal Justice System, 9-10 (Lexington Books, 2020).
\textsuperscript{13} See id.
\textsuperscript{14} See Lisa Keen, Out Law: What LGBT Youth Should Know About Their Legal Rights (Queer Ideas/Queer Action), 138 (Beacon Press, 2007).
identity at all, and will be used as such in this Article.15 “LGBT” is an acronym for lesbian, gay, bisexual, and transgender.16 The LGBT acronym has been extended to include other identifying individuals such as queer individuals, intersex individuals, and allies to create acronyms like “LGBTQ,” “LGBTQIA,” and “LGBTQIA+.”17 For simplicity and readability, I will be using the acronym LGBT in this Article. I will also be using the acronym “LGB” when discussing studies that only examine lesbian, gay, and bisexual individuals.

In recent decades, more youth are “coming out,” whether that be in public or privately to their peers and/or families. In 2005, researchers found that, on average, the age children become “aware of same-sex attraction is ten; the average age of self-identification as gay or lesbian is thirteen.”18 These age averages were significantly lower than the averages studied ten years prior, and, thanks to increased visibility and awareness of LGBT issues, both legally and in popular culture throughout the years, have likely decreased more in recent years.19 While such averages decrease, pushback and stigma continue to exist against individuals who stray from the social norm of heterosexual, cisgender identities, whether that be in the form of physical violence, emotional and mental turmoil, or legal consequences.20

PART II: LGBT YOUTH AND MENTAL HEALTH GENERALLY

The mental health of youth of all ages, races, sexual orientations, and gender identities have been on a downward spiral throughout the decades. The Centers for Disease Control and Prevention (“the CDC”) studied the mental health of teenagers generally, and found that there were major increases in the percentage of high schoolers who had feelings of extreme sadness or hopelessness (26.1% in 2009 to 36.7% in 2019), contemplated suicide (13.8% to 18.8%), and attempted suicide (6.3% to 8.9%) between 2009 and 2019, though the reasons as to why there were such increases were not discussed within the study.21 In another CDC study focusing on the effect of the

15. NADAL, supra note 12, at 11.
16. See id.
17. See generally id.
20. Almeida, supra note 19, at 1002.
21. See Sherry Everett Jones, Kathleen A. Ethier, Marci Hertz, Sarah A. DeGue, Vi Donna Le, Jemekia Thorton, Connie Lim, Patricia J. Dittus & Sindhura Geda, Mental Health, Suicidality, and Connectedness Among High School Students During the COVID-19
COVID-19 pandemic on high schoolers’ mental health, the aforementioned percentages increased even further, with one in three students experiencing, most of or all of the time, “poor mental health . . . during the COVID-19 pandemic (37.1%) and during the past 30 days (31.1%).”22 In evaluating the mental health of high schoolers twelve months before the survey was conducted and comparing the statistics to the 2019 percentages, the percentages increased even further with high schoolers who had feelings of extreme sadness or hopelessness (36.7% in 2019 to 44.2% between January and June 2021), contemplated suicide (18.8% to 19.9%), and attempted suicide (8.9% to 9.0%).23

The focus of all youth mental health tends to center around schools. The behaviors and functions of children and teenagers are shaped by characteristics unique to each child and teen as well as “a range of nested contextual systems, such as schools, families, and neighborhoods.”24 Because children and teenagers spend most of their time, energy, and social interactions at school, the bulk of mental health data obtained by researchers and psychologists focuses on how children and teenagers interact with other students, teachers, and faculty.25 Such research can then be used to enhance school-based mental health services and protective school policies, whether that involves training teachers to recognize signs of mental distress among their students or providing programs and classes that teach students about mental illnesses.26

While there has been a negative trend in the mental health of all youth, LGBT youth have faced more mental distress than their heterosexual peers due to their sexual orientation and/or gender identity.27 The victimization of LGBT youth in grade school and high school can be prevalent depending on the school environment, whether that is from social encounters where homophobic and/or transphobic language is used around or against them or...
physical violence.²⁸ LGBT students are more likely than their heterosexual, cisgender peers to experience and report physical violence and assault, with such physical violence and assault having homophobic and/or transphobic overtones.²⁹ School victimization and bullying lead to decreased academic achievement, increased truancy, aggressiveness, decreased mental and emotional health, decreased school belonging, and developing suicidal tendencies.³⁰

For example, studies focusing on health risk behaviors of students have found that if a school environment has a low level of victimization—i.e., they foster and promote a safe, welcoming environment for all students regardless of their sexual orientation or gender identity—percentages of LGBT students facing health risk behaviors can be similar to heterosexual students.³¹ In schools with high victimization rates, LGBT students have increased health risk behaviors versus that of heterosexual students.³²

School victimization can lead LGBT youths who already face and experience anxiety, depression, posttraumatic stress, and substance abuse to experience even higher rates of such health risks as they become adults.³³ While few studies focus on how LGBT youths develop as adults, evidence focusing on how LGBT youths are victimized at school suggests that there are negative consequences for the future of LGBT youths and their physical, mental, and emotional health.³⁴ In particular, one study found that men experience higher levels of depression and suicidal tendencies than women, and that the difference in levels between men and women increases when a history of LGBT victimization in schools is taken into account.³⁵ LGBT adults who experienced high levels of school victimization are also more likely to experience and report depression, suicidal tendencies, and have higher sexually transmitted disease (“STD”) and human immunodeficiency virus (“HIV”) risks in comparison to LGBT adults who experienced low levels of school victimization.³⁶

²⁹. Almeida, supra note 19, at 1002.
³⁰. Russell et al., supra note 28, at 224; see also V. Paul Poteat, Ian Rivers, & Jillian R. Scheer, Mental Health Concerns Among LGBTQ Youth in Schools in CRITICAL ISSUES IN SCHOOL-BASED MENTAL HEALTH 105, 105 (Melissa K. Holt & Amie E. Grills, Routledge, 2016).
³¹. See Russell et al., supra note 28, at 224; Poteat et al., supra note 30, at 105.
³². See Russell et al., supra note 28, at 224; Poteat et al., supra note 30, at 105.
³⁴. Id.
³⁵. Russell et al., supra note 28, at 228.
³⁶. See id.
Focusing on LGBT youth in the COVID-19 study by the CDC, the CDC found that 30.3% of heterosexual high school students felt extreme sadness or hopelessness in comparison to 63.8% of gay, lesbian, or bisexual students and 61.5% of other or questioning students. The CDC also found that gay, lesbian, or bisexual students had the highest percentage of contemplating suicide (46.8%) and attempting suicide (26.3%) in comparison to other or questioning students (39.5% contemplating and 16.5% attempting) and heterosexual students (13.6% contemplating and 5.2% attempting). Such significant differences between heterosexual students and LGB and questioning students display a prevalent disparity of mental distress and mental illness between heterosexual youth and LGB youth. The study does not provide statistics for transgender youth as it did not question students on their gender identity. However, it can be inferred that their rates of feeling extreme sadness or hopelessness, contemplating suicide, and attempting suicide are at the same percentage or perhaps at a higher percentage than LGB and questioning students.

The studies discussed in this section focusing on LGBT youth have shown time and time again that if schools develop and enforce policies and programs that promote safe, welcoming environments for everyone regardless of sexual orientation or gender identity, LGBT students would have decreased levels of mental distress and mental illness. Schools are a place where children and teens spend most of their time interacting with others and expending their social energy and personalities, and thus schools need to encourage students to feel like they belong in schools rather than take away programs and policies that promote such a belonging. Such encouragement can be done in a variety of ways, such as developing GSAs for students to participate in and youth programs that can encourage teamwork and belonging. Schools can also develop anti-bullying and anti-discrimination policies that are consistently and properly applied to students, teachers, and faculty, inclusive curriculum that discusses the history of LGBT events and LGBT issues, and train teachers and faculty to address LGBT issues and bullying.

However, there are times when schools either do not have the power to develop or maintain positive policies and programs due to laws passed by legislators or simply choose not to empower their LGBT students and instead develop negative policies and programs. The legal system—from state and federal congresses to judicial bodies—plays a critical role in how schools...
develop and implement protective or harmful policies for their students, which in turn influence the level of school victimization and mental turmoil LGBT youth face in their day-to-day lives. If LGBT youth rights are infringed upon by school policies and programs, the cause can be seen in their state’s anti-LGBT or lack of pro-LGBT legislation.

PART III: LGBT YOUTH & THE LEGAL SYSTEM

It is uncommon to acknowledge that American youths, particularly LGBT youths, have legal rights guaranteed by the United States Constitution, as well as by federal and state legislation and case law. Most parents and guardians do not take the time to teach youth about their legal rights and may even withhold information about a youth’s legal rights. LGBT youth in particular do not know that they have certain legal rights and how to assert them, whether that be in a school context with academic policies or a public context with freedom of speech and expression. There are some laws that protect LGBT youth, such as anti-discrimination laws, and laws that can bring harm to them, such as anti-transgender laws preventing transgender youth from transitioning or presenting themselves as the gender they choose to be. As the law is constantly changing, the fluctuation between protective laws and harmful laws tends to sway one way or another depending on the legislative body drafting and approving such laws, as well as how judges and justices handle cases they receive claiming and discussing LGBT issues.

Historically, the existence and everyday lives of LGBT individuals have been scrutinized and criminalized. Sodomy laws, for instance, criminalized sexual activity deemed immoral or socially deviant. Sodomy laws were used to heavily entrap and criminalize men who partook in same-sex sexual activity and destroy LGBT-friendly spaces and businesses by deeming such areas “resorts for sexual perverts” and shutting them down. Such laws became federally unconstitutional in 2003 in Lawrence v. Texas, where the Supreme Court determined that all citizens have a “right to privacy” that includes not intruding into their homes and dictating their relationships within the home. While same-sex sexual activities are no longer criminalized, LGBT individuals are still unfairly targeted by police through sting operations targeting gay and bisexual men for indecent exposure and stop and

44. See generally What are Youth Rights?, NATIONAL YOUTH RIGHTS ASSOCIATION, https://www.youthrights.org/about/what-are-youth-rights/ [https://perma.cc/7TQ3-9Y6D].
45. See id.
46. Keen, supra note 14, at 9.
47. See generally Keen, supra note 14, at 8-10; Nadal, supra note 12, at 21.
49. Id. at 22-23.
51. Nadal, supra note 12, at 20; see also Lawrence, 539 U.S. at 564-67.
frisks at higher rates than their heterosexual, cisgender counterparts. Some states still try to criminalize LGBT individuals based on the now unconstitutional sodomy laws by applying their now outdated state sodomy statutes to arrests or by using vague laws such as “loitering with the intent of soliciting.”

However, these legal protections often impact LGBT youth differently. For example, the language within Lawrence has been interpreted to apply to adults only, leading to LGBT youth being prosecuted under laws similar to the ones Lawrence invalidates. This is because of various state statutes prohibiting certain types of sexual activity in which one of the parties is underage, and such age-of-consent laws have been disproportionately applied to gay and lesbian youth. Age-of-consent laws vary from state to state, with some, for example, determining that one cannot consent to sexual activity until they turn eighteen, while other states allow for youth as young as fourteen to consent. Some states also provide “Romeo and Juliet” provisions that dictate how age-of-consent laws interact with youth who are close in age, but one of them is below the age of consent. These provisions mitigate or remove punishment against the above-aged party, including relieving them from the punishment of registering as a sex offender. While most underage consensual sexual activity goes unprosecuted, prosecutions tend to aim more toward same-sex couplings than opposite-sex couplings.

Further, some states have parameters for how large or small the underage gap can be to be determined consensual; for example, North Carolina makes it a felony for an individual to engage in sexual activity with another “who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person . . . .” Such broad, confusing statutes can make LGBT youth hesitant to explore their sexual identity if they are even aware that such a statute exists. LGBT youth are thus forced to research their state’s age-of-consent laws, lest they become labeled as predators and sexual deviants due to the lack of knowledge they have about their legal rights and the high frequency of prosecution of such crimes.

Other state laws that target LGBT adults also create a trickle effect targeting LGBT youth. For instance, “masquerade laws” are state and local laws that criminalize cross-dressing and genderbending and were originally

52. NADAL, supra note 12, at 58-59.
53. Id. at 23.
54. Fedders, supra note 18, at 235.
55. KEEN, supra note 14, at 57; Fedders, supra note 18, at 235-36.
56. KEEN, supra note 14, at 60.
57. Fedders, supra note 18, at 236.
58. Id.
59. See id.
60. KEEN, supra note 14, at 60-61.
61. See generally KEEN, supra note 14, at 9, 60-61.
intended to criminalize disguises when committing crimes, but slowly became laws that criminalized transgender and gender nonconforming individuals for their choice of clothing. Such laws allow law enforcement to use a scare tactic dubbed the “three-article” rule, in which an individual has to wear, at minimum, “three articles of clothing that matched their assigned birth sex.” The “three-article” rule does not have legal standing and has not been commonly used in recent decades, but the influence of masquerade laws remains: if a law enforcement official feels that an individual wearing clothing that did not match their assigned sex at birth is “disguising” themselves or using a “false persona” to avoid law enforcement, they could arrest them.

A more specific influence of masquerade laws trickles down to schools with student dress codes and how school districts treat students—particularly LGBT students—who do not wear gender-conforming clothing. School districts adopt student dress codes to promote and enforce an educational environment that maintains order and propriety. However, the Supreme Court in Tinker v. Des Moines Indep. Cnty. School Dist., highlighted a student’s First Amendment right to freedom of expression within schools. The Tinker Court determined that students could use black armbands to protest the Vietnam War as long as the protest did not cause material interference or substantial disruption on school grounds. After Tinker, schools have allowed students to express messages promoting LGBT pride and support, as long as that message does not contain “obscene, threatening, or ‘lewd or vulgar’ speech.”

School districts, however, can still limit students in their gender expression with policies stating that a student wearing gender-nonconforming clothing is inappropriate and disrupts order and propriety on school grounds. For instance, a student can be banned from going to their senior prom if they choose to wear an outfit that does not conform to their assigned sex at birth because the outfit can cause disorder among the students that would be inappropriate.

In these cases, school districts can be challenged on sex discrimination grounds under Title IX if their dress code policies are explicitly

63. Id. at 17-18 (citation omitted).
64. See id.
67. See Tinker, 393 U.S. at 514.
68. KEEN, supra note 14, at 71-72; see also STUART BIEGEL, THE RIGHT TO BE OUT: SEXUAL ORIENTATION AND GENDER IDENTITY IN AMERICA’S PUBLIC SCHOOLS, 54 (2d ed. 2018).
69. See generally KEEN, supra note 14, at 71-72.
70. KEEN, supra note 14, at 73.
This can be seen in the case of Nikki Youngblood, a lesbian teen who went to school in a suit and tie for her senior portrait. School officials cited a policy that stated that girls had to wear feminine drapes for their senior portrait, even though she had been wearing “boys clothing” her entire life, both at home and at school. Nikki refused and filed a lawsuit against the school under the First Amendment, Fourteenth Amendment, and Title IX when they omitted her photo and name from the school yearbook due to her choice of clothing. While the case settled in 2004, with the settlement allowing the school principal to maintain the dress code but also allowing students to challenge the standard, the school rescinded its requirement for girls to wear feminine drapes for senior portraits.

This case shows how school districts can empower or disempower their LGBT students with their policies, procedures, and programs. A school that empowers its LGBT students allows the students to be accepted, supported, and appreciated, which positively improves their mental health development. By creating and enforcing anti-bullying and anti-discriminatory policies, procedures, and programs, school districts are informing their LGBT students that they want them to thrive and develop into competent, mentally sound adults. School districts that empower LGBT students tend to create inclusive academic curricula, establish student clubs supporting LGBT students (GSAs), and train teachers and administrators on LGBT issues to allow LGBT students to go to them for aid. An empowered LGBT student tends to have “higher self-esteem, lower depression, higher grades, less victimization, greater attachment to school, higher educational aspirations . . . and better psychological well-being.”

However, a school district that disempowers their LGBT students makes them feel isolated, repulsed, and unaccepted by their peers, teachers, and administrators, which in turn negatively affects their mental health development. This disempowerment results in discriminatory environments that promote bullying, violence, and harassment, preventing LGBT students from expressing their identities and seeking out help if they are being harassed or bullied. Some examples of school districts disempowering their

71. Id. at 73-74.
72. Keen, supra note 14, at 73.
73. See id. at 73-75.
74. Id. at 73-74.
76. Phariss, supra note 10, at 258.
77. See id. at 259.
78. See id.
79. Id. at 266 (citations omitted).
80. Id. at 260.
81. Phariss, supra note 10, at 260.
LGBT students can be seen with schools refusing to train teachers and administrators on LGBT issues, providing inaccurate information about LGBT individuals or outright denying to provide information, and banning programs that would provide information and protections to LGBT youth.\textsuperscript{82} A disempowered LGBT student is, in essence, treated as if they are secondary to their peers, resulting in them feeling lesser and increasing their feelings of hopelessness and despair.\textsuperscript{83}

Whether a school district chooses to empower or disempower their LGBT students tends to stem from how their state empowers or disempowers LGBT students. Some states have statutes that provide protections to individuals based on their sexual orientation and gender identity, while others only provide protections to individuals based on their sexual orientation and ignore gender identities.\textsuperscript{84} Some states do not have statutes that protect LGBT individuals but allow their school districts to develop policies that can provide protections, though they are not required to do so.\textsuperscript{85}

States that provide protections to LGBT youth can still have school districts that choose to disempower students, however. An example of this can be seen in Illinois, which has antibullying measures that protect LGBT youth.\textsuperscript{86} However, despite these measures, some local school districts have disempowered LGBT students with the aid of religious groups by banning materials from programs and organizations that support LGBT youth such as the Gay, Lesbian, and Straight Education Network ("GLSEN").\textsuperscript{87} GLSEN, in particular, was banned from providing materials that discussed respecting others and the harms of name-calling because the materials included LGBT parents and antibullying resources for LGBT youth.\textsuperscript{88} The discrepancy in how states and school districts approach—or, in some cases, stray from—protections for LGBT youth can create confusion for students in how to interpret and practice their constitutional rights and determine whether these rights have been violated.\textsuperscript{89}

\textbf{PART IV: FLORIDA’S “PARENTAL RIGHTS IN EDUCATION” LAW}

The prime example of the impact of these laws and their applications can be seen in Florida, one of the most prominent states currently restricting and obstructing LGBT youth rights with legislation. Florida House Bill 1557,
or the “Parental Rights in Education” bill, was introduced on January 11, 2022.\textsuperscript{90} The bill is an amendment to Florida Statute § 1001.42, which pertains to the “powers and duties of district school board[s].”\textsuperscript{91} The purpose of the bill is to address and specify a parent’s fundamental decision-making rights involving their child’s care in schools.\textsuperscript{92} To do this, the bill applies a requirement to school districts to “adopt procedures for notifying parents if there is a change in the student’s services or monitoring related to a student’s mental, emotional, or physical health or well-being.”\textsuperscript{93} The bill went through the House committee process and passed the House on February 24, 2022.\textsuperscript{94} The bill subsequently went through the Senate committee process and passed the Senate on March 8, 2022.\textsuperscript{95} The bill was signed into law by Governor Ron DeSantis on March 28, 2022, and went into effect July 1, 2022, as Florida Statute § 1001.42(8)(c).\textsuperscript{96}

On its face, the text of the Law contains unclear language. Section 3 of the Law states the following:

Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.\textsuperscript{97}

Nowhere does the Law define terms such as “classroom instruction,” ‘sexual orientation,’ ‘gender identity,’ ‘school personnel,’ ‘third party,’ ‘age-appropriate,’ ‘developmentally appropriate,’ ‘standards,’ ‘services,’ ‘monitoring,’ or ‘well-being.’\textsuperscript{98} There were attempts to define the terms in amendments proposed by House and Senate legislators during the drafting process to prevent confusion about the terms, but they ultimately failed.\textsuperscript{99}
Under the law, if a parent has a concern about the classroom instruction, they can bring the concern to the school principal and the concern must be processed by the principal within seven days. The school district must then resolve the concern or explain why the concern cannot be resolved within thirty days. If there is no resolution to the concern that is satisfactory to the parent, Section 7(b)(II) of the Law allows one option for the parent:

[A parent may] bring an action against the school district to obtain a declaratory judgment that the school district procedure or practice violates this paragraph and seek injunctive relief. A court may award damages and shall award reasonable attorney fees and court costs to a parent who receives declaratory or injunctive relief.

In essence, if a parent does not like the resolution the school district provides to them, no matter how reasonable the resolution is, they can sue the school district to enjoin them from continuing their classroom instruction that concerned the parent and would also receive attorney’s fees and other costs they have incurred if they win the lawsuit.

The Law garnered many supporters throughout its journey to be codified into Florida law. Many supporters decreed that the Law is an “Anti-Grooming” law, and, according to DeSantis’s press secretary, Christina Pushaw, critics of the Law were “probably a groomer or at least you don’t denounce the grooming of 4-8 year old children.” Pushaw emphasized this groomer label in an interview with VICE News, stating that “any adult who wants to discuss sexual and gender identity topics with other people’s 5- to 8-year-old children—while keeping this a secret from their parents—is either a groomer or is complicit in promoting an environment where grooming becomes normalized.”

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103. See id.
When signing the bill into law, Governor DeSantis stated that teaching material that is inappropriate must be banned from grades kindergarten through third.\textsuperscript{106} He provided an example of the “Genderbread Person”—a diagram of gingerbread in the shape of a person that is used to teach youth about gender and sex in a gender-neutral way\textsuperscript{107}—stating that it “is trying to sow doubt in kids about their gender identity. . . . This is inappropriate for kindergarteners and first graders and second graders. Parents do not want this going on in their schools.”\textsuperscript{108} He also referenced Pushaw’s groomer rhetoric by claiming that critics of the bill are supporters of sexualizing kindergartners.\textsuperscript{109} Afterward, in April 2022, Governor DeSantis extended his distaste for “inappropriate teaching material” to apply to all grades in an interview with Fox News, stating that “woke gender ideology” does not have a place in schools at all.\textsuperscript{110}

Supporters during the drafting process of the Law stated that the purpose of the Law is to protect the rights of parents in the education system. In the House, Republican Senator Juan Alfonso Fernandez-Barquin of Miami-Dede emphasized the need to protect parent’s rights in the education system, stating that other states such as California are “terminating parental rights, because parents refuse to affirm a child’s gender orientation . . . [b]ut the parents know what’s best for the child.”\textsuperscript{111} Republican Senator Erin Grall of Vero Beach affirmed Fernandez-Barquin’s sentiment, offering an example that was occurring in a Florida school district’s support plan for students that advised educators “to not out a student to parents if they have expressed they are LGBTQ or questioning their sexuality or gender.”\textsuperscript{112} She stated that, without the Law, such a plan “affirmatively—affirmatively—exclude[s] the parents. They are making life-changing decisions for children without the involvement of the parent.”\textsuperscript{113}

In the Senate, Republican Senator Dennis Braxley of Ocala, who filed the Senate version of the Law, stated that the Law would protect the “core

\textsuperscript{106} See What is law critics have dubbed ‘Don’t Say Gay’?, ASSOCIATED PRESS (Mar. 29, 2022, 12:05 AM), https://apnews.com/article/health-lifestyle-education-florida-ron-desantis-322e0e40da909f48954ab6b1bd9190750 [https://perma.cc/9LL2-2NC8].
\textsuperscript{107} See Rick Gonzales, What is the Genderbread Person and How is it Being Used in Schools?, GO2TUTORS (June 1, 2022), https://go2tutors.com/what-is-the-genderbread-person-and-how-is-it-being-used-in-schools/ [https://perma.cc/ZR25-M3JD].
\textsuperscript{108} ASSOCIATED PRESS, supra note 106.
\textsuperscript{109} Joseph, supra note 105.
\textsuperscript{110} ASSOCIATED PRESS, supra note 106; see Fox News, DeSantis: Education not indoctrination, YOUTUBE, 6:26-6:31 (Apr. 29, 2022), https://www.youtube.com/watch?v=12Iveeq2ydk [https://perma.cc/M77P-8VBW].
\textsuperscript{112} Id.
\textsuperscript{113} Id.
belief systems and values” parents bestow upon their children. \footnote{114} Republican Senator Danny Burguess of Pasco County emphasized the need to protect the innocence of children “for just a few more years, because once it’s gone, it’s gone forever. It’s OK to let a little boy want to be Captain America, and a little girl want to be Rapunzel, it’s OK for children to be children for just a little while longer.”\footnote{115} In essence, supporters in the Senate sought to retain gender norms for children by deeming discussion and lessons about gender identity and sexuality as too adult for them, thus being “impure” for them to talk about.\footnote{116}

On the other hand, critics have dubbed the Law as the “Don’t Say Gay” law. \footnote{117} The major issue critics have with the Law focuses on its language being so broad that teachers and school districts of all grades may avoid any discussion or mention of LGBT topics to avoid lawsuits from parents. \footnote{118} Critics are concerned that district schools may decide to “preemptively ban[] LGBTQ content from secondary and high school classrooms, censor[] student speech, remove[] books from libraries that reference different sexual orientations or gender identities, even if they are not essential to the plot, and prohibit[] LGBTQ-identifying students (or students with LGBTQ parents) from forming clubs like Gender and Sexuality Alliances.”\footnote{119} Such actions would then discourage LGBT students from discussing and expressing themselves due to the possible legal consequences their teachers and faculty may face.

Legislative critics discussed the vagueness of the Law’s language in detail during the drafting and committee process. In the House, Democrat Senator Carlos Guillermo Smith stated that, though the bill did not directly restrict LGBT discussions, it would still “create an environment of fear and censorship.”\footnote{120} In the Senate, Democrat Senator Lauren Brook viewed the language as an attempt at a culture war against LGBT individuals, stating that Florida educators “[are] not secretly pushing the gay agenda, the trans agenda, the woke agenda. It’s just not happening. . . The message this bill sends goes far beyond the words contained in the text.”\footnote{121} Democrat Senator Jason Pizzo of Miami-Dade looked to the future of the bill if it were to be
passed, stating that the courts would throw out the Law for “invidious discrimination” against a particular and protected class of individuals.\textsuperscript{122}\footnote{See id.} He also points out the hypocrisy of prohibiting a discussion of sexual orientation and gender identity in classrooms while more mature topics, such as drug use, are allowed.\textsuperscript{123}\footnote{See id.}

The concerns critics expressed about the vague language of the Law were not unfounded once the Law went into effect. In April of 2022, after the Law was signed, school officials in Miami-Dade County sought approval of new sex education textbooks from the Florida Board of Education.\textsuperscript{124}\footnote{Anthony Izaguirre & Adriana Gomez Licon, ‘Don’t Say Gay’ law confuses some Florida schools, ASSOCIATED PRESS (Aug. 15, 2022, 12:46 PM), https://apnews.com/article/health-education-ron-desantis-gender-identity-49dfb9a4f63b2497846df8e96fd652cc [https://perma.cc/CNJ2-G454].} Per the Law, administrators stated that they would remove chapters containing gender identity and sexuality from the new textbooks and approve the textbooks.\textsuperscript{125}\footnote{Id.} However, the administrators reversed their approval in May after public criticism.\textsuperscript{126}\footnote{Id.} They then reversed themselves again in August, reverting to their plan to remove the chapters concerning gender identity and sexuality.\textsuperscript{127}\footnote{Id.} The administrators did not know how to interpret and follow the Law to comply effectively, which led them to indecisiveness in their application that created confusion within their school district.

During the summer of 2022, teachers prepping for the new school year were given conflicting instructions and plans concerning the Law.\textsuperscript{128}\footnote{See generally id.} For example, one teacher was instructed in workshops for her district that teachers “in kindergarten through third grade could not display pride flags or photos of their same-sex spouses.”\textsuperscript{129}\footnote{Izaguirre, supra note 123.} However, this instruction was later retracted by her school district because it interpreted the law to only apply to classroom instruction, not to decorations within the classroom.\textsuperscript{130}\footnote{Id.} The Department of Education did not give out instructions to school districts as to how to properly apply the law, only issuing a memo that reiterated the Law’s text word for word.\textsuperscript{131}\footnote{Id.} Without instructions from either the Department of Education or the Florida Board of Education, and with the vagueness of the Law’s language that created confusion within school boards, educators and administrators were left to flounder as the new school year loomed over them.\textsuperscript{132}\footnote{Id.} This resulted in the school districts implementing policies and procedures
that varied between each school, from some schools only removing LGBT books from libraries to full-on book bans until the books could be reviewed.133 This confusion and uneven implementation would eventually provide a foundation for lawsuits challenging the Law.

PART V: LAWSUITS AND CONSTITUTIONAL ARGUMENTS AGAINST THE “PARENTAL RIGHTS IN EDUCATION” LAW

The Law currently faces two prominent lawsuits that challenge its constitutionality: *Equality Florida et. al. v. Florida Board of Education et. al.*,134 and *Cousins et. al. v. School Board of Orange County et. al.*135 Both lawsuits claim that the Law violates the constitutional rights of LGBT students, teachers, their families, and their communities under the First Amendment and the Fourteenth Amendment.136 In contrast to *Cousins*, *Equality Florida* also claims the Law violates Title IX of the Education Amendments of 1972.137

The *Equality Florida* plaintiffs include LGBT students, parents of LGBT students, LGBT parents of students, and LGBT teachers.138 The defendants include the Florida Board of Education and the school districts that have jurisdiction over the plaintiffs.139 Before the Law, the school districts had policies that aimed at including LGBT history and issues in their curriculum, as well as policies that protected LGBT students from discrimination and harassment.140 When the Law was passed, the schools either took away the policies in their entirety or reworked them to comply with the Law, though confusion on what to remove or rework likely complicated such endeavors.141

*Equality Florida* was first filed in the United States District Court for the Northern District of Florida on March 31, 2022.142 The Florida State Board of Education has filed and won three motions to dismiss for failure to state a claim against Equality Florida.143 When granting the second motion

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138. *Id.* at 4.
139. *Id.* at 6-8.
140. *Id.* at 10-13.
141. *Id.* at 2; see also Riley, *supra* note 118.
142. Riley, *supra* note 118.
to dismiss, Judge Allen Winsor stated that the plaintiffs lacked legal standing to challenge the alleged harms against them, as they were unable to trace the alleged harms to the application of Law.\textsuperscript{144} He stated that the mere existence of the Law cannot be used to show harm as the harm has not occurred yet and that the Law must result in actual harm against the plaintiffs that can be fairly traced to the Law’s application and enforcement.\textsuperscript{145} In essence, the alleged harm of the plaintiffs in \textit{Equality Florida} is speculative, and speculative harms are not eligible for a remedy, especially for the limited jurisdiction of federal court.\textsuperscript{146} He reiterated this point in his third motion to dismiss, stating that the alleged harms newly developed in the Second Amended Complaint are still not concrete enough to provide the plaintiffs standing in federal court.\textsuperscript{147} While the Second Amended Complaint does provide more facts showing experiences and disappointment arising from the Law, the plaintiffs still need to show concrete evidence that is reasonably connected to the Law’s application and enforcement to survive federal jurisdiction.\textsuperscript{148} Judge Winsor dismissed the complaint without prejudice.\textsuperscript{149} The \textit{Equality Florida} plaintiffs are appealing the dismissal of the complaint during the writing of this Article.\textsuperscript{150}

The \textit{Cousins} plaintiffs include LGBT students, parents of LGBT students, LGBT parents of students, and an LGBT nonprofit organization.\textsuperscript{151} The defendants include the school boards that have jurisdiction over the plaintiffs.\textsuperscript{152} When the Law was passed, the schools began to remove LGBT material from their libraries and classrooms, and some rescinded guidelines that taught teachers how to respond to LGBT bullying and harassment against LGBT students.\textsuperscript{153}

\textit{Cousins} was first filed in the United States District Court Middle District of Florida, Orlando Division, on July 25, 2022.\textsuperscript{154} Judge Wendy Berger dismissed the complaint twice, with the second dismissal claiming that the
lawsuit contained shotgun pleadings that do not have legal standing.\textsuperscript{155} A shotgun pleading involves a complaint providing claims that cannot be reasonably connected to a defendant in a way that the defendant can respond to those claims.\textsuperscript{156} Judge Berger stated that the \textit{Cousins} plaintiffs provided vague and conclusory facts that could not be reasonably connected to the defendants due to the timing of the Law’s implementation.\textsuperscript{157} In essence, she is reiterating the same reasons Judge Winsor provided when dismissing \textit{Equality Florida}: the \textit{Cousins} plaintiffs have not shown enough concrete harm arising from the defendants’ interpretation and application of the Law that would reasonably connect the Law to the defendants.\textsuperscript{158} Thus, she concluded, the \textit{Cousins} plaintiffs lacked standing in federal court. After filing a second amended complaint that attempted to fix the standing issue, the defendants filed and were granted a third motion to dismiss as of August 16, 2023, for the same reasons as the previous dismissal.\textsuperscript{159} Similar to the \textit{Equality Florida} plaintiffs, the \textit{Cousins} plaintiffs may appeal the dismissal of their complaint in the future.

A. FIRST AMENDMENT ARGUMENTS

Although \textit{Equality Florida} has been dismissed for lack of standing and the standing issue has yet to be resolved for \textit{Cousins}, both complaints claim that the Law violates LGBT students, teachers, their families, and their communities’ right to freedom of speech and expression under the First Amendment.\textsuperscript{160} The Law, they claim, chills and restricts LGBT youth from self-identifying as LGBT or discussing their sexual orientation and/or their gender identity at school.\textsuperscript{161} \textit{Cousins} details the chilling effect on the plaintiffs, with some plaintiffs having the ability to discuss their sexual orientation and/or gender identity before the implementation of the Law, and are now unable to discuss their experiences and identities due to fear and harassment.\textsuperscript{162} Both complaints look to the public record of the Law’s drafting and discussion process by legislators and argue that because the Law is based on

\begin{itemize}
  \item\textsuperscript{155} See Order to Dismiss First Amended Complaint, Cousins v. Sch. Bd. of Orange Cnty., No. 6:22-cv-01312 (M.D. Fla. July 25, 2022) (Bloomberg).
  \item\textsuperscript{156} \textit{Id.} at 6.
  \item\textsuperscript{157} \textit{Id.} at 7-8.
  \item\textsuperscript{158} \textit{See generally id.; Equal. Fla. Second Amended Complaint, supra note 127, at 4.}
  \item\textsuperscript{159} See Order to Dismiss Second Amended Complaint, Cousins v. Sch. Bd. of Orange Cnty., No. 6:22-cv-01312 (M.D. Fla. July 25, 2022) (Bloomberg).
  \item\textsuperscript{160} \textit{Equal. Fla. Second Amended Complaint, supra note 98, at 53-54; Cousins Second Amended Complaint, supra note 4, at 49-51.}
  \item\textsuperscript{161} \textit{Equal. Fla. Second Amended Complaint, supra note 98, at 53-54; Cousins Second Amended Complaint, supra note 4, at 49-51.}
  \item\textsuperscript{162} \textit{Cousins Second Amended Complaint, supra note 4, at 24-26.}
\end{itemize}
animus and discrimination against LGBT individuals, it is thus facially unconstitutional under the First Amendment.163

Both complaints also claim the Law violates the plaintiffs’ First Amendment right to receive information.164 They state that the Law deprives the student plaintiffs’ right to receive information by removing and limiting access to materials concerning sexual orientation and gender identity.165 The Law does not address “legitimate pedagogical concerns,” meaning the speech and activity it is trying to suppress is not related to any interferences school districts would deem disruptive, obscene, or inappropriate.166 Because the Law is based on animus against LGBT individuals, is unrelated to “legitimate pedagogical concerns,” and does not serve a “legitimate state purpose,” it is unconstitutional.167

The First Amendment violations the Law faces also allow the complaints to claim that it violates the overbreadth doctrine.168 The First Amendment overbreadth doctrine allows for a citizen to invalidate a law if there are a substantial number of constitutional violations against it.169 Equality Florida explains that, even if the Law addresses a “legitimate pedagogical concern,” it is not narrowly tailored to address that concern.170 Instead, they claim it broadly infringes the plaintiffs’ First Amendment rights and is thus unconstitutional as applied to the plaintiffs.171

B. FOURTEENTH AMENDMENT ARGUMENTS

Both Equality Florida and Cousins claim that the Law violates the Fourteenth Amendment rights under the Due Process Clause for LGBT students, teachers, their families, and their communities due to the vagueness of its language.172 The basis of this claim is that if a law’s “prohibitions are not

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163. Equal. Fla. Second Amended Complaint, supra note 98, at 54; Cousins Second Amended Complaint, supra note 4, at 51.
164. Equal. Fla. Second Amended Complaint, supra note 98, at 51-52; Cousins Second Amended Complaint, supra note 4, at 53-55.
165. Equal. Fla. Second Amended Complaint, supra note 98, at 52; Cousins Second Amended Complaint, supra note 4, at 54.
167. Equal. Fla. Second Amended Complaint, supra note 98, at 52; Cousins Second Amended Complaint, supra note 4, at 54.
168. Equal. Fla. Second Amended Complaint, supra note 98, at 55; Cousins Second Amended Complaint, supra note 4, at 56.
169. Equal. Fla. Second Amended Complaint, supra note 98, at 55; Cousins Second Amended Complaint, supra note 4, at 56.
171. Id.
172. Equal. Fla. Second Amended Complaint, supra note 98, at 45; Cousins Second Amended Complaint, supra note 4, at 57.
clearly defined[,]" then it is void for being unconstitutionally vague.173 A vague law is unconstitutional if it fails to give proper notice to an ordinary individual of average intelligence about what is prohibited, or is not explicit in its standards and allows and/or encourages discriminatory and/or unnecessary enforcement.174 As mentioned in Part IV, the Law’s language does not define a multitude of terms, leaving them ambiguous.175 The vagueness and ambiguity of the terms then cause a chilling effect on the plaintiffs’ speech and behaviors, discouraging them from self-identifying as LGBT or embracing the identities of LGBT individuals in fear of facing legal or academic discipline.176

The ambiguity of the Law is emphasized when looking at the legislative history and later application of the Law: legislators were unable to pass amendments to clarify the ambiguous terms; school districts were unable to properly train their staff about the Law and its effects; textbooks were approved and disapproved at high rates due to the confusion school districts were facing about the Law; and statements from Governor DeSantis and his staff were especially unhelpful in determining whether the Law was designed to protect the rights of parents, or to support his political agenda.177

Both complaints also claim that the Law violates the Equal Protection Clause of the Fourteenth Amendment due to the discriminatory nature of the Law, though the way they describe the violation varies.178 Equality Florida claims that the defendants deprived the plaintiffs of their Fourteenth Amendment rights by treating them differently from others based on their sexual orientations and/or gender identities.179 While the claim does explain that the Law was the cause of the discriminatory treatment, Equality Florida places blame and responsibility solely on the defendants.180 In contrast, Cousins focuses on the Law and its enforcement being discriminatory, explaining that the enforcement of the Law has created an anti-LGBT climate in the school districts operated by the defendants.181

173. Equal. Fla. Second Amended Complaint, supra note 98, at 45; Cousins Second Amended Complaint, supra note 4, at 57.
174. Cousins Second Amended Complaint, supra note 4, at 57.
175. Cousins Second Amended Complaint, supra note 98, at 14-15.
177. Equal. Fla. Second Amended Complaint, supra note 98, at 47-48; Cousins Second Amended Complaint, supra note 4, at 59-62.
178. See id.
179. Equal. Fla. Second Amended Complaint, supra note 98, at 47.
180. See id.
181. Cousins Second Amended Complaint, supra note 4, at 61.
C. TITLE IX ARGUMENT

Equality Florida adds an additional argument under Title IX. Title IX of the Education Amendments Act of 1972 “prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of Federal financial assistance.”182 In June of 2021, the Office for Civil Rights within the Department of Education released an interpretation in the Federal Register that included sexual orientation and gender identity within sex discrimination.183 This interpretation is based on the Supreme Court’s decision in Bostock v. Clayton County.184 In Bostock, an individual joined a gay softball league, promoted it at his workplace, and was fired days later after experiencing harassment from his colleagues.185 The Supreme Court interpreted Title VII’s sex discrimination prohibition to include sexual orientation and gender identity.186 Sex discrimination is intertwined with discrimination based on sexual orientation and gender identity as the employer must first discriminate their employee based on sex before discriminating based on sexual orientation and gender identity.187

Because the Supreme Court’s interpretation of Title VII includes sexual orientation and gender identity, the Department of Education applied the same interpretation to Title IX.188 The text between Title VII and Title IX is similar enough for an ordinary individual to interpret definitions of terms within both as the same.189 Furthermore, cases after Bostock focusing on discrimination based on sexual orientation and gender identity have used the Supreme Court’s interpretation of Title VII in their decision-making, and using the interpretation for Title IX would align with the purpose of Title IX to protect students from discrimination.190

Based on this Title IX interpretation, Equality Florida argues that the Law discriminates against the LGBT student plaintiffs based on their sexual orientation and gender identity.191 The Law goes against the federal regulation instructions and is thus directly opposing the Department of Education

184. See id.
186. Bostock, 140 S. Ct. at 1741-44.
187. Id. at 1747.
189. See id.
190. See id.
and its guidance.\textsuperscript{192} The LGBT student plaintiffs are forced into disempowering, discriminatory school environments. While the guidance is currently facing an injunctive order preventing implementation in several states such as Alabama, Missouri, and Tennessee, Florida did not oppose the interpretation.\textsuperscript{193} Floridian legislators still passed the Law almost a year later, going against federal regulation and risking a loss of federal funds to their school districts,\textsuperscript{194} which would further disempower the LGBT student plaintiffs as they would not be able to obtain resources for their learning experiences.\textsuperscript{195}

PART VI: EXPANSION OF THE LAW

As of June 2023, the Law has been expanded, though the route it took to expand did not follow its predecessor. On February 28, 2023, Florida House Bill 1223 was introduced to expand the Law to ban classroom discussion surrounding sexual orientation and gender identity in prekindergarten to grade 8 and restrict preferred pronoun usage, and such restrictions would also apply to charter schools.\textsuperscript{196} However, such a bill was unnecessary as Governor DeSantis and his administration moved towards a ban on such classroom discussion across all grades, with two exceptions for grades 4 through 12: if the instruction is explicitly required by the state, or if it is part of a health reproductive course a parent can opt their student out of.\textsuperscript{197} The DeSantis administration did this by going around the legislative process and seeking approval through the Florida Board of Education and Education Department, both of which contain individuals appointed by DeSantis.\textsuperscript{198} The Florida Board of Education approved the new ban in April 2023, and the ban took

\begin{itemize}
\item 192. See id.
\item 195. See generally id.
\item 198. See Anthony Izaguirre, DeSantis to expand ‘Don’t Say Gay’ law to all grades, ASSOCIATED PRESS (Mar. 22, 2023, 3:54 PM), https://apnews.com/article/dont-say-gay-desantis-florida-gender-d3a9c91f4b5383a5bf0df6f7d8ff65b6 [https://perma.cc/GK56-HAXY].
\end{itemize}
effect a month later.\textsuperscript{199} Florida House Bill 1223 subsequently died in the Education & Employment Committee of the House on May 5, 2023.\textsuperscript{200}

**PART VII: OTHER LEGISLATION SIMILAR TO THE LAW**

The Law is not unique in its vagueness and discriminatory application. As of the writing of this Article, there are several state bills pending that contain the same language and intent as the Law, including some that have already passed to become law.\textsuperscript{201}

In 2022, around the same time the Law passed, Alabama introduced and passed House Bill 322.\textsuperscript{202} Section 2 of HB 322 states that any classroom discussion or instruction in kindergarten through grade 5 concerning sexuality or gender identity is prohibited if it is not considered appropriate for students according to Alabama’s standards.\textsuperscript{203} Opponents of the bill caught the language of the section, stating that it was similar to the Law.\textsuperscript{204} Such language, they claim, “stigmatiz[es] conversations around LGBTQ identity [and] will only fuel more bullying, anxiety and suicide risk among these youth.”\textsuperscript{205} Currently, there are no lawsuits challenging the law.

In March 2023, Arkansas passed an education bill that focuses on the creation of a new education voucher program while restricting classroom discussion of sexual orientation and gender identity before grade 5.\textsuperscript{206} Similar to the Law, the language of the new law is vague and does not provide


\textsuperscript{203}. Id.


guidelines on how far the restriction goes. Critics argued that the restrictions would result in the marginalization of LGBT individuals.

In 2022, Louisiana had a bill that would have banned all school employees from any discussion of sexual orientation or gender identity in kindergarten through grade 8, nor could they talk about their own sexual orientation or gender identity in any grade. This bill died in the committee stage but was reintroduced in March 2023. The current bill expands to all grades and restricts preferred pronoun usage and discussions for students and teachers.

The bill passed both the House and Senate, but Louisiana governor John Bel Edwards stated that he would veto the bill once it reached his desk, along with other anti-LGBT bills that have passed Louisiana’s Congress. It was likely that once vetoed, Louisiana’s Congress would attempt to override the veto. As of July 2023, Edwards’s veto has occurred, and a motion to override that veto has failed.

Other bills have tried to follow suit, but many died within the committee stages as of 2023. Kansas’s version, for instance, gave parents immense power to object to any kind of instruction teachers and administrators give to students and inspect all materials, lessons, and teachings to determine the appropriateness of the lessons for their children.

However, even if the legislation fails, states will continue to draft and try to pass bills that echo the Law’s anti-LGBT purpose and language. Iowa has proposed a bill that would prohibit “any program, curriculum, material, test, survey, questionnaire, activity, announcement, promotion, or instruction of any kind relating to gender identity or sexual activity” in kindergarten through grade 3. Indiana had a bill that mimicked the Law’s language


208. See id.


211. Id.


213. Id.


215. See Mapping Attacks on LGBTQ Rights in U.S. State Legislature, supra note 201.


almost word-for-word, but it was later amended to limit sexuality and gender identity discussions to sex education due to criticism.\textsuperscript{218}

PART VIII: CONCLUSION

The current academic and legal climate for LGBT youth is harsh, cruel, and confusing. State legislators across the country have the power to create legislation to help uplift and empower LGBT students, yet the variety of pro-LGBT and anti-LGBT laws currently in place creates a bewildering environment for students to comprehend. In some states, they can express their true selves and be protected by their schools thanks to pro-LGBT legislation. In other states, they are terrified that even mentioning something LGBT could get them or their teachers into academic and legal trouble. Even if their state has pro-LGBT legislation, there are a select few school districts that still go out of their way to restrict LGBT support and resources.\textsuperscript{219} LGBT youth are not protected equally, and this inequality produces harm.

There is an emerging need for a cohesive, federal solution that will nurture and empower LGBT students, not neglect and chill them. The 2021 version of the SSIA, for example, would have required school districts to implement anti-bullying and harassment policies centering on race, sex, disability, gender identity, sexuality, and other characteristics.\textsuperscript{220} Federal legislation like the SSIA could allow pro-LGBT curriculum and discussions to flourish in an environment that empowers LGBT students.\textsuperscript{221} Federal protections for LGBT students give the students a chance to comprehend a consistent piece of legislation that would apply to all of them instead of those who live in states that provide protections for them. However, with Congress currently occupied by many individuals who would not and will not think twice about the LGBT citizens they are representing, that hope will not be realized any time soon.

\textsuperscript{219} See Phariss, supra note 10, at 261.
\textsuperscript{221} See Phariss, supra note 10, at 264-65.