UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

EQUALITY FLORIDA, et al.,

Plaintiffs,

v. Case No.: 4:22-cv-134-AW-MJF

RON DESANTIS, Governor of Florida, et al.,

_____/

DEFENDANT, SCHOOL BOARD OF MANATEE COUNTY'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT

Defendant, the School Board of Manatee County, Florida, ("School Board"), moves to dismiss Plaintiffs' First Amended Complaint (Dkt. No. 47) pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and for failure to comply with Rules 8(a) and 10(b) of the Federal Rules of Civil Procedure. In support of the foregoing, the School Board states as follows:

MEMORANDUM OF LAW

I. BACKGROUND

A. The Operative Complaint.

On May 25, 2022, Plaintiffs filed a First Amended Complaint ("FAC") against the School Board and several other Defendants. (Dkt. No. 47). Of the six counts set

forth therein, five are alleged against the School Board in addition to all other Defendants. (*See id.* generally). In support of their claims, Plaintiffs allege that H.B. 1557[1] violates the First and Fourteenth Amendments. (*Id.*).

H.B. 1557 prohibits classroom instruction by school personnel or third parties on sexual orientation or gender identity in kindergarten through third grade "or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards." (*See* Dkt. No. 47, ¶ 5). This general requirement that classroom instruction comply with state standards is consistent with preexisting statutory law governing a school board's duties with respect to distribution of appropriate K-12 instructional materials. *See* FLA. STAT. § 1006.28(2)(b); *see also* Dkt. No. 47, at ¶ 83 (stating the Next Generation Sunshine State Standards are the core content to be taught in K-12 public schools).[2]

B. The Parties.

The School Board is responsible for the operation of schools within its district in Manatee County, Florida, pursuant and subject to its duties and obligations as defined by statutory law. *See, e.g.*, FLA. STAT. § 1001.42.

The FAC identifies sixteen Plaintiffs. (Dkt. No. 47, ¶ 24). All Plaintiffs are

[1] H.B. 1557, 24th Sess. (Fla. 2022).
[2] *See also* FLA. STAT. § 1003.41 (establishing the core content of the curricula to be taught in Florida and specifying the core content knowledge and skills that K-12 public school students are expected to acquire).

bringing this lawsuit solely in their own capacities except for Equality Florida, which is also bringing this lawsuit in its associational capacity. (*See id.* at ¶ 25).

Plaintiffs include two associations—Equality Florida and Family Equality. (*Id.* at ¶¶ 25, 28). Equality Florida is based in St. Petersburg, Florida and its membership includes LGBTQ students and parents who attend or whose children attend Florida public schools, non-LGBTQ students and parents who support LGBTQ equality and who attend or whose children attend Florida public schools, LGBTQ teachers who teach in Florida public schools, non-LGBTQ teachers who support equality and teach in Florida public schools, and other school personnel such as counselors who support equality and work in Florida Public schools. (*Id.* at ¶¶ 25-26). Plaintiffs do not allege that Equality Florida's membership includes students, teachers, or other personnel who attend and/or are employed by any school within the School Board's district.

Family Equality is headquartered in New York, New York, and has slightly fewer than nine hundred individuals on its email list in Florida. (*Id.* at ¶ 28). Plaintiffs do not allege that Family Equality's membership includes students, teachers, or other personnel who attend and/or are employed by any school within the School Board's district.

The remaining Plaintiffs are individuals, which include parents, teachers, and students. More specifically, they include eight parents—Amy Morrison and Cecile

Houry, Dan and Brent VanTice, Lourdes Casares and Kimberly Feinberg, Lindsey Bingham Shook, and Anh Volmer. None of these individuals are parents of students enrolled in a school within the School Board's district. (*Id.* at ¶¶ 60, 67, 71, 73, 75).

Plaintiffs include two teachers—Scott Berg and Myndee Washington. Neither individual is employed by a school in the School Board's district. (*Id.* at ¶¶ 78, 79).

Plaintiffs include four students—M.A., S.S., Zander Moricz, and Jane Doe. (*See id.* at ¶¶ 30, 38, 44, 49). With the exception of M.A., Plaintiffs do not allege that these students attend schools within the School Board's district.

As to M.A. specifically, M.A. is a seventeen-year-old sophomore at Manatee School for the Arts (MSA), a charter school. (*Id.* at ¶ 30). According to Plaintiffs, and despite MSA being a charter school,[3] Plaintiffs allege that the School Board "operates" MSA. (*Id.* at ¶¶ 30, 88).

In support of their claims, Plaintiffs allege that M.A. has drafted and submitted

[3] Despite Plaintiffs' concession that "there are reasonable arguments that H.B. 1557 does ***not*** apply in charter schools", they allege that "the State is likely to take the position that it does…" (Dkt. No. 47, at note 1) (emphasis added). However, even the article upon which Plaintiffs rely in support of this position quotes the Senate Bill sponsor as stating that "the law would be applied to traditional public schools—not the nontraditional charters." *See* Danielle J. Brown, *Does the so-called 'Don't Say Gay' law apply to Florida charter public schools?*, FLORIDA POLITICS (Mar. 30, 2022), https://floridapolitics.com/archives/512625-does-the-so-called-dont-say-gay-law-apply-to-florida-charter-public-schools/ (last accessed June 23, 2022). In any event, and even if the new law ***does*** apply to charter schools as alleged, this does not otherwise affect or alter the School Board's position that none of the Plaintiffs have standing to sue the School Board in the present lawsuit.

a proposal to establish a "Committee on Classroom Practices" but that he believes that "there is little chance that this proposal will be considered, let alone implemented, as a result of the new law." (*Id.* at ¶¶ 180, 181).

Plaintiffs additionally allege that M.A.'s GSA teacher-advisor has warned him that she could potentially lose her job for adjusting pronouns to respect a student's gender and that M.A. is concerned about whether the new law would prohibit him from writing about issues related to his sexual identity and sexual orientation or having other conversations on similar and/or related topics. (*Id.* at ¶¶ 182, 189).

C. The Relationship Between MSA and the School Board.

Though Plaintiffs generally allege that the School Board "operates" MSA, statutory law indicates otherwise. Indeed, while the School Board must monitor and review MSA's progress towards the goals as set forth in the Charter Contract as its sponsor, Florida law prohibits the School Board from unilaterally applying its policies to MSA. FLA. STAT. § 1002.33(b)(1)(d). Additionally, Florida law expressly states that the School Board's duties to monitor MSA "**shall not constitute the basis for a private cause of action**." FLA. STAT. s. 1002.33(b)(1)(j) (emphasis added).

While the School Board may terminate the Charter Contract if it finds that MSA has committed a "[m]aterial violation of law," this authority is not absolute. To the contrary, the School Board is required to provide a 90-day notice of its intent to not renew or terminate the Charter Contract and then the charter school's

governing board may request a hearing before an Administrative Law Judge assigned by the Division of Administrative Hearings. *See* FLA. STAT. § 1002.33(8)(a)-(b).

The School Board also may "immediately" terminate the Charter Contract if: (1) the sponsor sets forth in writing the particular facts and circumstances demonstrating an immediate and serious danger to the health, safety, or welfare of the charter school's students exist; (2) the immediate and serious danger is likely to continue; and (3) an immediate termination is necessary. *See* FLA. STAT. § 1002.33(8)(c). Notably, however, such a decision is also subject to review and a hearing before an Administrative Law Judge. *See id.*

The numerous hurdles imposed by Florida law that the School Board must overcome before terminating the Charter Contract, immediately or otherwise, demonstrates the extreme limitations on the School Board's ability to exercise control over MSA—especially as it pertains to what occurs in the classroom on a daily basis. And it is ***MSA's*** governing board—not the School Board—that is obligated to exercise continuing oversight over MSA's operations and be responsible for promoting and encouraging compliance with applicable laws. FLA. STAT. § 1002.33(i)(-(j).

Consistent with the foregoing, Florida's Division of Corporations website

("Sunbiz.org")[4] shows that the not-for-profit corporation that operates MSA—Renaissance Arts and Education, Inc.—has a separate mailing address and has its own Officers, Directors, and Registered Agent.[5]

II. LEGAL ARGUMENT

The most notable and most fundamental limits on the federal court's jurisdiction are set forth in Article III of the Constitution, which limits the courts' jurisdiction to cases and controversies. *Gardner v. Mutz*, 962 F.3d 1329, 1336 (11th Cir. 2020). This case-or-controversy requirement is comprised of three elements: (1) standing, (2) ripeness, and (3) mootness. *Id.* Standing is generally considered the most important or, alternatively, the most central of Article III's jurisdictional requirements. *Id.* at 1337. Therefore, the threshold question in every federal case is whether the plaintiffs have standing. *See Warth v. Seldin*, 422 U.S. 490, 498 (1975).

To have standing, Plaintiffs have the burden of establishing three elements:

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[4] The School Board respectfully asks the Court to take judicial notice for the limited purpose of acknowledging the contents of this public record. *See Sziranyi v. Allan R. Dunn, M.D., P.A.*, No. 07 CV 21762 (SJ), 2009 WL 6613675, at *2 (S.D. Fla. Sept. 30, 2009), *aff'd,* 383 F. App'x 884 (11th Cir. 2010) (taking judicial notice of Florida Department of State, Division of Corporations, available at Sunbiz.org).

[5] *See* FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS, https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=RENAISSANCEARTSEDUCATION%20N980000011790&aggregateId=domnp-n98000001179-e749eab1-49dc-48e1-8658-ca36fb237515&searchTerm=Renaissance%20Arts%20and%20Education%2C%20Inc.&listNameOrder=RENAISSANCEARTSEDUCATION%20N980000011790 (last accessed June 23, 2022).

(1) Plaintiffs must have suffered an "injury in fact;" (2) a causal connection must exist between said injury and the conduct complained of; and (3) it must be "likely" as opposed to "speculative" that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). In other words, Plaintiffs must show that Defendants harmed them and that a court decision can either eliminate the harm or compensate them for it. *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 924 (11th Cir. 2020).

While standing concerns Plaintiffs' identity and asks whether they may appropriately bring suit, ripeness concerns the timing of the suit. *Mulhall v. UNITE HERE Loc. 355*, 618 F.3d 1279, 1291 (11th Cir. 2010). As such, the ripeness doctrine is designed to protect federal courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes. *Id.*

Though general factual allegations of injury may suffice at the pleading stage, such allegations must at least plausibly and clearly allege a concrete injury. *Id.* Indeed, Courts have long recognized that even at the pleading stage plaintiffs must clearly and specifically set forth facts to satisfy Article III's requirements. *Id.* (quoting *Whitemore v. Arkansas*, 495 U.S. 149, 155 (1990)).

For the reasons detailed below, dismissal is warranted because: (1) none of the Plaintiffs have standing, (2) Plaintiffs' claims are not ripe for adjudication, and

(3) the FAC is a shotgun pleading, which—due to the Plaintiffs' lack of standing and the premature nature of their claims—cannot be cured by amendment.[6]

A. The Individual Plaintiffs Do Not Have Standing.

1. Plaintiffs Did Not Suffer an Injury in Fact.

To establish an "injury in fact," Plaintiffs must demonstrate that the School Board has invaded some "legally protected interest," which is (1) concrete and particularized, and (2) actual or imminent, not conjectural or hypothetical. *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 984 (11th Cir. 2005). For an injury to be "particularized," it must affect Plaintiffs in a personal and individual way. *Lujan*, 504 U.S. at 560. In other words, the injury cannot be undifferentiated. *Gardner*, 962 F.3d at 1342. It must be distinct to the Plaintiff. *Id.* Further, while a "concrete" injury need not be tangible, psychic injuries arising from disagreement with government action—for instance "conscientious objection" and "fear"—do not qualify. *Id.* at 1341. An injury in fact has not occurred if the plaintiff is merely a concerned bystander. *Id.* at 1342.

First and foremost, the FAC is void of ***any*** alleged connection between parents Amy Morrison and Cecile Houry, Dan and Brent VanTice, Lourdes Casares and Kimberly Feinberg, Lindsey Bingham Shook, and Anh Volmer, teachers Scott Berg

[6] Alternatively, if the Court the does not dismiss the Complaint on other grounds, the School Board moves for a more definite statement pursuant to Rule 12(e).

and Myndee Washington, and/or students S.S., Zander Moricz, and Jane Doe and the School Board. In the absence of any alleged connection between the above-mentioned Plaintiffs and the School Board or any alleged harm committed by the School Board as it pertains any of these individual Plaintiffs, it follows that these Plaintiffs have not suffered any distinct injuries particular to them or due to any act or omission by the School Board.[7]

Though Plaintiffs at least allege ***some*** type of connection between M.A. and the School Board, Plaintiffs have failed to allege that the School Board has invaded any particularized, concrete, actual, and/or imminent legally protected interest belonging to M.A. As discussed in detail above, M.A. is a seventeen-year-old sophomore at MSA. (Dkt. No. 47, ¶ 30). In terms of constitutional harms imposed by H.B. 1557, Plaintiffs allege that: (1) M.A. has, in an effort to increase teacher education and support at his school, drafted and submitted a proposal to establish a "Committee on Classroom Practices" but believes "there is little chance that this proposal will be considered, let alone implemented, as a result of the new law" (*Id.* at ¶ 180), (2) that M.A.'s GSA teacher-advisor has warned him that ***she*** could potentially lose her job for adjusting pronouns to respect a student's gender (*Id.* at ¶ 182), and (3) that M.A. is concerned about whether H.B. 1557 would prohibit him

[7] For identical reasons, it follows that these Plaintiffs also cannot establish a causal connection between any act or omission by the School Board or that a favorable decision against the School Board would redress any of their alleged injuries.

from writing about issues related to his sexual identity and sexual orientation or having other conversations on similar and/or related topics. (*Id.* at ¶ 189). According to Plaintiffs, the foregoing is evidence of their conclusory assertion that H.B. 1557's "proscription on classroom instruction on sexual orientation and gender identity—which has not even gone into effect as a technical matter—is already having effects far and wide throughout the Florida public school system." (*Id.* at ¶ 173) (internal quotations omitted).

Contrary to Plaintiffs' assertions, the foregoing does not evidence an injury in fact that is particular to M.A. or otherwise evidence the School Board's invasion of a particularized, concrete, actual, and/or imminent legally protected interest belonging to M.A. As previously discussed, H.B. 1557 prohibits classroom instruction on sexual orientation or gender identity by school personnel or third parties in kindergarten through third grade. M.A. is not enrolled in any of these grades and will not be in the future as he is already a sophomore. Thus, the plain terms of H.B. 1557 do not expressly prohibit classroom instruction on these topics in classes that M.A. attends to the extent such instruction otherwise complies with state standards, which is required regardless of H.B. 1557's implications. *See, e.g.*, FLA. STAT. § 1006.28(2)(b).

As evidenced by the foregoing, M.A.'s concern that H.B. 1557 may prohibit him from writing and/or discussing certain topics constitutes nothing more than a

fear arising from his disagreement with H.B. 1557. Such fears do not evidence an injury in fact. *See Gardner*, 962 F.3d at 1342.

Neither M.A. nor any other Plaintiff has suffered an injury in fact due to the School Board's invasion of any legally protected interest. Accordingly, Plaintiffs fail to establish this first element.

2. No causal connection exists.

To establish a causal connection, the alleged injury must be fairly traceable to Defendants' challenged action, and not the result of an independent action by some third party not before the court. *Lujan*, 504 U.S. at 560.

Plaintiffs also cannot establish this element. M.A. alleges that he drafted and submitted a proposal to establish a "Committee on Classroom Practices" but that he believes "that there is little chance that this proposal will be considered, let alone implemented, as a result of the new law." (Dkt. No. 47, ¶ 180). M.A. also alleges that he is concerned about whether the new law would prohibit him from writing about issues related to his sexual identity and sexual orientation or having other conversations on similar and/or related topics. (Dkt. No. 47, ¶ 189). But, as previously discussed, applicable law prohibits the School Board from unilaterally applying its policies to MSA. FLA. STAT. § 1002.33(b)(1)(d). Further, it is ***MSA's*** governing board—not the School Board—that is obligated under applicable law to exercise continuing oversight over MSA's operations and responsible for promoting

and encouraging compliance with applicable laws. FLA. STAT. § 1002.33(i)(-(j). Consistent with the foregoing, MSA is solely responsible for selecting its own employees—not the School Board. *See* FLA. STAT. § 1002.33(12). And MSA's employees are not employees of the School Board. *See id.*

As evidenced by the foregoing, it would be an MSA employee and/or MSA's governing board that would be the final decisionmaker on the issues of whether M.A.'s proposal and/or whether M.A. is permitted to write on a particular subject. Therefore, it follows that any alleged injury suffered by M.A. due to the denial of his proposal or inability to write on a chosen subject would not be the result of any action taken by the School Board. Rather, the sole cause of such injury would be the result of a decision by MSA through its employees and/or governing board.

Additionally, though the School Board may terminate the Charter Contract for one of the reasons enumerated under Section 1002.33(8), Florida Statutes, the allowable reasons for termination are narrowly limited to: (1) failure to participate in the state's education accountability system; (2) failure to meet generally accepted standards of fiscal management; (3) material violation of law; and (4) other good cause shown. FLA. STAT. § 1002.33(8)(a). And as previously discussed (*see* Part I.C. *supra*), the circumstances under which the School Board may terminate the Charter Contract immediately are even narrower. *See* FLA. STAT. § 1002.33(8)(c).

None of M.A.'s alleged constitutional harms give rise to circumstances that

would enable the School Board to terminate the Charter Contract even if M.A.'s fears with respect to H.B. 1557's alleged impact on his classroom experience come to fruition. Further, given that M.A. is not even enrolled in a grade that is subject to H.B. 1557's prohibition on classroom instruction on sexual orientation or gender identity, it is unclear whether MSA's acceptance of M.A.'s proposal and/or permitting M.A. to write on certain topics would constitute "good cause" or a "material violation of law" to justify termination. Even more unclear is whether a termination by the School Board on such grounds could survive subsequent review by an Administrative Law Judge. *See* FLA. STAT. § 1002.33(b). Considering the numerous statutory hurdles that the School Board would have to overcome to terminate the Charter Contract on such grounds and the increasingly stringent requirements where termination is immediate, it is at best speculative to imagine a situation where a violation of H.B. 1557 would result in circumstances that warrant lawful intervention by the School Board.[8]

[8] For example, the only time that the School Board has immediately terminated a charter contract was due to: (1) the charter school's extreme financial mismanagement resulting in a $1 million deficit of, which led to the charter school being unable to pay utility bills, failing to properly pay its employees, failing to timely pay the Internal Revenue Service, the termination of contracts with the charter school's food and dairy supplier due to failure to pay invoices, and being unable to meet the financial obligations required to run the school, among other issues, and (2) the charter school permitting its Chief Executive Officer and Principal to remain on campus and interact with students despite an Order by the Education Practices Commission indicating that he was not to be employed or working in a position that

As illustrated by the foregoing, the School Board is incapable of causing any of the harms that M.A. believes may result from H.B. 1557's implementation. Plaintiffs fail to meet their burden with respect to this second element.

3. A favorable decision would not redress the alleged injuries.

For analogous reasons, a decision by this Court against the School Board would not redress Plaintiffs' alleged injuries. For example, if the alleged injury is the rejection of M.A.'s proposal to establish a "Committee on Classroom Practices," redress of this injury would require a change to MSA's policy and/or reversal of a decision by the MSA's governing board and/or faculty. Likewise, if the alleged injury is the restriction of topics that M.A. can discuss and/or write about in class, redress of this injury would also require a change in MSA's policy and/or reversal of a decision by the MSA's governing board and/or faculty. However, and as previously discussed, the School Board cannot unilaterally impose its policies upon a charter school. *See* FLA. STAT. § 1002.33(b)(1)(d). MSA's employees are not employees of the School Board. *See* FLA. STAT. § 1002.33(12). The School Board is simply not the correct party to redress M.A.'s alleged injuries.

In addition, it is important to note that the School Board's duties to monitor MSA "**shall not constitute the basis for a private cause of action**." FLA. STAT. s.

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required direct contact with students. *See Manatee Cty. Sch. Bd. v. Lincoln Memorial Academy, Inc.*, No. 19-4155, 2019 WL 4894993, at *2 (DOAH 2019).

1002.33(b)(1)(j) (emphasis added). Thus, to the extent that M.A., any other MSA student, or any other charter school student seeks to hold the School Board liable pursuant to its duty to monitor a charter school within its district, Florida law forbids it. *See id.*; *see also* FLA. STAT. s. 1002.33(g)-(h) (stating that the sponsor shall not be liable for civil damages under state law because of acts or omissions by an office, employee, agent, or governing body of the charter school); *P.J. v. Gordon*, 359 F. Supp. 2d 1347, 1351 (S.D. Fla. 2005), *vacated and remanded on other grounds,* 174 F. App'x 504 (11th Cir. 2006).[9] For these reasons, Plaintiffs also fail to meet their burden with respect to this third and final element.

B. The Plaintiff Associations Do Not Have Standing to Sue the School Board.

Associations can establish standing: (1) on behalf of itself or (2) on behalf of

[9] As explained in further detail by the Court in this case:

> In the context of this case, Fla. Stat. s. 1002.33 delegated to the School Board the responsibility for approving the [charter school's] charter and then monitoring its progress in meeting its educational goals, its revenues and expenditures, and ensuring its participation in the state's accountability system. Consistent with the statute, **the charter is silent with respect to any involvement by the School Board in the day-to-day management of the [charter school].** Further, to the extent the charter touches on such topics as student safety and the hiring or supervision of staff, those responsibilities are placed on the [charter school] …**what [plaintiff] has done is to conflate the School Board's monitoring responsibilities with day-to-day control over personal actions and in-school safety. There is simply nothing in the charter that supports that interpretation.**

P.J., 359 F. Supp. 2d at 1351-52 (emphasis added).

its members. Equality Florida and Family Equality cannot establish standing under either theory.

1. Lack of Standing to Sue on Behalf of Themselves.

An association has standing to bring suit on behalf of itself when it can establish the three *Lujan* elements previously discussed (*see* Part II.A *supra*)—i.e., an injury-in-fact, a causal connection between an alleged injury and the conduct complained of, and it is "likely" as opposed to "speculative" that a favorable decision will redress the injury. *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 805 (11th Cir. 1993). Consistent with the foregoing, an association's mere interest in a problem is insufficient to establish standing, no matter how longstanding the interest and no matter how qualified an organization is to evaluate the problem. *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972).

Here, Equality Florida's alleged injuries include having to divert financial and staff resources to educate the public about the dangers of and fighting against the passage of H.B. 1557, having to raise and expend financial resources to fight H.B. 1557's passage and implementation, having to divert money away from existing education and lobbying efforts to recruit additional funds directly for H.B. 1557, having to shift time and energy away from other programs to focus on fighting H.B. 1557, and losing a full-time staff member. (*See* Dkt. No. 47, ¶¶ 243-250).

Similarly, Family Equality's alleged injuries include having to shift resources

away from nationwide work to focus on Florida and other states that are considering laws similar to H.B. 1557, having to divert resources away from other nationwide campaigns and projects to focus on fighting H.B. 1557's impact, and having to restructure its Policy Department "partly in response to making sure there are adequate staff resources to work on the impact of H.B. 1557." (*Id.* at ¶¶ 257-260).

None of these alleged injuries are fairly traceable to any unlawful act—or any act at all—by the School Board. Equality Florida and Family Equality are not diverting resources because of anything the School Board did. Rather, Equality Florida's and Family Equality's allegations make clear that the sole cause of these alleged injuries is their perceived threat of the passage of H.B. 1557. The School Board's duties and scope of authority are clearly defined by statute. *See* FLA. STAT. § 1001.42. The School Board plays no role in the passage of laws such as H.B. 1557 and therefore, had no authority to stop its passage and has no authority to stop its implementation thereafter.

Accordingly, it follows that even if Equality Florida and/or Family Equality successfully enjoined the School Board from implementing H.B. 1557, such an injunction would not redress the ongoing diversion of resources allegedly needed to combat H.B. 1557. This is especially true with respect to Family Equality's assertion that it is not only diverting funds to address H.B. 1557's impact in Florida but also its impact "beyond" Florida and to focus on "other states that are considering laws

similar to H.B. 1557." (Dkt. No. 47, ¶¶ 257-258). While Equality Florida and Family Equality may have concerns regarding H.B. 1557 and an interest in how it is ultimately implemented in school districts—such as the School Board's—this alone is insufficient to establish standing. Dismissal is warranted.

2. Lack of Standing to Sue on Behalf of Its Members.

An association has standing to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right pursuant to the three *Lujan* elements; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief required requires the participation of individual members in the lawsuit. *Doe v. Stincer*, 175 F.3d 879, 882 (11th Cir. 1999) (quoting *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). While an association need not specifically name the individual, the association must at least allege that one of its members has suffered an injury that would allow it to bring suit in its own right. *Id*.

Though Plaintiffs allege that Equality Florida's membership[10] includes LGBTQ students who attend and parents whose children attend Florida public schools, non-LGBTQ students and parents who support LGBTQ equality and who

[10] Family Equality is not bringing this lawsuit in its associational capacity. (*See* Dkt. No. 47, ¶ 28). But even if it were, Family Equality does not have associational standing to sue the School Board because Plaintiffs fail to allege that any of its members suffered an injury due to any act or omission by the School Board.

attend or whose children attend Florida public schools, LGBTQ teachers who teach in Florida public schools, non-LGBTQ teachers who support equality and teach in Florida public schools, and other school personnel such as counselors who support equality and work in Florida Public schools (Dkt. No. 47, ¶¶ 25-26), Plaintiffs do not otherwise allege or offer any facts or evidence showing that the School Board has injured or will injure any member of Equality Florida or that Equality Florida's membership even includes any parents of students, students, or teachers associated with any school within the School Board's district. In the absence of any such allegation, it follows that neither Equality Florida nor any of its members have suffered a concrete and particularized and actual or imminent injury in fact due to the School Board's invasion of any legally protected belonging to Equality Florida's members. Rather, it appears that Equality Florida's members, at least as it pertains to any alleged action they fear that the School Board may take pursuant to H.B. 1557, are nothing more than concerned bystanders. This is insufficient.[11]

Further, even if Equality Florida's members suffered an injury in fact, they still cannot establish standing because their alleged injuries are not fairly traceable to any action or omission by the School Board. As previously discussed, Equality Florida alleges that it has suffered harm due to the need to divert resources to fight against the passage of H.B. 1557 to protect its LGBTQ members. (*See, e.g.*, Dkt. No.

[11] *See Gardner*, 962 F.3d at 1342.

47, ¶¶ 243-250). The School Board's duties and scope of authority are clearly defined by statute. *See* FLA. STAT. § 1001.42. The School Board plays no role in the passage of laws such as H.B. 1557. *See id.* The School Board simply has not deprived Equality Florida's members of any resources or harmed them in any way.

Lastly, and for identical reasons, a decision against the School Board would not redress any alleged injuries to Equality Florida's membership. This is evidenced by the simple fact that Equality Florida has not alleged that any of its members include students enrolled in, parents of students enrolled in, or employees of any school within the School Board's district or alleged that the School Board injured any of its members. For these reasons, Equality Florida does not have standing to sue on behalf of its members. Dismissal is warranted.

C. Plaintiffs' Claims are Note Ripe for Adjudication.

With respect to the doctrine of ripeness, the general rule is that a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all. *Texas v. United States*, 523 U.S. 296, 300 (1998). M.A.'s alleged injuries are limited to nothing more than fears of future events that may not ever occur—mainly, (1) his belief that his proposed "Committee on Classroom Practices" will be rejected due to H.B. 1557 and (2) his concern that H.B. 1557 will prohibit him from writing on certain issues or having conversions on certain topics. (Dkt. No. 47, ¶¶ 180, 189). As previously discussed, H.B. 1557's

express prohibitions are limited to classroom instruction in kindergarten through third grade. M.A. is a sophomore. (*Id.* at ¶ 30). Thus, not only do M.A,'s claim rest upon future events that may not occur as anticipated, it is unlikely that these alleged injuries will occur at all. M.A.'s claims are clearly not ripe for review.

D. The FAC Fails to Meet Minimum Pleading Requirements.

Pursuant to the Federal Rules of Civil Procedure, pleadings must contain a "short and plain statement" of the claim showing that the pleader is entitled to relief, *see* Fed. R. Civ. P. 8(a)(2), and be stated in numbered paragraphs "each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b). Consistent with the courts' inherent authority to control its docket and ensure the prompt resolution of lawsuits, courts may dismiss a complaint for failure to comply with Rules 8(a)(2) and 10(b). *See Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). Dismissal of a complaint for failure to comply with Rule 8(a)(2) is also appropriate if the plaintiffs are unable to prove any facts that would entitle them to relief, *Osahar v. U.S. Postal Serv.*, 297 F. App'x 863, 864 (11th Cir. 2008), or where amendment is futile. *Prawl v. City of Clearwater*, No. 8:18-CV-431-T-AEP, 2018 WL 11229894, at *5 (M.D. Fla. June 19, 2018).

Complaints that violate Rule 8(a)(2) and/or Rule 10(b) are commonly referred to as "shotgun pleadings." *Weiland*, 792 F.3d at 1320. The most common types of shotgun pleadings are: (1) a complaint containing multiple counts where each count

adopts the allegations of all preceding counts; (2) a complaint replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action; (3) a complaint that fails to separate into different count each cause of action or claim for relief; and (4) a complaint asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions or which of the defendants the claim is brought against. *Id.* at 1323. The unifying characteristic of shotgun pleadings is that they fail to adequately notify defendants of the claims against them. *Id.*

The FAC is a shotgun pleading due to its failure to comply with basic pleading requirements. For example, Plaintiffs "reallege and incorporate by reference" ***all*** of the preceding paragraphs as though fully set forth therein pursuant to each of the FAC's six Counts. (*See, e.g.*, Dkt. No. 47, ¶¶ 261, 273, 286, 293, 300, 308). Thus, by the last Count, Plaintiffs replead and incorporate by reference a total of ***307*** paragraphs—most of which are clearly irrelevant to Count VI.

By incorporating all preceding Counts pursuant to each of the FAC's six Counts, Plaintiffs continuously "reallege and incorporate by reference" conclusory, vague, and immaterial facts not obviously connected to the Counts that cite them by reference. Indeed, as currently drafted, the FAC suggests that every single one of the sixteen Plaintiffs are suing the School Board even though the FAC is void of any allegation that these Plaintiffs are students (except for M.A.) in, parents of students

in, and/or have any members that have any alleged relationship with the school district operated by School Board. Absent clarification, the School Board does not have sufficient notice of which Plaintiffs are attempting to seek relief against it.

Because the FAC constitutes a shotgun pleading, and because amendment would be futile for the previously stated reasons (*see* Parts II.A and II.B. *supra*), dismissal is warranted.

WHEREFORE, Defendant School Board of Manatee County, Florida respectfully moves this Court to dismiss Plaintiffs' First Amended Complaint or alternatively moves for a more definite statement, and for the Court to provide all other relief it deems just and proper.

CERTIFICATE OF GOOD FAITH PURSUANT TO LOCAL RULE 7.1(B)

Pursuant to Local Rule 7.1(B), the Defendant School Board hereby certifies that it conferred with Plaintiffs' Counsel on June 24, 2022, via phone and email. Plaintiffs' Counsel objected to the relief sought herein.

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(F)

Pursuant to Local Rule 7.1(F), the Defendant School Board hereby certifies that the number of words in the Memorandum of Law section, including headings, footnotes, and quotations totals approximately 5,813 words.

/s/ Erin G. Jackson
Attorney

Dated this 27th day of June 2022.

Respectfully submitted,

/s/ Erin G. Jackson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of June 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 all counsel of record.

/s/ Erin G. Jackson
Attorney