IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IOWA SAFE SCHOOLS f/k/a GLBT YOUTH IN IOWA SCHOOLS TASK FORCE, et al., *Plaintiffs*, v. KIM REYNOLDS, in her official capacity as Governor of the State of Iowa, et al., *Defendants*.	Case No. 4:23-cv-474 **PLAINTIFFS' REPLY IN SUPPORT OF RENEWED MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

State Defendants mischaracterize Senate File 496 ("SF 496" or "the law") in a manner that avoids its plain language and clear intent. The State cannot twist the Eighth Circuit's mandate to rewrite these plainly unlawful provisions. To avoid further harm to Iowa students, educators, and others, enforcement of SF 496 must be enjoined.

I. The GISO Prohibition Is Unconstitutional.

The State asks this Court to do the legislature's work and rewrite a plainly unconstitutional statute. The Court lacks that power. Federal courts are "generally without authority to construe or narrow state statutes." *United Food & Com. Workers Int'l Union v. IBP, Inc.*, 857 F.2d 422, 431 (8th Cir. 1988). Narrowing constructions of state law are more appropriately done by state courts or enforcement agencies. *See Ward v. Rock Against Racism,* 491 U.S. 781, 795-96 (1989). But the State Board of Education has failed to do so, and this Court should not step in in its place or, at minimum, must be confident of a "reasonable" and "readily apparent" way to construe the text narrowly. The text of SF 496 forecloses any such construction. Even if one were available, legislative history and other evidence does not support the narrow construction the State seeks.[1]

A. The GISO Prohibition Cannot Be Narrowly Construed.

The State offers two narrowing constructions of the GISO Prohibition: (1) it applies only to mandatory instruction, and (2) it is neutral as to LGBTQ+ content. Both fail.

First, as this Court recognized, the GISO Prohibition cannot reasonably be read as applying only to mandatory instruction. It expressly applies to seven offerings: program, curriculum, test, survey, questionnaire, promotion, and instruction. This list covers far more than "a school's mandatory, instructional functions." State Defs.' Resistance to Pls.' Renewed Mot. for Prelim. Inj. ECF No. 128 at 7 "Resp.". Only three items on the list—curriculum, test, and instruction—concern mandatory school functions, and instruction is not always mandatory. *See* Iowa Code §279.80(2).

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[1] The State repeatedly points to Section 4.4 of the Iowa Code. Resp. at 5, 7. But that section sets forth *presumptions of enactment*, not canons of construction or interpretation.

The rest are not, and the State's reading would render them superfluous.[2] The Legislature knows how to specify which programs are mandatory. It did not do so here.

Noscitur a sociis does not rescue the State. If the Legislature had intended "program" to reach only mandatory, instructional functions, it would not have applied it to non-mandatory functions like "promotion" and "survey," whose most relevant commonality is that a school may offer them. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 196 (2012). Further, Iowa courts "cannot apply [*noscitur a sociis*] if its application . . . makes the general words meaningless." *Mall Real Est., LLC v. City of Hamburg*, 818 N.W.2d 190, 199 (Iowa 2012). Here, inserting "instructional" before "program" on a list that already includes "instruction" and "curriculum" would render "program" meaningless.

Second, the State's insistence that the GISO Prohibition is "neutral" does not save it. If neutral, it is absurd—i.e., it bans the use of all pronouns altogether, including "you", "me", and "our". If not neutral, it is discriminatory—i.e., it prohibits discussion of LGBTQ+ content. The Court previously interpreted it as neutral, and the Eighth Circuit instructed the Court to consider whether additional interpretive methods reveal a non-absurd reading. None save the Prohibition.

The State does not explain how the GISO Prohibition is triggered by discussion of a straight, cisgender person's relationships or gender. To the contrary, the State conceded that the GISO Prohibition must be read in a discriminatory manner when it said that a teacher could not require students to read a book that "has a gay character," Tr. Prelim. Inj. Hr'g ECF No. 62 at 84:14–23 ("Hr'g"), but could require a book with a straight character. All other interpretations of the statute result in the same absurdity that the Constitution forbids.

The State's concession of the law's discriminatory nature is consistent with the legislative history. *See* Iowa Code §§ 4.6.1-3, 5 (resolving ambiguity by looking to legislative intent and

[2] For instance, the GISO Prohibition applies "program" to non-mandatory and mandatory offerings. *Compare* Iowa Code §§ 256.11.6.b.(2) ("supervised athletic program"), 11.9.a.(2) ("library program"), 11.9A ("guidance and counseling program") *with* § 256.11.5.h.(2) ("instructional programs").

discerning intent by looking to the statute's objectives, surrounding circumstances, legislative history, and consequences). As one of the bill's supporters put it: "We all know what we're talking about here." Am. Compl. ECF No. 121 ¶ 124. Further, the GISO Prohibition should be interpreted in the context of other laws targeting LGBTQ+ students passed by the Iowa legislature, which undermine a neutral interpretation. *See, e.g.*, Iowa Code §§ 261I.2(1)(a)–(b). Ultimately, the State's narrowing constructions fail to rescue the GISO Prohibition from unconstitutionality.

B. The GISO Prohibition Is Unconstitutionally Vague.

The GISO Prohibition is vague, and the State's arguments to the contrary are unpersuasive. The State argues the mere use of pronouns and gendered honorifics does not "relate to" gender identity. But it is incoherent to insist that "acknowledg[ing] gender identity and sexual orientation" is permitted, Hr'g at 29:8-11, while teaching a book that "has a gay character" is prohibited, Hr'g at 84:14-23. The Board of Education's recent rulemaking proposal further demonstrates even the State does not know what "relating to" means: "[T]he department will not conclude that a neutral statement regarding sexual orientation or gender identity violates" the GISO Prohibition. *See* Iowa Admin. Bull., Educ. Dep't [281] *Notice of Intended Action*, ARC 8506C, at 5617 (Dec. 11, 2024), bit.ly/40h6rUG. But what is a "neutral statement" in this context? A statement that a nonbinary person wishes to be referred to as "them" may be "neutral." Yet, that is precisely the sort of instruction the State's own declarants say the law is intended to prohibit. *See* ECF No. 53-1, Ex. C, ¶¶ 8–10. And such a statement would plainly be one "relating to" gender identity. If the State cannot offer a coherent interpretation, how can students, teachers, and administrators do so?

The reality on the ground confirms the law's vagueness. Rather than engage with the factual record evincing serious and widespread uncertainty about the scope of the statute, the State simply declares: "the statute's text should quell [those] concern[s]." Resp. at 27. But the record evidence shows teachers have "[foregone] protected speech to steer clear of punishment." *Parents Defending Educ. v. Linn Mar Cmty. Sch. Dist.*, 83 F.4th 658, 668 (8th Cir. 2023); *see also* Harper

Decl. ¶¶ 17-18; Gutmann Decl. ¶¶ 30-31; Telford Decl. ¶ 26; Tayler Suppl. Decl. ¶ 31; Stevens Suppl. Decl. ¶ 6; Mix Suppl. Decl. ¶ 17.

C. The GISO Provision Violates Plaintiffs' First Amendment Rights Under *Moody*.

Because the GISO Prohibition's "unconstitutional applications substantially outweigh its constitutional ones," Plaintiffs' First Amendment facial challenges are likely to prevail under *Moody v. NetChoice, LLC*, 603 U.S. 707, 724 (2024):

Moody Step One: The GISO Prohibition covers non-mandatory programs and activities and restricts practically any acknowledgement of LGBTQ+ identity.

Moody Step Two: The overbroad and discriminatory scope of the GISO Prohibition produces unconstitutional applications that violate students' rights to receive information and to expressive association. The State does not seriously contest that these restrictions violate Plaintiffs' First Amendment rights. Rather, the State seeks to kick them out of the scope of the law through its erroneous statutory construction. The State also asserts the GISO Prohibition does not infringe upon students' rights because it can only be enforced against school districts and teachers. But the Eighth Circuit recognized a student suffers a First Amendment injury when a school district prohibits GSA meetings pursuant to the GISO Prohibition. *See GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 114 F.4th 660, 669 (8th Cir. 2024).

Moody Step Three: The purported "constitutional" applications of the GISO Prohibition the State identified violate the Equal Protection Clause because only instruction on LGTBQ+ topics would trigger the statute. Plaintiffs' facial challenge meets the *Moody* test.

D. The GISO Provision Violates Plaintiffs' Equal Protection Rights.

The GISO Prohibition requires differential treatment on the basis of sex for which the State lacks an exceedingly persuasive justification, as heightened scrutiny requires. Pls.' Br. in Support of Renewed Mot. for Prelim. Inj. ECF No. 115-1 at 21-22 "Mot."; *see also Sessions v. Morales-Santana*, 582 U.S. 47, 58 (2017); *Bostock v. Clayton Cnty. Ga.*, 590 U.S. 644, 669 (2020). The

State does not meaningfully attempt to justify treating LGBTQ+ individuals differently. Instead, it insists the GISO Prohibition does not require differential treatment—just exposure to discriminatory messages. Resp. at 16. But the GISO Prohibition makes classifications based on sexual orientation and gender identity. Under the only plausible statutory construction, if an LGBTQ+ student or teacher discusses basic facts about their life, the GISO Prohibition will be triggered. The same is not true for heterosexual and/or cisgender students or teachers. If a male teacher cannot give a "Family Day" presentation about his husband but a female teacher can, the male teacher has suffered differential treatment. *Cf. Bostock*, 590 U.S. at 660. Heightened scrutiny applies, and vague appeals to "age-appropriateness" offer no justification.

II. The Library Restriction Is Unconstitutional.

A. The Library Restriction Is Unconstitutionally Vague.

Educators' culling of more than 3,400 books from school libraries (Am. Compl. ¶ 56) demonstrates the vagueness of the Library Restriction. The State argues the term "descriptions or visual depictions" sufficiently notifies educators what content they must pull from library shelves because a "description" is more than a "mere reference." Resp. at 18–20. But that misses the point: books express ideas through literary devices such as allegory, metaphor, and allusion and often describe sex acts in language that falls between the explicit descriptions in Iowa Code § 702.17 and "mere references."

Educators cannot apply the Library Restriction with any uniformity because SF 496 fails to provide necessary clarity. *See Fayetteville Pub. Libr. v. Crawford Cnty. Ark.*, 684 F.Supp.3d 879, 906 (W.D. Ark. 2023); *also Hill v. Colorado*, 530 U.S. 703, 732 (2000) (the State's duty is to write laws that provide educators "a reasonable opportunity to understand" which content is prohibited). Instead, the Library Restriction impermissibly recruits educators to determine what violates its terms on an "ad hoc and subjective basis." *Stephenson v. Davenport Cmty. Sch. Dist.*, 110 F.3d 1303, 1308 (8th Cir. 1997). Given the context in which the State Legislature passed SF

496 and the threat of punishment, educators pulled thousands of books from library shelves, consistently targeting books with LGBTQ+ themes. *See* B.F. Suppl. Decl. ¶¶ 13- 14; P.B.-P. Suppl. Decl. ¶¶ 4-8; T.S. Suppl. Decl. ¶¶ 8-9.

B. The Library Restriction Violates Plaintiffs' First Amendment Rights Under *Moody*.

The State does not contest that students have a First Amendment right to receive information as the Supreme Court established in *Bd. of Educ. v. Pico*, 457 U.S. 853 (1982), and by the Eighth Circuit in *Pratt v. Indep. Sch. Dist. No. 831*, 670 F.2d 771 (8th Cir. 1982). The State also does not contest that Student Plaintiffs have demonstrated that the Library Restriction has "directly and sharply implicated" their basic First Amendment rights. *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). The crux of the State's argument is that in a world where educators applied the State's supposed narrowing construction, the Library Restriction would apply only to content that did not serve a legitimate pedagogical interest. Resp. at 22. The State, however, fails to consider the holistic value of school library books. *Miller v. Cal.*, 413 U.S. 15, 24 (1973); *see also Sheck v. Baileyville Sch. Comm.*, 530 F. Supp. 679, 692–93 (D. Me. 1982); *Free Speech Coal., Inc. v. Rokita*, No. 24 Civ. 980, 2024 WL 5055864, at *5–6 (S.D. Ind. July 25, 2024). Books contain more than whatever few lines of text the State thinks is a "description" of proscribed sex acts. This Court already has found that the books removed—which are not only "modern award-winners" but also "historical classics" and "non-fiction books designed to help minors avoid being victimized by sexual assault"—*did* serve a legitimate pedagogical purpose. Although the State's purported goal now is to "avoid controversy within the school environment," *Fleming v. Jefferson Cnty. Sch. Dist. R-1*, 298 F.3d 918, 925–26 (10th Cir. 2002), the unconstitutional applications of how it has chosen to do so far outweigh any constitutional ones. *Moody*, 603 U.S. at 724.

Prior to SF 496, Iowa law had a workable standard for restrictions on books in school libraries: books with "sex acts" could be in school libraries if taken "as a whole and applying contemporary community standards *with respect to what is suitable material for minors*," the

books have "serious literary, scientific, political or artistic value." Iowa Code §§ 728.1(5), 728.2 (emphasis added). Moreover, these decisions were made locally by those with the expertise to do so and were tailored to the student grade level to which the materials were available. Those who disagreed had a procedural means to challenge. *Accord Smith v. United States*, 431 U.S. 291, 301 (1977) (rejecting statewide laws that establish "community standards" under *Miller*).

The State argues that the more than 3,400 books removed from schools is insufficient to show overbreadth. Resp. at 20. But this case is unlike *Moody*, where additional evidence was required to determine whether certain applications of the law at issue even implicated the First Amendment. 603 U.S. at 724-25. Because every possible application of the Library Restriction reaches protected speech, the removed books, along with the Student Plaintiffs' declarations as to some of those books, are evidence enough. *See* B.F. Suppl. Decl. ¶¶ 13-14; P.B.-P. Suppl. Decl. ¶¶ 4-8; T.S. Suppl. Decl. ¶¶ 8-9. Censoring this speech is an unconstitutional application of the Library Restriction, and it is the State's burden to show these removals are permissible. *Pratt*, 670 F.2d at 777; *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988).

The Library Restriction also lacks a "plainly legitimate sweep." *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021). The State's asserted pedagogical concern "in avoiding exposing its students to 'controversial and sensitive topics'" is a ruse. Resp. at 22-23. The law imposes a blanket ban on materials with "descriptions" or "depictions" of sex acts but incorporates *no* standards to assess whether removal of the entire book is "reasonably related" to the State's concern about exposure. *Hazelwood*, 484 U.S. at 273. Yet, the State exempts religious and curricular health course texts that include "descriptions" of sex acts, implying that books with sex acts *can* have pedagogical value under the standard. Iowa Code §§ 256.11(9)(a)(1), 19(a)(1). The State has no answer for why such exceptions exist. *City of Ladue v. Gilleo*, 512 U.S. 43, 51-52 (1994). The State cannot have it both ways: either all books should be analyzed for value in relation to their descriptions of sex acts or not. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S.

819, 837 (1995). Through exceptions, the State impermissibly imposes its own viewpoint on what it maintains are "controversial and sensitive topics." Resp. at 22; *Pico*, 457 U.S. at 872.

III. The Gender Identity Notification Provision Is Unconstitutional.

ISS has associational and organizational[3] standing to challenge the Gender Identity Notification Provision. The State's assertion that ISS must identify a member who has been affected, *see* Resp. at 28–29, is incorrect at this stage of the litigation. To establish associational standing an organization must demonstrate that (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Worth v. Jacobson*, 108 F.4th 677, 685 (8th Cir. 2024) (quoting *Students for Fair Admissions, Inc. v. Pres. & Fellows of Harvard College*, 600 U.S. 181, 199 (2023)). The entity "need not establish that all of its members would have standing to sue individually so long as it can show that 'any one of them' would have standing." *Iowa League of Cities v. EPA*, 711 F.3d 844, 869 (8th Cir. 2013) (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)).

ISS has sufficiently pled associational standing, and submitted several affidavits from members affected by SF 496 on this point, which the State ignores. For example, one student, who was the president of an ISS-member GSA, noted the school barred any advisor from attending GSA meetings due to the Gender Identity Notification Provision. Mot. at 4; *see* F.J. Decl. ¶¶ 18, 23-24, 32. And other Student Plaintiffs who belong to ISS-member GSAs averred that student engagement has dropped specifically due to the Gender Identity Notification Provision. Mot. at 4-

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[3] The State fails to address the fact that ISS has organizational standing. A plaintiff with organizational standing need only show (i) that it has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). ISS has alleged sufficient facts to establish its own organizational standing: the Gender Identity Notification Provision directly interferes with ISS's core mission of providing a safe, supportive, and nurturing learning environment and community for LGBTQ+ youth and their allies, causing ISS to divert its resources and employee time away from this purpose, all of which would be resolved should the Court enjoin the law. *See* Mot. at 23-24; Am. Compl. ¶ 7.a.

5; *see* Doe Suppl. Decl. ¶¶ 9-10; P.B.-P. Suppl. Decl. ¶¶ 14-15. Several schools required permission slips from parents for students to participate in ISS-member GSAs, because of the provision. Mot. at 5; *see* F.J. Decl. ¶ 38. ISS thus meets the requirements for associational standing and has provided affidavits of affected members. *See Students for Fair Admissions, Inc.*, 600 U.S. at 201; *Worth*, 108 F.4th at 686.[4]

Turning to the merits, the statutory language of the Gender Identity Notification Provision is impermissibly vague. The legislature provided only one example of what would constitute a "request" for an "accommodation" "intended to affirm the student's gender identity": names and pronouns. Mot. at 15. Students and teachers are left guessing as to what other "requests" for such accommodations might be. And despite the State's attempt to characterize educators' understanding as sufficiently certain to render the provision constitutional, *see* Resp. at 26-27, the declarations underscore the law's vagueness and uncertainty. For example, one Plaintiff Educator expressed concern that if a student were to confide in her about binding his chest, she would be required to report him to his parents. Telford Decl. ¶¶ 16-18. This scenario does not include a request to be called by certain name or referred to by certain pronouns. *See id.*; *see also* Mot. at 23 (citing Telford Decl. ¶¶ 30-37). Similarly, ISS has heard from educators who "fear *learning* of students' transgender or gender nonconforming status," lest doing so would trigger a report. Mix Suppl. Decl. ¶ 8. Again, learning of a student's gender identity does not necessarily involve a request to use a certain name or pronouns. As ISS and Plaintiff Educators plainly state, educators have "reported confusion over what sort of question might constitute a request" and "don't know what is forbidden and what is allowed" under the Gender Identity Notification Provision. Tayler

[4] The State also fails to acknowledge that Plaintiffs seek injunctive and declaratory relief, not damages. *See* Am. Compl. at 157-58. And "where an organizational plaintiff 'seeks only declaratory and prospective injunctive relief, the participation of individual [members] . . . is not required.'" *Catholic Benefits Ass'n v. Burrows*, 732 F.Supp.3d 1014, at 1025 (D.N.D. 2024) (quoting *Heartland Acad. Cmty. Church v. Waddle*, 427 F.3d 525, 533 (8th Cir. 2005)); *United States v. Iowa*, *appeal docketed* No. 24-2265 (8th Cir.), Nos. 4:24-cv-162, 4:24-cv-161, 2024 WL 3035430, at *10, (S.D. Iowa 2024) (citation omitted).

Decl. ¶ 28; Telford Decl. ¶ 37; *see also* Mot. at 23. With no insight into what the law prescribes, teachers' licenses are at the mercy of those enforcing the law.

Finally, the State's assertion that the Gender Identity Notification Provision "does not single out any viewpoint" or facially violate the right to expressive association of students is also misguided. Resp. at 29. On its face, the provision exclusively targets one viewpoint—students who do not identify with the gender assigned to them at birth. The provision has demonstrably affected the ability of GSAs across Iowa to meet, resulting in the shuttering of these organizations. *See* Mot. at 19. "Allowing" students to associate but restricting the speech at those meetings such that teachers will not sponsor them and prohibiting students from advertising them when substantial restrictions are not placed on other clubs *is* a quintessential viewpoint-based restriction on expressive association.

IV. The Other Factors Weigh in Plaintiffs' Favor.

The State does not contest that the constitutional violations Plaintiffs have suffered are irreparable, but questions the harm because Plaintiffs took two months to amend their complaint and seek renewed injunctive relief. Resp. at 30. However, the Eighth Circuit's mandate did not issue until the end of August, and Plaintiffs filed as soon as school districts approved policies to enforce the law. Despite its cries to the contrary, the State does not suffer any injury when it is prevented from enforcing a plainly unconstitutional law. *Rogers v. Bryant*, 942 F.3d 451, 458 (8th Cir. 2019). Indeed, the balance of equities generally favors protecting First Amendment rights and the public is served by the preservation of constitutional rights. *Phelps-Roper v. Nixon*, 545 F.3d 685, 694 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester, Mo*., 697 F.3d 678 (8th Cir. 2012).

CONCLUSION

For the foregoing reasons, enforcement of the GISO Prohibition, Library Restriction, and Gender Identity Notification Provision should be enjoined during the pendency of this action.

Dated: January 6, 2025 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing paper with the Clerk of Court by using the CM/ECF system.

Dated: January 6, 2025

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