

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

GENDER AND SEXUALITY ALLIANCE;
CAMPAIGN FOR SOUTHERN EQUALITY; and
SOUTH CAROLINA EQUALITY COALITION,
INC.,

Plaintiffs,

v.

MOLLY SPEARMAN, in her official capacity as
South Carolina State Superintendent of Education,

Defendant.

No. 2:20-cv-00847-DCN

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

INTRODUCTION

1. This action seeks to enjoin enforcement of a facially discriminatory and harmful South Carolina statute, S.C. Code § 59-32-30(A)(5), which provides that local public school districts may not include in their health education any “discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases.” S.C. Code § 59-32-30(A)(5). That prohibition violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution by singling out non-heterosexual students as a class—including those who are lesbian, gay, bisexual, transgender,¹ and queer (LGBTQ)—for negative treatment based on their sexual orientation, by preventing any health education about their relationships except in the context of sexually transmitted diseases. The law does not impose any comparable restriction on health education about heterosexual people.

¹ Although transgender people, like people who are not transgender, can have any sexual orientation, there is a significant overlap among transgender people and lesbian, gay, bisexual, and queer people. In addition, S.C. Code § 59-32-30(A)(5) has been interpreted by some educators to prohibit discussion in schools about transgender people.

2. By classifying on the basis of “homosexual relationships,” the challenged statute (the “Anti-LGBTQ Curriculum Law”) facially discriminates against non-heterosexual students on the basis of sexual orientation and places them in an expressly disfavored class. The negative impact is significant, communicating to teachers and students that there is something so shameful, immoral, or dangerous about “homosexual relationships” that they should not generally be discussed. Moreover, by permitting teachers to mention same-sex relationships only in the context of sexually transmitted diseases, the statute limits classroom discussion of LGBTQ people to a negative context, and sends a message that LGBTQ people are specifically associated with “sexually transmitted diseases,” contributing to a hostile and stigmatizing climate for LGBTQ students.

3. South Carolina schools are not safe for most LGBTQ students. According to a study by GLSEN, nearly 90% of LGBTQ students surveyed in South Carolina regularly heard homophobic remarks from students, and 76% experienced verbal harassment in the past year due to their sexual orientation. Research shows that laws selectively restricting the discussion of “homosexuality” in public schools, like South Carolina’s Anti-LGBTQ Curriculum Law, harm LGBTQ students by fostering school climates that stigmatize and isolate LGBTQ youth, putting them at heightened risk of bullying and harassment.

4. The Anti-LGBTQ Curriculum Law, a provision of the Comprehensive Health Education Act, was enacted in 1988 to express moral disapproval of “homosexual relationships” and of non-heterosexual people, and to discriminate against them. It does not serve any legitimate state purpose.

5. Plaintiffs have sustained and will sustain irreparable harm due to the Anti-LGBTQ Curriculum Law. The Court should declare this law unconstitutional and enjoin its

enforcement.

JURISDICTION AND VENUE

6. Plaintiffs bring this action under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution.

7. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343. It may issue a declaratory judgment and grant relief under 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant resides in the District of South Carolina and the events or omissions giving rise to Plaintiffs' claims took place in the District of South Carolina. Venue is proper in the Charleston Division of the District of South Carolina because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Charleston County, South Carolina, and Plaintiff Gender and Sexuality Alliance is an organization in Charleston County.

PARTIES

9. Plaintiff Gender and Sexuality Alliance (the "GSA"), an unincorporated association, is a student organization for high school students at Charleston County School of the Arts, a public magnet school in the Charleston County School District for grades six through twelve. One of the GSA's goals is to ensure that LGBTQ students are treated fairly and equally in all respects at school. The GSA is open to all high school students at Charleston County School of the Arts, and its membership includes LGBTQ students who have been and will be harmed by the Anti-LGBTQ Curriculum Law.

10. Plaintiff Campaign for Southern Equality is a nonprofit organization whose purpose is to promote full LGBTQ equality across the South and to empower LGBTQ people in the South to achieve equality in their hometown. It is a 501(c)(3) organization based in North

Carolina with members throughout the South, including in South Carolina. The membership of Campaign for Southern Equality includes LGBTQ public school students in South Carolina who have been and will be harmed by the Anti-LGBTQ Curriculum Law.

11. Plaintiff South Carolina Equality Coalition, Inc. (“South Carolina Equality Coalition”) is a nonprofit organization whose purpose includes advancing the civil and human rights for gay, lesbian, bisexual, and transgender South Carolinians. It is a 501(c)(4) organization with members throughout the State. The membership of South Carolina Equality Coalition includes LGBTQ public school students who have been and will be harmed by the Anti-LGBTQ Curriculum Law.

12. Defendant Molly Spearman is sued in her official capacity as the State Superintendent of Education. The responsibilities of the State Superintendent of Education, an elected official, include exercising supervision over the public school system as the “chief administrative officer of the public education system of the State.” S.C. Const. art. XI, § 2. The Superintendent also has authority to “[a]dminister, through the State Department of Education, all policies and procedures adopted by the State Board of Education.” S.C. Code § 59-3-30(6). The State Board of Education (“Board of Education” or “Board”) is the policymaking body for public education in South Carolina, and it is responsible for “adopt[ing] policies, rules, and regulations . . . for the government of the free public schools.” S.C. Code § 59-5-60(1). The Board possesses authority to “enforce courses of study,” S.C. Code § 59-5-60(6), including comprehensive health education compliant with state law, S.C. Code § 59-32-30; S.C. Code Regs. 43-234(V)(B)(8). The State Department of Education is required to “assure district compliance” with the statutory requirements for comprehensive health education, S.C. Code § 59-32-60, which includes the Anti-LGBTQ Curriculum Law.

FACTUAL BACKGROUND

The Anti-LGBTQ Curriculum Law

13. In 1988, South Carolina enacted the Comprehensive Health Education Act, codified at S.C. Code §§ 59-32-5 *et seq.* The Act requires local school boards to adopt and implement a program of instruction in comprehensive health education, which includes subjects such as community health, growth and development, personal health, prevention and control of diseases and disorders, safety and accident prevention, and mental and emotional health. *See id.* § 59-32-30. The Act provides for “age-appropriate, sequential instruction,” *id.* at § 59-32-10(1), and the program for middle and high school students must also provide what is commonly referred to as sex education, including instruction on “reproductive health” and “sexually transmitted diseases,” among other topics. *See id.* at 59-32-30(A)(2) and (3). Instruction under the Act may also include “family life education,” which includes instruction to “develop an understanding of the physical, mental, emotional, social, economic and psychological aspects of close personal relationships” and to “support the development of responsible personal values and behavior and aid in establishing a strong family life for themselves in the future and emphasize the responsibilities of marriage,” among other topics. *Id.* §§ 59-32-10(3), 59-32-30(A)(2).

14. According to the Act, “comprehensive health education” “is planned and carried out with the purpose of maintaining, reinforcing, or enhancing the health, health-related skills, and health attitudes and practices of children and youth that are conducive to their good health and that promote wellness, health maintenance, and disease prevention.” S.C. Code § 59-32-10(1).

15. The Act contains a discriminatory provision, the Anti-LGBTQ Curriculum Law, which singles out and restricts the discussion of “homosexual relationships” in health education.

It provides that a program of instruction under the Comprehensive Health Education Act “may not include a discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases.” S.C. Code § 59-32-30(A).

16. The Act further provides that “[a]ny teacher violating the provisions of this chapter or who refuses to comply with the curriculum prescribed by the school board as provided by this chapter is subject to dismissal.” S.C. Code § 59-32-80.

The Anti-LGBTQ Curriculum Law Harms LGBTQ Students

17. The Anti-LGBTQ Curriculum Law harms LGBTQ students. It stigmatizes them by creating a state-sanctioned climate of discrimination in schools and denies LGBTQ students health education opportunities equal to those of their heterosexual peers. Students who are not LGBTQ are not singled out for stigma or denied health education opportunities.

18. The Anti-LGBTQ Curriculum Law communicates to teachers and students that there is something so shameful, immoral, or dangerous about “homosexual relationships” that discussion of LGBTQ people or same-sex relationships must be explicitly restricted. The enforcement of the statute demeans LGBTQ students by conveying a message that they are of less value than heterosexual students. By enshrining into state law that LGBTQ people may not be discussed on an equal basis as heterosexual people, the system of public education instructs all students that LGBTQ people are a dangerous, immoral class of people from whom other students must be shielded. Stigma is associated with lower self-esteem and greater risk-taking behaviors, and it can have devastating and enduring impacts on LGBTQ youth, who face dramatically higher risks for suicide, suicidal ideation, and depression compared to their heterosexual peers. Data from the U.S. Centers for Disease Control indicate that nationally, 29%

of LBG youth had attempted suicide at least once *in the prior year*, compared to 6% of heterosexual youth.

19. The Anti-LGBTQ Curriculum Law fosters inaccurate stereotypes by restricting what schools can discuss about LGBTQ people, without imposing any comparable restriction of discussion about heterosexual people. It prevents LGBTQ students from having equal educational opportunities and exacerbates the heightened risks LGBTQ students already face with regard to their health and safety.

20. By carving out an exception that applies only in the context of discussions “concerning sexually transmitted diseases,” S.C. Code § 59-32-30(A)(5), the Anti-LGBTQ Curriculum Law stigmatizes LGBTQ people by suggesting that “homosexual relationships” are associated with “sexually transmitted diseases,” and that this is the only information worth learning about them. Prohibiting teachers from discussing LGBTQ people in other contexts of health education undermines their ability to correct negative stereotypes.

21. The Anti-LGBTQ Curriculum Law also fosters a school climate that stigmatizes and isolates LGBTQ youth, putting them at heightened risk of bullying and harassment. LGBTQ students in states with laws like South Carolina’s Anti-LGBTQ Curriculum Law are more likely to report a hostile school climate.

22. Recent data from GLSEN demonstrate that South Carolina schools are not safe for most LGBTQ students. Nearly 90% of LGBTQ middle and high school students surveyed regularly heard homophobic remarks such as “fag” or “dyke” from students. In reporting on their experiences *in the past year*, 76% of LGBTQ students surveyed in South Carolina experienced verbal harassment, 34% experienced physical harassment, and 14% were physically assaulted due to their sexual orientation.

23. LGBTQ students who lack support and face harassment and discrimination at school experience increased isolation, depression, and risk of suicide and are more likely than their peers to miss school, often in an effort to avoid abuse. These negative experiences can have serious long-term negative impacts on these students' health, education, and well-being.

24. By contrast, LGBTQ students who attend schools allowing equal discussion about their identities on par with the recognition and discussion of heterosexual identities are safer and healthier. LGBTQ-inclusive curricula are associated with higher reports of safety, and lower levels of bullying in schools.

25. A positive school climate has been associated with decreased depression, suicidal feelings, substance use, and unexcused school absences among LGBTQ students. LGBTQ students in a positive school climate also perform better academically and feel a greater sense of belonging in their school community.

26. Through the Anti-LGBTQ Curriculum Law, and the State Superintendent of Education's enforcement of it, Defendant discriminates against LGBTQ students and violates their well-established legal obligations to provide equal educational opportunities to all students, including students who are LGBTQ.

27. In a February 18, 2020 opinion, the South Carolina Attorney General's Office stated that "a court likely would conclude that § 59-32-30(A)(5) violates the Equal Protection Clause." The opinion noted that "a court is likely to adopt the analysis that Section 59-32-30(A)(5) overtly discriminates on the basis of sexual orientation" and "would likely determine that such discrimination does not serve a legitimate state interest."

Plaintiff GSA

28. The GSA is a student organization for high school students at Charleston County

School of the Arts. The GSA and its activities are led by students, and the organization meets weekly on school grounds. The GSA's goals include providing support to LGBTQ and allied students, building community, educating the GSA members and the broader school community, and ensuring the equal treatment of LGBTQ students at school. The Anti-LGBTQ Curriculum Law inflicts serious and ongoing harm against the GSA's members.

29. E.B., a fifteen-year-old tenth grader, is the GSA's president. E.B. identifies as "queer" and non-binary and uses the pronouns "they" and "them." E.B. considers their school – including the teachers and administration – to be generally supportive of LGBTQ students. But the school and district have no authority to adopt health education curriculum that would violate the State's Anti-LGBTQ Curriculum Law. The Charleston County School District's Policy Manual cites the Comprehensive Health Education Act and forbids the superintendent from permitting an educational program that fails to "[p]rovide comprehensive health education for all grades which complies with state . . . law."

30. The GSA brings this action on behalf of its members. Many GSA members had a sex education class as part of their middle school health instruction, which was subject to the Anti-LGBTQ Curriculum Law. When E.B. was in eighth grade, one of their classmates asked a question about a same-sex relationship during the sex education class, and the instructor responded, "we can't really talk about that." When this happened, E.B. and their classmate, who is also a current member of the high school GSA, felt embarrassed and ashamed. Some GSA members have completed their required high school health education curriculum and have been further harmed by the Anti-LGBTQ Curriculum Law. Some LGBTQ members of the GSA have not yet completed the high school health education curriculum and will face further stigma and be denied equal opportunities because of the Law.

Plaintiffs Campaign for Southern Equality and South Carolina Equality Coalition

31. Campaign for Southern Equality is a nonprofit organization that provides advocacy and support to achieve legal and lived equality for LGBTQ people throughout the South and to empower LGBTQ people in the South to achieve equality in their hometown. One of its programs is the Supportive Schools Program, which provides training and policy guidance to assist schools in becoming more inclusive and welcoming for LGBTQ students. Campaign for Southern Equality has members throughout the South, including in South Carolina. It brings this action on behalf of its members, who are experiencing serious and ongoing harm from the Anti-LGBTQ Curriculum Law.

32. South Carolina Equality Coalition is a statewide nonprofit organization whose purpose includes advancing civil and human rights for gay, lesbian, bisexual, and transgender South Carolinians. South Carolina Equality Coalition has members throughout the State. It brings this action on behalf of its members, who are experiencing serious and ongoing harm from the Anti-LGBTQ Curriculum Law.

33. John Doe is member of Campaign for Southern Equality and South Carolina Equality Coalition. He is a twelve-year-old student in seventh grade at a public middle school in the Greenville County School District in Greenville, South Carolina.² John identifies as gay and is perceived as gay by other students. John and his family are very involved in their community. John's mother is also a member of Campaign for Southern Equality and South Carolina Equality Coalition.

34. In elementary school, John experienced bullying based on his perceived sexual orientation. For example, in fourth grade, a classmate called John a "redneck faggot."

² To protect his privacy, John is referred to with a pseudonym rather than his initials.

35. When John entered middle school in sixth grade, he experienced further bullying based on his perceived sexual orientation. Classmates frequently called John a “faggot,” and John was hit by other students. On one occasion, a classmate threw a Clorox wipe at John, told him that he was diseased and that the stairway to hell was “rainbow-colored,” and then kicked John in the chest.

36. John first learned about the Anti-LGBTQ Curriculum Law when he took a required middle school health program in sixth grade that included sex education consistent with the Anti-LGBTQ Curriculum Law. The program was taught as part of John’s gym class. At the start of the class, John’s teacher told the students that the class would not be talking about gay people. The teacher then played an educational video about personal space that portrayed a man encroaching on another man’s personal space. A student reacted to this video with an expression of disgust, saying “eww, gay.” The teacher did not object or otherwise respond to that student’s comment.

37. John experienced bullying and harassment during the sex education class. John’s classmates called him a “faggot” during class, in front of the teacher. A student shouted, “you have no penis” and stated that John should “sit with the girls” for sex education, which was segregated by gender.

38. When John’s mother emailed John’s teacher to express her concerns about the harassment that John had endured, the teacher explained in his reply that “unfortunately it does happen and I can not [sic] control what students say or do.”

39. John believes that the Anti-LGBTQ Curriculum Law contributed to the bullying and harassment he experienced during his sex education class and the teacher’s failure to address it.

40. As with all other school districts in South Carolina, Greenville County School District lacks authority to adopt curriculum that would violate the Anti-LGBTQ Curriculum Law. The Greenville School Board’s official Sexuality Education policy states that its “comprehensive plan of instruction shall . . . comply with the South Carolina Comprehensive Health Education legislation” and that “Greenville County Schools will comply with all provisions of the South Carolina Comprehensive Health Education Act.”

41. John will attend a public high school in the Greenville School District, and he will again take health education in high school. Because that curriculum will be subject to the Anti-LGBTQ Curriculum Law, John will face further unequal treatment and stigma, and he will again be denied equal education opportunities based on his sexual orientation.

CLAIM FOR RELIEF

**U.S. Constitution Amendment XIV, 42 U.S.C. § 1983
Denial of Equal Protection on the Basis of Sexual Orientation**

42. Plaintiffs incorporate by reference and reallege the allegations in paragraphs 1 to 41 as though fully set forth here.

43. Plaintiffs state this claim against Defendant in her official capacity for purposes of seeking declaratory and injunctive relief. At all relevant times, Defendant has acted and continues to act under color of state law.

44. The Fourteenth Amendment provides that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

45. S.C. Code § 59-32-30(A) violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by discriminating against non-heterosexual students, both facially and as applied.

46. Pursuant to her statutory and regulatory authority and obligations, Defendant

enforces the Anti-LGBTQ Curriculum Law.

47. Plaintiffs' members, who include LGBTQ public school students in South Carolina, have been irreparably harmed by the Anti-LGBTQ Curriculum Law, and will face further irreparable harm if the Anti-LGBTQ Curriculum Law is not enjoined.

48. The Anti-LGBTQ Curriculum Law singles out non-heterosexual students for differential and adverse treatment on the basis of their sexual orientation. The law allows discussion of "homosexual relationships" only in the context of instruction concerning sexually transmitted diseases without imposing any similar restriction on discussion of heterosexuality or heterosexual people. The Law stigmatizes LGBTQ students, encourages their teachers and classmates to view them as inferior, harms their long-term health and well-being, and denies them equal educational opportunities on the basis of their sexual orientation.

49. The Anti-LGBTQ Curriculum Law has contributed to the creation of an anti-LGBTQ climate in many South Carolina public schools. It fosters a culture of silence and non-acceptance of LGBTQ students and discourages school officials from complying with their obligations to treat all students equally, without regard to sexual orientation.

50. The Anti-LGBTQ Curriculum Law does not serve any legitimate purpose, pedagogical or otherwise, and is instead rooted in animus toward and moral disapproval of LGBTQ people.

51. The Anti-LGBTQ Curriculum Law cannot withstand any level of constitutional scrutiny. Although the Anti-LGBTQ Curriculum Law fails even rational basis review, it requires heightened scrutiny. First, discrimination based on sexual orientation is a form of discrimination based on sex, which requires at least intermediate scrutiny. Second, government discrimination based on sexual orientation bears all the indicia of a classification requiring heightened scrutiny

on its own terms. LGBTQ people are a politically vulnerable minority who have suffered a long history of discrimination based on their sexual orientation, which is a characteristic that is resistant to voluntary change, is fundamental to identity, and has no bearing on one's ability to contribute to society.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as follows:

- A. Declaring that S.C. Code § 59-32-30(A) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
- B. Permanently enjoining Defendant and her agents, officers, employees, successors, and all persons acting in concert with each or any of them from enforcing S.C. Code § 59-32-30(A);
- C. Awarding Plaintiffs the costs incurred in pursuing this action, including reasonable attorneys' fees under 42 U.S.C. § 1988 and other applicable laws; and
- D. Granting such other and further relief as the Court deems just and proper.

DATED: February 26, 2020

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP
/s/Kevin Hall
Kevin Hall, D.S.C. I.D. No. 5375
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
Tel: (803) 454-7710 | Fax: (803) 454-6509
kevin.hall@wbd-us.com

BRAZIL & BURKE, PA
Meghann Burke*
77 Central Ave., Suite E
Asheville, North Carolina 28801
Tel: (828) 255-5400 | Fax: (828) 258-8972
meghann@brazilburkelaw.com

Clifford Rosky*
383 South University Street
Salt Lake City, Utah 84112
Tel: (801) 581-7352 | Fax: (801) 585-0077
clifford.rosky@gmail.com

* *Pro hac vice application forthcoming*

NATIONAL CENTER FOR LESBIAN RIGHTS
Julie Wilensky*
870 Market Street, Suite 370
San Francisco, CA 94102
Tel: (415) 392-6257 | Fax: (415) 392-8442
jwilensky@nclrights.org

LAMBDA LEGAL DEFENSE AND EDUCATION
FUND, INC.

Peter C. Renn*
4221 Wilshire Blvd., Suite 280
Los Angeles, CA 90010
Tel: (213) 382-7600 | Fax: (213) 351-6060
prenn@lambdalegal.org

Tara L. Borelli*
730 Peachtree Street, NE, Suite 640
Atlanta, Georgia 30308
Tel: (470) 225-5341 | Fax: (404) 897-1884
tborelli@lambdalegal.org

Puneet Cheema*
1776 K Street, NW, 8th floor
Washington, DC 20006
Tel: (202) 804-6245 | Fax: (213) 351-6060
pcheema@lambdalegal.org

Counsel for Plaintiffs