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.
_____/

DEFENDANT SCHOOL BOARD OF SARASOTA COUNTY'S REPLY TO PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT S MOTIONS TO DISMISS

Defendant School Board of Sarasota County ("SBSC") replies ("SBSC's Reply") to Plaintiffs' Memorandum of Law in Opposition to Defendants' Motions to Dismiss ("Plaintiffs' Response") (Dkt. 91). SBSC is entitled to dismissal of each count for the same reasons asserted in its Motion to Dismiss First Amended Complaint and Memorandum of Law in Support ("Motion to Dismiss") (Dkt. 65). Nothing in Plaintiffs' Response changes this.

I. Plaintiffs Continue Their Shotgun Pleadings.

First, Dismissal is required because Plaintiffs' First Amended Complaint ("Amended Complaint") (Dkt. 47) is a shotgun pleading. If anything, the vague, non-specific, and overbroad nature of Plaintiffs' Response continues this "shotgun"

trend. For example, throughout Plaintiffs' Response, despite the various distinct Plaintiffs alleging that they are students, teachers, parents, and organizations – all from various parts of the state, with different claims which permit different types of relief, and with different factual assertions that appear to relate to some plaintiffs but not others, Plaintiffs refer to themselves throughout Plaintiffs' Response in a "one size fits all" way as "Plaintiffs" with little to no differentiation while also maintaining each of their causes of action against all or many of the defendants without differentiation. Likewise, despite asserting that the various Defendants are state-level actors and non-state-level local school boards while raising specific allegations with different types of injuries, theories of liability, causes of actions, and relief sought that feasibly purport to apply to only some but not all of the Defendants, the Plaintiffs also repeatedly refer to the various Defendants in Plaintiffs' Response generically as "the State" without ever declaring in the Response which specific defendants constitute "the State".

Along these lines, much like in the First Amended Complaint, the portions of the lengthy Plaintiffs' Response that specifically refer to SBSC are exceedingly limited. Plaintiffs' Response only mentions SBSC by name on **five (5) occasions**. As detailed in SBSC's Motion to Dismiss, even in a light most favorable to Plaintiffs, only one specific Plaintiff — Zander Moricz — has alleged facts that could possibly be interpreted as a claim against SBSC. And as is the case with Plaintiffs' references

to SBSC, Plaintiffs' Response mentions Moricz on only **seven (7) occasions** throughout its 60-page brief. The limited references in Plaintiffs' Response to anything even remotely connected to SBSC or a plaintiff with plausible ties to Sarasota County does nothing to overcome the ambiguously deficient nature of the Amended Complaint.

As such, Plaintiffs' Response does nothing to clarify which allegations in the Amended Complaint apply to which Defendants and once again leaves SBSC and other Defendants guessing which assertions apply specifically to it. Even when construing the Amended Complaint with the permissive pleadings-stage standard, dismissal is warranted. While defendants tend to over-assert "shotgun pleadings" in litigation when seeking dismissal, for once it actually applies in this case. Both this Court and every Defendant in this matter would benefit from a complaint that is pled in a way that asserts with clarity which causes of action are raised by each Plaintiff against each Defendant.

II. In Plaintiffs' Response, Plaintiffs Improperly Re-Characterize What is Pled in the Amended Complaint, Raise Additional Assertions Not Pled in the Amended Complaint, and Co-Mingle Allegations Pled in the Amended Complaint that Apply to Specific Defendant(s) in an Attempt to Show it Stated Valid Claims Against All Defendants.

Throughout Plaintiffs' Response, Plaintiffs improperly go far beyond the scope of the four corners of the Complaint in an effort to salvage their claims. *See Rutger v. Internal Revenue Serv.*, No. 8:20-CV-1144-T-33TGW, 2021 WL 118983,

at *2 (M.D. Fla. Jan. 13, 2021) (Where plaintiffs "make additional factual assertions in their response … the Court could not consider these additional factual assertions in evaluating the complaint."); *see also Gibbons v. McBride*, 124 F. Supp. 3d 1342, 1381 (S.D. Ga. 2015) ("A complaint may not be amended by briefs in opposition to a motion to dismiss."). By way of example, Plaintiffs cite to news articles as purported support for their various positions. *See* Dkt. 91 at 19, 51.

Plaintiffs also apparently now seek to "clarify that they all allege claims against the State Defendants and ***they each allege claims against their own local school boards.***" *Id.* at 59. (emphasis added). In accepting this "clarification," Plaintiffs appear to admit that only Moricz has brought claims against SBSC. To the extent that represents the case, all causes of action brought by any of the remaining Plaintiffs against SBSC must be dismissed.

Further, Plaintiffs' repeated attempts in Plaintiffs' Response to lump factual assertions from the Amended Complaint that only pertain to only one or certain Defendants to argue it has stated a valid claim against SBSC is likewise improper and is insufficient to save its deficient pleadings from dismissal. For example, this is evident at pg. 12 of Plaintiffs' Response (Dkt. 91) when Plaintiffs assert that "students" with "specific fears that gay groups they participate in will be shut down" then cite to paragraphs in the Amended Complaint pertaining to Plaintiff M.A. and Plaintiff S.S. While such allegations may help establish a cause of action by certain

Plaintiffs against state-level Defendants and their own non-state local school board Defendant, they do not support in any way a cause of action for Plaintiff Moricz (who at one time prior to HB 1557 becoming effective was a student but who now has already graduated from a school overseen by SBSC) or against SBSC. Likewise, Plaintiffs' reference at the bottom of pg. 13 of Plaintiffs' Response (Dkt. 91) to "students" not having access to "LGBT-friendly books" cites to portions of the Amended Complaint for support that not only do not relate to former SBSC student Plaintiff Moricz whatsoever, they also do not relate to *any* named Plaintiff[1]. Plaintiffs' Response asserts many other examples of this type of improper co-mingling of allegations. This Court must reject these attempts.

III. Each of the Plaintiffs that are Individuals Lack Standing Against SBSC.

Not once in Plaintiffs' Response do Plaintiffs reference specifically SBSC regarding the issue of standing. Instead, Plaintiffs make generic and conclusory claims that they have "easily satisf[ied] their burden" establishing an injury-in-fact. *See* Dkt. 91 at 17. However, a review of the Amended Complaint refutes this contention. These attempts in Plaintiffs' Response to re-characterize the assertions actually pled in the Amended Complaint cannot save it from dismissal.

[1] Paragraph 191 of the Amended Complaint references a superintendent from a county school system (Palm Beach County) whose School Board is not a named Defendant in this dispute who allegedly removed library books from a school in that school district.

In order to sufficiently plead standing, a plaintiff must plausibly assert the existence of an injury-in-fact, that an injury is plausibly traceable to the defendant, and that the injury is plausibly likely to be redressed by a favorable decision. *See Yelappi v. DeSantis*, No. 4:20-cv-351-AW-MAF, 525 F. Supp.3d 1371, 1378 (N.D. Fla. 2021) (Windsor, J.).

The only even remotely plausible basis pled in the Amended Complaint by any of the various Plaintiffs that are individuals that is sufficient to establish standing against SBSC involves Plaintiff Moricz (a former SBSC student). Instead of specifically arguing in Plaintiffs' Response that Plaintiff Moricz possesses standing in Count II because he was "censored" or "disciplined", Plaintiffs instead more opaquely argue in Plaintiffs' Response that "some Individual Plaintiffs and others have already faced censorship or been disciplined based on their speech", *See* Dkt. 91 at 17, without connecting the alleged "censorship" or "discipline" to a particular count in the Amended Complaint. In doing so, Plaintiffs reference paragraphs 176, 179, 191, 226, 233, 237, and 239 of the Amended Complaint. *See* Dkt. 47. Notably, only **one** of these referenced paragraphs reference Plaintiff Moricz. The other paragraphs apply to different alleged scenarios completely unrelated to SBSC. At best, the alleged "censorship" and "discipline" experienced by Plaintiff Moricz demonstrate a "deprivation" sufficient to establish an injury-in-fact for the portion

of Count II that asserts that a tort occurred[2]. However, it does not establish standing for Plaintiff Moricz regarding the constitutional challenges to HB 1557 – as he was not involved in its drafting whatsoever, is in no way involved in implementing it at the state or local level, and who has already graduated and as a result will never be injured by HB 1557 moving forward – such that plausible traceability exists between SBSC, the passage of HB 1557, and Plaintiff Moricz or the existence of plausible redressability for Plaintiff Moricz from SBSC via injunctive relief as there is no scenario the graduated Plaintiff Moricz will benefit from enjoining HB 1557 moving forward or that such relief will save *him* from *future* harm. In other words, Plaintiff Moricz lacks standing to challenge the constitutionality of HB 1557 in this case or seek injunctive or other equitable remedies moving forward.

In Plaintiffs' Response, Plaintiffs also argue other conclusory allegations such as "[t]he Amended Complaint alleges in concrete, real-world terms that H.B. 1557 has erected an unconstitutional 'barrier' that 'makes it more difficult' for LGBT people to obtain an education on the same terms as their non-LGBT peers," (*see* Dkt. 91 at 24).

[2] As noted in SBSC's Motion to Dismiss, Count II – which both challenges the constitutionality of HB 1557 *and* asserts that a deprivation occurred - is the *only* count in the Amended Complaint involving SBSC that asserts that a deprivation occurred. SBSC is not a named Defendant in Count VI and Counts I, the portions of Count II unrelated to a deprivation of rights, Count III, Count IV, and Count V merely challenge the constitutionality of HB 1557. And while Plaintiff Moricz may have alleged an injury-in-fact in Count II by virtue of the alleged "censorship", "discipline", and "deprivation" to establish standing in that particular count, standing is just one component to stating a valid claim for relief. For the other reasons noted in SBSC's Motion to Dismiss and this Reply, Plaintiff Moricz has failed to state a valid claim in Count II. Therefore, even if this Court finds that Plaintiff Moricz validly asserted a concrete injury in Count II based on the alleged deprivation, Plaintiff Moricz has failed to state a valid claim sufficient to survive dismissal in Count II or any of the counts (I, III, IV, and V) for which he seeks relief. Thus, SBSC is entitled to dismissal from this case.

However, Plaintiffs wholly fail to tie these allegations to Moricz or SBSC in any way. Such attempts to assert standing by virtue of a chilling effect, without more, are insufficient. *See Restoration Assoc. of Fla., Inc. v. Julie I. Brown*, No. 4:21-CV-263-AW-MAF, 2022 WL 1279692, at *4 (N.D. Fla. Jan. 10, 2022) (Winsor, J.) (citing *Dermer v. Miami-Dade Cnty.*, 599 F.3d 1217, 1221 (11th Cir. 2010); *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972) ("Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm ....")) ("Although concrete allegations of self-censorship tied to a credible threat of enforcement satisfy the injury-in-fact requirement, a 'mere assertion of a chill is insufficient.'"). Importantly, not a single allegation in the Amended Complaint claims that any action of SBSC has made it more difficult for any LGBT student to obtain an education versus their non-LGBT peers, never mind Moricz who graduated months before the law took effect.

The only possible claim by Plaintiff Moricz is one of *past* harm. But that too is impossible, as Plaintiff Moricz's only alleged censorship, by his own admission, relates to his ***activism***. *See* Dkt. 47 ¶ 174. When viewed in a light most favorable to him, Plaintiff Moricz's claim of self-censorship is insufficient to state a cognizable claim for past injury as it represents a "mere assertion of a chill." *See Restoration Assoc. of Fla., Inc.*, at *4 (quoting *Dermer*, 599 F.3d at 1221). As detailed above, Plaintiffs' attempts to circumvent that fact now, at the responsive briefing stage, is

improper. *See Rutger v. Internal Revenue Serv.*, No. 8:20-CV-1144-T-33TGW, 2021 WL 118983, at *2 (M.D. Fla. Jan. 13, 2021) (citing *Gibbons v. McBride*, 124 F. Supp. 3d 1342, 1381 (S.D. Ga. 2015)).

Lastly, given the lack of allegations pled in the Amended Complaint by any of the other Plaintiffs who are individuals pertaining to "censorship", "discipline", "deprivations", other harms associated with enforcing HB 1557, or otherwise, *specifically by SBSC*, none of the other Plaintiffs who are individuals have pled the requisite plausible traceability to SBSC or that they are plausibly entitled to redress from SBSC. Thus, dismissal against each of these Plaintiff individuals is proper.

IV. The Organizational Plaintiffs Also Lack Standing Against SBSC.

In the Amended Complaint, Plaintiff Equality Florida seeks relief both in its own capacity and in an associational capacity on behalf of its members. *See* Dkt. 47 ¶ 26. Family Equality seeks relief "in its own capacity". *See* Id. at ¶ 28. Meanwhile, in Plaintiffs' Response, these "Organizational Plaintiffs" argue additional unpled assertions regarding their standing that impermissibly expands the four corners of the Amended Complaint. For instance, Plaintiffs argue in Plaintiffs' Response: "As alleged in the Amended Complaint, H.B. 1557 has seriously impeded Equality Florida's mission to combat discrimination against LGBT Floridians." Dkt. 91 at 27 (citing Dkt. 47 ¶ 27). A review of the Amended Complaint shows that this has not been pled either specifically or by reference.

Rather, the Amended Complaint merely restates Equality Florida's "mission" as follows:

> In furtherance of its mission—which includes fighting discrimination against LGBTQ Floridians—Equality Florida has actively opposed the passage of H.B. 1557. Equality Florida's mission also includes education, and through programs like the Safe and Healthy Schools Project, Equality Florida works to create a culture of inclusion while countering the bullying, harassment, social isolation, and bigotry that increase risk factors for LGBTQ students. *See* Dkt. 47 ¶ 27.

Likewise, regarding Family Equality, the Amended Complaint merely asserts that its "mission" is to

> [E]nsure that everyone has freedom to find, form, and sustain their families by advancing equality for the LGBTQ community. In furtherance of this mission, Family Equality works to advance legal and lived equality for LGBTQ families and those who wish to form them, including by ensuring that families have the support they need in school. Family Equality recently adopted a new strategic plan that includes as a priority protecting LGBTQ families and children from discrimination in schools as well as increasing Family Equality's presence in southern states, with an emphasis on the State of Florida. *See* Dkt. 47 ¶ 28.

"An organization may have standing to assert claims based on injuries to itself if that organization is affected in a tangible way", *League of Women Voters of Florida Inc. v. Lee*, Case No: 4:21-cv-186-MW/MAF, 566 F. Supp.3d 1238, 1248 (N.D. Fla. 2021) (Walker, M.), such as when the challenged conduct "impedes its ability to attract

members, to raise revenues, or to fulfill its purposes". *Id.* Under a "diversion-of-resources" theory, organizations possess standing when *a defendant's* illegal acts impair the organization's ability to engage in its own projects by forcing the organization to divert resources in response. *Id.* (italicized for emphasis). Moreover, a plaintiffs' asserted injury must be "far more than simply a setback to the organization's abstract social interests." *Dream Defs. v. DeSantis*, 553 F. Supp. 3d 1052, 1072 (N.D. Fla. 2021) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, 379, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982)). In *Dream Defs.*, this Court held that plaintiffs were "just as able to fulfill their purpose" (i.e., "advocate for racial justice and police accountability") "after section 1 went into effect as they were beforehand." *Id. Dream Defs.*, found that accordingly, "though it may be more difficult for Plaintiffs to have their preferred policies implemented at the municipal level, this does not frustrate their purpose — to advocate for those policies." *Id.*

In addition, an organization may also sue on behalf of its members when its members would otherwise have standing to sue in their own right, the interests its seeks to protect are germane to the organization's purpose, and neither claim asserted not the relief requested requires the participation of individual members in the lawsuit. *Id*. at 1248-1249. Organization plaintiffs – like any other plaintiff – must also establish an injury-in-fact, traceability *to defendants*, and that redressability of injuries can be obtained by a favorable ruling. *See Id*. at 1248. (italicized for emphasis).

The Organizational Plaintiffs lack standing against SBSC under any viable theory. Importantly, neither Organizational Plaintiff alleges that Plaintiff Moricz was a member while a student at one of SBSC's schools, that any Plaintiff (including Plaintiff Moricz) was or currently is a member of either organization, or that any other nexus *specifically traceable to SBSC* **or** *redressable by relief from SBSC* exists regarding any Plaintiff. Nor has either Organizational Plaintiff pled that the actions of the SBSC have impeded its ability to raise revenues, fulfill its purposes, and engage in its own projects because it has been forced to instead divert its own resources in response, or that SBSC has frustrated their ability to fight discrimination or fulfill their other missions. And while the Organizational Plaintiffs may have been injured, such injuries are not in any way traceable to SBSC or redressable by relief they can obtain from SBSC. Thus, the Organizational Plaintiffs have failed to plead standing on their own behalf specifically against SBSC.

Similarly, in an effort to avoid dismissal of their claims against SBSC for failure to allege associational standing, Plaintiffs argue that, because "Equality Florida has more than 140,000 members … [i]t is thus plausible that 'at least one member faces a realistic danger' of having their rights denied." Dkt. 91 at 29 (quoting *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F. 3d 1153, 1163 (11th Cir. 2008)). But the Organizational Plaintiffs to date have failed to allege or plead the actual existence of any members with ties to SBSC or Sarasota County, never mind those who might

realistically face danger of having their rights violated by SBSC. And even if they did, the Organizational Plaintiffs have not established their members possess standing on their own. Further, to the extent that Plaintiff Moricz is a member of either Organizational Plaintiff – which is not currently pled, associational standing is still lacking because the only even potentially viable theory for which he possesses standing – one based on a deprivation of rights – requires his direct participation in the lawsuit. For all of these reasons, SBSC is entitled to dismissal from claims asserted by the Organizational Plaintiffs.

WHEREFORE, based on the above and as outlined in SBSC's Motion to Dismiss, SBSC requests that this Court dismiss SBSC from Counts I-V of the Complaint. SBSC is not a proper party to a constitutional challenge to H.B. 1557, nor have any of the Plaintiffs in Counts I, II, III, IV, or V stated a valid claim against SBSC based on deprivation of rights or otherwise.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Counsel for School Board of Sarasota County hereby certifies that, based on Microsoft Word's "Word Count," the foregoing reply complies with Local Rules 7.1(f) and 7.1(i) because it contains 3,192 words.

Dated: August 10, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically using the CM/ECF e-filing portal, which will serve a copy on counsel of record.

Dated: August 10, 2022

Respectfully submitted,

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