UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

EQUALITY FLORIDA, et al,

Plaintiffs,

vs. CASE NO.: 4:22-CV-00134-AW-MJF

RONALD D. DESANTIS, in his official capacity as Governor of Florida, et al,

Defendants.
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ST. JOHNS COUNTY SCHOOL BOARD'S MOTION TO DISMISS THE AMENDED COMPLAINT

Defendant, St. Johns County School Board ("St. Johns" or "Board"), hereby files its Motion to Dismiss the Amended Complaint ("Complaint") pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted, and in support thereof states:

I. INTRODUCTION AND BACKGROUND

This case arises out of Plaintiffs' challenge to what they, activists, and the media have colloquially coined the "Don't Say Gay" law. While an effective marketing campaign to manufacture media, celebrity, and public outrage, nothing in H.B. 1557 goes so far. The gravamen of Plaintiffs' challenges lie with the prohibition on providing classroom instruction to kindergarten through grade three students on

sexual orientation or gender identity, or in a manner that is not age or developmentally appropriate for students, in conformity with state standards.

In an effort to support their facial and as-applied challenges against the Board, Plaintiffs allege an abundance of immaterial personal background information, trials, tribulations, and a long list of subjective fears, potential speculative harm, chilling effects, and other potential adverse consequences.[1] Notably absent, however, are any allegations of a custom, pattern, or practice by the Board that was a driving force behind any act or omission that caused a cognizable as-applied constitutional harm. Plaintiffs have no constitutional right to be free from an unreasonable fear of potential harm, and no right of financial recovery against the Board for the speculative ramifications of the Board following the yet-to-be implemented state law. The overwhelming majority of the claims asserted against the Board are brought by Plaintiffs who reside in other counties and who are not alleged to have any employment, communication, children enrolled in St. Johns' schools, or any contact with the Board whatsoever. Those few that have attempted to establish a relationship with the Board have not alleged a concrete or particularized injury in fact; thus none of the Plaintiffs have standing to assert their as-applied claims against the Board. Only the VanTice plaintiffs and Equality

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[1] Most of Plaintiffs' hypotheticals purportedly causing constitutional harm have nothing to do with "classroom instruction" by Board employees or third parties. Their overreach in this regard is unpersuasive.

Florida Plaintiffs have even attempted to establish standing to assert claims for prospective relief.

Plaintiffs' impermissibly broad shotgun pleading frustrates the Board's ability to respond, but clearly includes five Counts against it by seventeen separate Plaintiffs, totaling forty-seven (47) separate claims.[2] The Complaint unnecessarily multiplies these proceedings because the Board had no involvement in the passage of H.B. 1557, and its involvement with H.B. 1557, once it becomes law will simply be to follow its provisions, unless and/or until enjoined by this or another court. It is axiomatic that the Board would comply with any statewide injunction issued by this Court enjoining, in whole or in part, implementation of the challenged law. Plaintiffs' efforts to assert "one size fits all" claims against 18 defendants is inappropriate.

More specifically, Plaintiffs allege the following claims against the Board, each of which includes facial and as-applied challenges against the Board:

- Count I – Due Process Clause of the Fourteenth Amendment – Vagueness – by seventeen (17) plaintiffs;
- Count II – Equal Protection Clause of the Fourteenth Amendment – Discrimination – by thirteen (13) plaintiffs;
- Count III – First Amendment – Right to Receive Information – by six (6) plaintiffs;
- Count IV – First Amendment – Right to Freedom of Expression – by six (6) plaintiffs; and

2 Count VI, brought under Title IX, does not name the Board as a Defendant and therefore is not addressed in this Motion.

- Count V – First Amendment – Overbreadth – by five (5) plaintiffs.

Plaintiffs' Complaint fails to state a claim upon which relief may be granted because their pleading deficiencies include procedural and substantive failures. Procedural failures include the failure to allege a short plain statement of their entitlement to relief, and the filing of an impermissible shotgun pleading. Substantive failures include a lack of standing, and a failure to assert acts or omissions caused by Board custom, policy, or practice that caused an as-applied constitutional deprivation. Plaintiffs' fears, concerns, and speculation are not actionable in the as-applied claims asserted against the Board. Plaintiffs' Complaint should be dismissed, and where indicated, leave to amend would be futile and dismissal should be with prejudice.

II. STATEMENT OF THE ALLEGED FACTS[3]

This case arises from Plaintiffs' facial and as-applied challenges to Florida House Bill 1557 ("H.B. 1557"), which was signed into law by Governor Ron DeSantis. Plaintiffs are organizations, students, parents, and teachers. [D.E. 47 at ¶¶ 24–81]. Defendants include the Governor, education related state agencies and personnel, and several individual school districts, including the St. Johns County School Board. *Id.* at ¶¶ 82–93. Plaintiffs allege H.B. 1557 is motivated by anti-

[3] The Board disputes and intends to refute many of Plaintiffs' claims at the appropriate time, but as it must, it accepts the allegations as true for the purposes of this Motion only.

LGBTQ animus and a discriminatory purpose, it unconstitutionally targets members of that community, suffers from impermissible vagueness and overbreadth, and causes harm to LGBTQ teachers, students, parents, allies, and organizations who advocate on their behalf. *E.g.*, *id.* at ¶¶ 1–23, 94–260. Plaintiffs have not, and cannot, allege the Board procured, passed, or signed H.B. 1557 into law.

In each of the five counts against St. Johns alleging different legal theories, Plaintiffs assert facial and as-applied challenges to the law. More specifically, all Plaintiffs allege a violation of the Due Process Clause of the Fourteenth Amendment claiming the law is unconstitutionally vague. *Id.* at ¶¶ 261–72 (Count I). Plaintiffs M.A., Moricz, Doe, Dan and Brent VanTice, Casares, Feinberg, Morrison, Houry, Berg, Equality Florida, and Family Equity allege a violation of the Equal Protection Clause claiming discrimination. *Id.* at ¶¶ 273–85 (Count II). Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality allege a violation of the First Amendment right to Receive Information. *Id.* at ¶¶ 286–92 (Count III). Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality allege a violation of the First Amendment Right to Freedom of Expression. *Id.* at ¶¶ 293–99 (Count IV). Finally, Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality allege a violation of the First Amendment claiming the law is unconstitutionally overbroad. *Id.* at ¶¶ 300–07 (Count V). All Plaintiffs seek declaratory judgment,

injunctive relief, nominal, compensatory, statutory, punitive damages, costs and attorney's fees, and any other available relief against St. Johns. *Id.* at ¶¶ 313–17.

Plaintiff Equality Florida alleges associational standing against St. Johns on behalf of its members Dan and Brent VanTice, and standing as a LGBTQ advocacy organization. *Id.* at ¶¶ 25–26, 68. Plaintiffs Dan and Brent VanTice allege standing due to their two children attending St. Johns County District school. *Id.* at ¶¶ 67–68. However, none of the other Plaintiffs, including Equality Florida suing in its own name, even attempt to allege any contact, communication, or relationship with St. Johns: they do not identify students or parents of students enrolled in, individuals employed by, or any connection whatsoever with St. Johns County District schools. *Id.* at ¶¶ 24–81. Family Equality, suing in its own name only, does not allege it has any members in St. Johns County, Florida. *Id.* at ¶¶28–29.

Despite 114 pages and 307 incorporated paragraphs of purported facts alleged against St. Johns—the overwhelming majority of which have nothing to do with the Board—the Complaint is silent as to any alleged Board policy, custom, or practice that has caused an as-applied constitutional deprivation. The Complaint fails to allege any acts or omissions by the Board against Equality Florida as an association, the VanTices, or any other Plaintiff. Instead, Equality Florida identifies its efforts to challenge H.B. 1557 and the harm it claims to have suffered generally as a result

of its passage. *Id.* at ¶¶ 26–27, 242–55.[4] Indeed the VanTice Plaintiffs, and by extension, their association Equality Florida's, allegations rely on the VanTice's "worry," *Id.* at ¶ 196, uncertainty, *Id.* at ¶ 203, anticipation, *Id.* at ¶ 205, "fear," *Id.* at ¶ 208, misunderstanding by their minor child, *Id.* at ¶ 204, and rhetorical questions. *Id.* at ¶ 208. Equality Florida, in its status as an advocacy organization, has not identified any students, employees, allies, or members with any contact with St. Johns County School Board *other than* the VanTice parent - plaintiffs.

III. MEMORANDUM OF LAW

A. Standard of Review

The Court is well-versed on the motion to dismiss standard. It is sufficient to state that in order to overcome a motion to dismiss, a plaintiff must allege sufficient facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Granting a motion to dismiss is appropriate if it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations of the complaint. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). The allegations of the complaint must be deemed true and construed in a light most favorable to the plaintiff. *Lowell v. Am. Cyanamid Co.,* 177 F.3d 1228, 1229 (11th Cir. 1999). Where a plaintiff is unable to state a cause of

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4 There is no conceivable basis how the diversion of funds and resources to "combat an unjust law" can be attributed to the St. Johns County School Board. [D.E. 47 at ¶¶ 242–55].

action and further leave to amend the complaint is futile, claims should be dismissed with prejudice. *See Cockrell v. Sparks,* 510 F.3d 1307, 1310 (11th Cir. 2007).

B. The Complaint Is an Impermissible Shotgun Pleading

The Complaint should be dismissed because it is a quintessential "shotgun pleading," in violation of Rules 8 and 10(b) of the Federal Rules of Civil Procedure. "Complaints that violate either Rule 8(a)(2) or Rule 10(b), or both, are often disparagingly referred to as 'shotgun pleadings.'" *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d. 1313, 1320 (11th Cir. 2015). The Eleventh Circuit has identified four rough categories of shotgun pleadings: (1) a complaint containing multiple counts adopting the allegations of all preceding counts; (2) a complaint replete with conclusory, vague, and immaterial facts not connected to any particular cause of action; (3) a complaint that does not separate into a different count each cause of action or claim for relief; and (4) a complaint that asserts multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions. *Id.* at 1321–23. The Complaint fails in each regard.

More specifically, each Count of the Complaint re-alleges and incorporates by reference each of the preceding paragraphs, resulting in the final Count against the Board—Count V—incorporating the prior 299 paragraphs. The overwhelming majority of these incorporated paragraphs have no application to, or bearing on, the

claims against the Board. "[I]t is exceedingly difficult, if not impossible to know which allegations pertain to that count (according to its label), to separate the wheat from the chaff." *Keith v. DeKalb Cnty.*, 749 F.3d 1034, 1045 n.39 (11th Cir. 2014). This is particularly prejudicial because: (1) the facial challenges to H.B. 1577 are mere surplusage when alleged against the Board; (2) the Complaint is silent as to any act or omission by the Board that resulted in a constitutional deprivation; (3) the Complaint is silent as to any Board custom, policy, or practice that resulted in a constitutional deprivation; and (4) Plaintiffs seek monetary damages against the Board, but have failed to allege any act or omission by the Board entitling them to the recovery of nominal, compensatory, and punitive damages for resulting from application of H.B. 1557 to them. [D.E. 47 at ¶ 315]. Plaintiffs apparent efforts to overwhelm the Board and this Court by incorporating extraneous surplusage and allegations wholly unrelated to St. Johns neither states a claim nor does it excuse Plaintiffs from their pleading obligations.[5]

The Complaint is wrought with paragraph after paragraph of immaterial background regarding the challenges Plaintiffs have allegedly suffered well before passage of H.B. 1557 and struggles that are all entirely unrelated to the Board. While no doubt intended to score points and obtain sympathy, these immaterial facts are

[5] Plaintiffs efforts in this regard flirt with, if not establish, the prohibited vexatious multiplication of the proceedings against the Board. *See* 28 U.S.C. §1927.

mere political theatre and are entirely irrelevant to the claims asserted against St. Johns and Plaintiffs' obligation to allege a short plain statement of facts entitling them to relief.

Additionally, each Count contains numerous different claims; perhaps most egregiously, Count I consists of claims by 17 plaintiffs against 18 defendants, totaling 306 separate and distinct claims consisting of facial and as-applied claims by each Plaintiff against each Defendant. Each of the subsequent counts are similarly flawed.

Finally, Plaintiffs' Prayer for Relief seeks uniform damages without regard to each claim or defendant, and therefore fails to comply with Rule 8 because the damages available to 17 Plaintiffs' six claims and against 18 individual Defendants, if any, differ significantly.

C. Plaintiffs Cannot Recover Punitive Damages Claims Against the Board

Plaintiffs' punitive damages claims against the Board are frivolous because an abundance of well-settled authority conclusively establishes punitive damages are not recoverable from a government entity, including Section 1983 claims. *E.g.*, *Kentucky v. Graham*, 473 U.S. 159, 167 n.13 (1981); *Newport v. Fact Concerts, Inc.,* 453 U.S. 247 (1981); *see also, e.g.*, *Gonzalez v. Lee Cnty. Housing Auth.*, 161 F.3d 1290, 1299 n.30 (11th Cir. 1998); *Doe v. Sch. Bd. of Miami-Dade Cnty.*, 403 F. Supp. 3d 1241, 1269 (S.D. Fla. 2019); *Kubany v. Sch. Bd. of Pinellas Cnty.*, 839 F. Supp.

1544, 1551 (M.D. Fla. 1993). Plaintiffs' punitive damages claims against the Board should be dismissed with prejudice.

D. Plaintiffs Cannot Recover Monetary Damages Against the Board Because H.B. 1557 Is Presumed Constitutional Until Judicially Declared Otherwise

Plaintiffs cannot recover monetary damages from the Board for its compliance with Florida law. "[S]tate statutes, like federal ones, are entitled to the presumption of constitutionality until their invalidity is judicially declared." *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 153 (1944); *see also Pettway v. Am. Cast Iron Pipe Co.*, 494 F.2d 211, 254 (5th Cir. 1974).[6] "Special circumstances" exist foreclosing the recovery of monetary damages where an agency followed state law that had not been previously declared unconstitutional. *See Pettway*, 494 F.2d at 254. Even assuming St. Johns applied H.B. 1557 to any Plaintiff with standing, and that the application resulted in an as-applied constitutional deprivation, it would create an unjust result to impose monetary damages against it for applying a law it did not procure, draft, pass, and which it was legally obligated to follow. *See Id*.

This is not a case of first impression in this Court. In *Florida Education Association v. State of Florida, Department of Education*, this Court dismissed the plaintiff's monetary damages claims under Title VII against the Department of

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6 Decisions by the former Court of Appeals for the Fifth Circuit decided prior to October 1, 1981, are binding precedent within the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

Education and individual Florida school boards for failure to state a claim upon which relief could be granted, where the plaintiff alleged compliance with state law resulted in unconstitutional disparate impact. Case No. 4:17-cv-414-RH/CAS, D.E. 142 (N.D. Fla. June 8, 2018). Like in that case, the "special circumstances" exception here "fits like a glove," and the Complaint does not state a claim for monetary damages against the Board for simply following a state statute that has yet to be declared unconstitutional. *Id.* at 8. Plaintiffs' compensatory and statutory damages claims against the Board should be dismissed with prejudice.

E. All Plaintiffs Lack Standing to Sue the Board

"It goes without saying that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshhold [sic] requirement imposed by Article III of the Constitution by alleging an actual case or controversy." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). To establish a case or controversy under Article III, and thus satisfy the threshold standing requirement, "the plaintiff must have a personal stake in the case." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) (internal quotations and citation omitted). "To demonstrate their personal stake, plaintiffs must be able to sufficiently answer the question: '"What's it to you?"'" *Id.* (quoting Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983)). "If 'the plaintiff does not claim to have suffered an injury *that the defendant caused* and

the court can remedy, there is no case or controversy for the federal court to resolve.'" *Id.* (emphasis added) (quoting *Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 333 (7th Cir. 2019)).

"Under Article III, federal courts do not adjudicate hypothetical or abstract disputes. Federal courts do not possess a roving commission to publicly opine on every legal question. Federal courts do not exercise general legal oversight of the Legislative and Executive Branches, or of private entities. And federal courts do not issue advisory opinions. As Madison explained in Philadelphia, federal courts instead decide only matters 'of a Judiciary Nature.'" *Id.* (quoting 2 Records of the Federal Convention of 1787, p. 430 (M. Farrand ed. 1966)).

1. Other Than Dan and Brent VanTice and Equality Florida in Its Associational Capacity, the Remaining Plaintiffs Have Not Even Attempted to Allege Standing Against St. Johns

None of the Plaintiffs, other than Dan and Brent VanTice and Equality Florida in its associational capacity[7] (for this argument only, "Plaintiffs"), have even attempted to allege standing to sue the Board, and therefore, the fourteen remaining Plaintiffs have failed to state a claim upon which relief may be granted. In Count I, all Plaintiffs seek the full panoply of damages from the Board, in Counts II–V, a

7 Equality Florida in its associational capacity has attempted to assert standing through its members, Dan and Brent VanTice. It has not, however, identified any student, employee, or other members with any contact with St. Johns *other than* the VanTice plaintiffs..

subset of Plaintiffs seek the same. None of these Plaintiffs have alleged any contact, contract, business, members, or other relationship, employment, or privity with the Board whatsoever, and therefore, do not "have a personal stake in the case." *TransUnion*, 141 S. Ct. at 2203. Although they allege claims against other school boards with which they have had contact, their claims against St. Johns should be dismissed.

2. Dan and Brent VanTice, and Equality Florida in Its Associational Capacity Have Not Alleged a Concrete and Particularized Injury

The doctrine of standing requires "that a case embody a genuine, live dispute between adverse parties" by insisting that a litigant "prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020) (quoting *Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013)); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). A constitutional injury must not only be concrete and particularized, but it must also be "actual or imminent." *Lujan*, 504 U.S. at 560. It cannot be "conjectural or hypothetical." *Id.* A plaintiff must show more than "an abstract and generalized harm" to his interest in the proper application of the law, or it does not count as an injury in fact, and fails to establish standing. *Carney*, 141 S. Ct. at 498.

As a threshold matter, nether the VanTices nor Equality Florida in its associational capacity have alleged an act or omission by the Board that has caused them as-applied constitutional harm. Instead, Plaintiffs allege potential, speculative, and intangible harm. Indeed the allegations of the VanTices, and by extension, the association Equality Florida suing on their behalf, rely on the VanTice's "worry," [D.E. 47 at ¶ 196], uncertainty, *Id.* at ¶ 203, anticipation, *Id.* at ¶ 205, "fear," *Id.* at ¶ 208, misunderstanding by their minor child, *Id.* at ¶ 204, and rhetorical questions. *Id.* at ¶ 208. These Plaintiffs have alleged no concrete and particularized injury-in-fact, and their subjective concerns, fears, and questions, do not satisfy the threshold standing requirement to open the courthouse's doors. These Plaintiffs' as-applied claims should be dismissed.

F. Plaintiffs Failed to Allege a Board Custom, Policy, or Practice to Establish *Monell* Liability

It is well-settled that "a plaintiff cannot rely on *respondeat superior* theory to hold a [governmental entity] liable for individual actions of its officers." *Busby v. City of Orlando*, 931 F.2d 764, 776 (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978)). "Instead, in order to recover against a [governmental entity], a plaintiff must establish that the alleged [unconstitutional conduct] occurred pursuant to a custom or policy of the [governmental entity]." *Id.*; *accord Lake Cnty. Educ. Ass'n v. Sch. Bd. of Lake Cnty.*, 360 So. 2d 1280, 1284 (Fla. 2d DCA 1978). Under Florida law, "the school board . . . clearly has *final* decision making authority."

Johnson v. Dade Cnty. Pub. Schs., No. 91-2952-CIV-DAVIS, 1992 WL 466902, at *4 (S.D. Fla. Nov. 25, 1992); *see, e.g.*, §§ 1001.41, 1001.43 1012.22, Fla. Stat. In addition to Plaintiffs' failure to allege any Board action or omission causally related to their purported as-applied constitutional deprivations, Plaintiffs have ignored entirely their obligation to establish that their purported constitutional harm was caused by an official Board custom, policy, or practice and point to no others who purportedly suffered similar as-applied constitutional deprivations by St. Johns. To the extent they argue the Board's intent to follow Florida law once implemented establishes a custom policy or practice for as-applied constitutional deprivations occurring before the implementation of H.B. 1557, their argument would be unpersuasive.

G. Plaintiffs Have Failed to State a Claim for the Facial Unconstitutionality of H.B. 1557 Under Any Theory

Defendants Ron DeSantis, in his official capacity as Governor of Florida, Florida State Board of Education, Thomas R. Grady, Ben Gibson, Monesia Brown, Esther Byrd, Grazie P. Christie, Ryan Petty, Joe York, Jacob Oliva, in his official capacity as commissioner of Education of Florida, and the Florida Department of Education ("State Defendants") are well represented by the Florida Office of the Attorney General. The Board adopts and incorporates herein, the arguments made in support of the facial constitutionality of H.B.1557 raised by the State Defendants in their Motion(s) to Dismiss, as if fully set forth herein.

H. Plaintiffs Have Failed to State a Claim Establishing the Board Applied H.B. 1557 Unconstitutionally Under Any Theory

Plaintiffs' imprecision in pleading and lack of specific factual allegations against the Board establishing even the suggestion of unconstitutional conduct frustrates the Board's response. However, in Counts I–V against the Board, Plaintiffs have alleged that H.B. 1557, as applied by the Board to them, has caused constitutional harm. Plaintiffs' claims fail because in addition to the arguments set forth above: (1) Plaintiffs have not alleged any facts or omissions sufficient to establish a claim for relief or to place the Board on notice of its allegedly unconstitutional conduct; and (2) Plaintiffs' reliance on the potential for future harm is insufficient as a matter of law to establish an as-applied challenge or to state a claim for monetary damages. H.B. 1557, as written and signed into law, by its own plain terms, "shall take effect July 1, 2022." *See* Ch. 2022-22, Laws of Fla; Fla. H.B. 1157, § 3 (2022).[8] Plaintiffs' original Complaint and Amended Complaint were both filed prior to July 1, 2022, as is the Board's Motion to Dismiss.

It is axiomatic that Plaintiffs cannot state an as-applied claim by relying on speculative future conduct that has not yet occurred. Plaintiffs' fears of future discrimination or infringement, no matter if reasonable, are insufficient as a matter of law to establish an as-applied challenge where, as here, the law has yet to be

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[8] H.B. 1557, once in effect, will be enshrined in the newly-added paragraph (c) to subsection (8) of section 1001.42, Florida Statutes.

applied by the Board—or indeed, has yet to be enshrined into Florida's statutes—and Plaintiffs have not alleged even a single act or omission by the Board directed towards them, much less one of constitutional proportions.

1. Plaintiffs Have Failed to Satisfy the Barest of Pleading Requirements

Despite the manifesto-like recounting of Plaintiffs' backgrounds, fears, and speculative harm, they have failed to meet the basic notice pleading standards sufficient to state a claim or to place the Board on notice how its conduct caused an as-applied constitutional deprivation of any right or under any alleged legal theory. The Supreme Court has defined the specificity of pleading required to survive a motion to dismiss:

> Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Specific facts are not necessary; the statement need only "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Erickson v. Pardus, 551 U.S. 89, 93 (2007). A complaint thus "does not need detailed factual allegations." *Twombly*, 550 U.S. at 555. However, a conclusory recitation of the elements of a cause of action is insufficient. **A complaint must include more than "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."** *Id.* (emphasis added). A complaint must include "allegations plausibly suggesting (not merely consistent with)" the

plaintiff's entitlement to relief. *Id.* at 557. **The complaint must set forth facts**—not mere labels or conclusions—that "render plaintiffs' entitlement to relief plausible." *Id.* at 544, 551, 557, 569 n.14 (declining to take as true the conclusory allegation "upon information and belief" that a conspiracy occurred without enough facts to make the statement plausible); *see also Mann v. Palmer*, 713 F.3d 1306, 1315 (11th Cir. 2013) (relying on *Twombly* in rejecting allegations based on "information and belief").

A district court thus should grant a motion to dismiss unless "the plaintiff pleads **factual content** that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added). This is so because

> [T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice . . . [Federal] Rule [of Civil Procedure] 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.

Id. at 678–79. Plaintiffs' as-applied constitutional challenges directed to the Board fail to meet these basic pleading requirements, and therefore, the Complaint against the Board should be dismissed in its entirety.

The threshold pleading failures apply to each of the claims against the Board. Additionally, the VanTice Plaintiffs bring this action in their own names and not on

behalf of their children, and Equality Florida brings its associational claims after having identified only the VanTice Plaintiffs as members with any contact or relationship with the Board. Beyond these threshold pleading failures, and the substantive failures more fully set forth above, each of the five counts against the Board individually fails to state a claim upon which relief may be granted.

2. Count I - Due Process Clause of the Fourteenth Amendment – "As Applied" Vagueness

In addition to the standing threshold, the Supreme Court has noted, as a prudential concern, that a plaintiff must be asserting his or her own legal rights and interests rather than the legal rights and interests of third parties. *See Bischoff v. Osceola Cnty.*, 222 F.3d 874, 883 (11th Cir. 2000). Thus, a party only has standing to challenge allegedly unconstitutional actions as applied to themselves; they cannot bring an as-applied challenge on behalf of others.

Here H.B. 1557 has not yet been implemented and no Plaintiff has alleged an unconstitutional act or omission by St. Johns. It logically follows that any "as-applied" challenge must be dismissed as the Complaint fails to allege how the law has been applied to them, constitutionally or otherwise. Additionally, aside from the VanTices and Equality Florida, none of the Plaintiffs have any connection with St. Johns County or the Board, and therefore, has no redress to seek recovery for the purported violations of another's rights. Accordingly, any as-applied challenge by the Plaintiffs not connected to St. Johns fails on its face. And as for the suggestion

that a law addressing limitations on "classroom instruction" has resulted in individualized harm and "as-applied" constitutional deprivation to these parents, it strains credulity, where, as here, Plaintiffs offer not a single factual allegation of how the Board applied the law to them or their children. Plaintiffs' as-applied vagueness claim is unsupported.

3. Count II - Equal Protection Clause of the Fourteenth Amendment – "As Applied" Discrimination

Assuming for the purposes of this motion only that Plaintiffs have asserted appropriate class membership, the suggestion that a law addressing limitations on "classroom instruction" has resulted in individualized harm and as-applied constitutional discrimination stretches the notion to the breaking point. Plaintiffs concede the law has not yet taken effect, yet allege injury and ostracization from passage of the law, and from the "imprimatur of discrimination by Defendants." [D.E. 47 at ¶ 279]. This impermissible bootstrapping of the alleged discriminatory animus of others cannot be imputed to the Board, because it is unassailable that Florida School Boards do not enact state law. Plaintiffs' efforts to improperly impute upon the Board the alleged "invidious discrimination" of unrelated people or agencies ignores the facts, legislative procedure, and the law. Plaintiffs' as-applied discrimination claims in this count are similarly unsupported.

4. Count III – First Amendment – "As Applied" Right to Receive Information

This claim is brought by the various student Plaintiffs and the organizational Plaintiffs, yet none allege even a single fact implicating their right to receive information. As for Equality Florida—the only Plaintiff that even attempted to establish standing to sue St Johns—it seeks redress for the deprivation of constitutional rights of its student members to receive information in its associational capacity.[9] [D.E. 47 at ¶¶ 288, 290]. Organizations have associational standing "to sue to redress injuries suffered *by its members*." *Doe v. Stincer*, 175 F.3d 879, 882 (11th Cir. 1999) (emphasis added); *see also Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977) (associational standing allows association to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right). Equality Florida has not identified any teacher, student, parent, ally, or member in St. Johns County *other than* the VanTice parents. Equality Florida has failed to allege it has even a single member enrolled in St. Johns County schools. Moreover, the VanTices are Plaintiffs in their individual capacities, *not* as the parents of their unidentified children. Because Equality Florida's

9 It is beyond dispute that Equality Florida is not a student, and therefore has no "right," implied or otherwise, to receive information in a classroom setting. The same logic holds true for Florida Equality, which is also suing on behalf of itself. [D.E. 47 at ¶ 28].

associational standing, if any, is limited to its members identified in the Complaint, it therefore has not alleged a violation of any constitutional right of a St. Johns County student member to receive classroom instruction on issues of sexual orientation or gender identity.[10]

5. Count IV – First Amendment – "As Applied" Right to Freedom of Expression

Similar to Count III, Count IV is also brought only by student and organizational Plaintiffs. Thus, for the same reasons as why Plaintiffs' as-applied challenge fails for Count III, so too does it fail for Count IV.

6. Count V – First Amendment – "As Applied" Overbreadth

While the overbreadth doctrine provides an exception to the ordinary prudential considerations of judicial administration, it is "not an exception to the irreducible requirements of the Constitution." *CAMP Legal Defense Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1271 (11th Cir. 2006). That is, "the plaintiff still must allege a distinct and palpable injury to himself." *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)). "The overbreadth doctrine, which is judicially created,

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10 The Board also disputes whether the alleged "right to receive information" is applicable to students and classroom instruction. The case Plaintiffs rely upon, *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982), is a plurality decision. Specifically, the plurality's reasoning as to the right to receive information, as relevant in a classroom context, was joined by only three justices. *See Id.* at 855. Plurality opinions are not binding authority. *See Horton v. Zant*, 941 F.2d 1449, 1464 n.32 (11th Cir.1991).

cannot alter the requirements of standing, under Article III, because the Judiciary cannot abrogate the Constitution." *Id.* Thus, "even under the more lenient requirements for standing applicable to First Amendment overbreadth challenges, it still remains the law that plaintiffs must establish that they have suffered some *injury in fact* as a result of the defendant's actions." *Bischoff*, 222 F.3d at 884.

Similar to Counts III and IV, Count V is also brought only by student and organizational Plaintiffs. Like all other counts, this one does not allege any actual instances of the Board unconstitutionally applying H.B. 1557 in an unconstitutionally overboard manner. In fact, the Complaint concedes as much on its face, alleging H.B. 1557 "will be applied in a manner" that infringes Plaintiffs' rights. [D.E. 47 at ¶ 302]. While Plaintiffs' speculation that H.B. 1557 "will be applied" in an unconstitutionally overbroad manner may establish standing for prospective relief, it does not satisfy Article III's requirements for an injury in fact. Accordingly, their as-applied challenge in Count V also fails.

IV. CONCLUSION

Plaintiffs' efforts to aggregate all of their claims against St. Johns is both unsupportable and improper. Their "one size fits all" Complaint, despite the wide variance in Defendants, unnecessarily multiplies the proceedings against St. Johns, fails to establish their standing to assert claims against the it, fails to place St. Johns on notice of how it purportedly acted or failed to act with regard to each named

Plaintiff, materially prejudices the Board in preparing its defense, and for the purposes of this Motion, fails to state a claim upon which relief may be granted under any theory. Plaintiffs' efforts to shoe-horn as-applied challenges into this lawsuit before H.B. 1557's effective date and without making any allegations of facts sufficient to support such claims, render the as-applied challenges unsupportable. Each of Plaintiffs' five claims against the Board should be dismissed, and the punitive damages claims and those brought by Plaintiffs without any contact or relationship with St. Johns should be dismissed with prejudice.

WHEREFORE, Defendant St. Johns County School Board requests an order dismissing Plaintiffs' Amended Complaint with prejudice, where appropriate, and for any other such relief that is deemed just and proper.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)

I HEREBY CERTIFY that this Motion complies with the requirements of Local Rule 7.1(F), because it contains 5,889 words, excluding the parts exempted by said rule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 27, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: **Roberta Ann Kaplan at rkaplan@kaplanhecker.com, D. Brandon Trice at btrice@kaplanhecker.com, John Charles Quinn at jquinn@kaplanhecker.com, Joshua Adam Matz at jmatz@kaplanhecker.com, Kate Linsley Doniger at kdoniger@kaplanhecker.com, Valerie Lynn Hletko at vhletko@kaplanhecker.com, Christopher Stoll at CStoll@nclrights.org,**

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