United States Court of Appeals
For The Eighth Circuit
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September 12, 2025

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RE: 25-2186 Iowa Safe Schools, et al v. Kim Reynolds, et al

Dear Counsel:

The amici curiae brief of the amici Iowa State Education Association and National Education Association in support of the appellees has been filed. If you have not already done so, please complete and file an Appearance form. You can access the Appearance Form at www.ca8.uscourts.gov/all-forms.

Please note that Federal Rule of Appellate Procedure 29(g) provides that an amicus may only present oral argument by leave of court. If you wish to present oral argument, you need to submit a motion. Please note that if permission to present oral argument is granted, the court's usual practice is that the time granted to the amicus will be deducted from the time allotted to the party the amicus supports. You may wish to discuss this with the other attorneys before you submit your motion.

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District Court/Agency Case Number(s): 4:23-cv-00474-SHL

No. 25-2186

IN THE
United States Court of Appeals for the Eighth Circuit

IOWA SAFE SCHOOLS, *ET AL.*,
Plaintiffs-Appellees

v.

KIMBERLY REYNOLDS, *ET AL.*,
Defendants-Appellants

and

MATT DEGNER, *ET AL.*,
Defendants.

On Appeal from the United States District Court
for the Southern District of Iowa, Case No. 4:23-cv-474
(The Hon. Stephen H. Locher)

BRIEF OF THE NATIONAL EDUCATION ASSOCIATION AND THE IOWA STATE EDUCATION ASSOCIATION AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES AND URGING AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(4)(a), Amici Curiae National Education Association ("NEA") and the Iowa State Education Association ("ISEA") state that they are nonprofit corporations. Amici further state that they are not subsidiaries of any corporation, nor do they have any stock that can be owned or held by a publicly held corporation.

/s/ Katherine E. Lamm

September 12, 2025

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STATEMENT OF AMICI CURIAE

NEA and ISEA have a strong interest in this appeal, which addresses an unworkable state law that interferes with how Iowa's school districts and educators meet students' needs around gender identity and sexual orientation.[1] NEA is the nation's largest labor organization, representing approximately three million members who serve as educators, counselors, and education support professionals in our nation's public schools and institutions of higher education. NEA seeks to champion justice and excellence in public education. ISEA is NEA's Iowa affiliate, whose mission is to "elevate the profession and public education while placing students at the center of everything we do."

Amici have a profound interest in their members' ability to do their jobs with integrity and without fear of discipline for alleged violations of ill-defined laws that disrupt the learning environment. Amici are also deeply invested in strengthening the quality of public education for every

[1] Amici submit this brief with the parties' consent. Fed. R. App. P. 29(a)(2). No party's counsel authored the brief in any part or contributed money intended to fund the brief's preparation or submission, and no person—other than NEA and ISEA, their members, or counsel—contributed money intended to fund the brief's preparation or submission. *Id.* 29(a)(4)(E).

student, regardless of background, belief, or identity. To that end, amici are committed to fostering an environment in public schools that is welcoming and responsive to the needs of all students—including those who are lesbian, gay, bisexual, transgender, non-binary, and questioning (LGBTQ+).

Further, amici believe that enabling freedom of thought is essential to students' academic success and to the development of democratic values. Educators are uniquely well suited by training and experience to conduct developmentally appropriate classroom discussions and to curate library content, and must be able to select freely from appropriate materials to provide each student with the excellent education they deserve.

These values are at stake in this appeal from the district court's decision enjoining three aspects of Iowa's Senate File 496 (SF496), a law that endeavors to erase from public schools LGBTQ+ topics and identities, and to eliminate school library books that even acknowledge the existence of sex. Amici urge this Court to affirm, because the law violates the First and Fourteenth Amendments and needlessly harms students and educators.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This appeal involves a challenge to parts of SF496 brought by plaintiffs-appellees Iowa Safe Schools, several public-school students, and two public-school teachers. *See* App.206–10, R.Doc.121, at 3–7. At issue here are three of SF496's components: a requirement for educators and administrators to notify parents of a student's request for "accommodation" regarding gender identity (the "Parental Notice Section"); a broad prohibition on content in schools regarding gender theory and sexual orientation (the "Instruction Section"); and the censorship of library books that describe or depict sex acts (the "Library Restriction").[2] The district court properly found that plaintiffs are likely to succeed in proving that aspects of each of these provisions are unconstitutional.

First, the district court properly concluded that the Parental Notice Section is unconstitutionally vague save for a single example contained in the statutory text. *See* App.558–60, R.Doc.141, 32–34. This Court

[2] This brief adopts the same shorthand terminology used in the parties' briefs. Also following the parties' lead, this brief describes the Instruction Section as it appears following a July 2025 amendment, which bars content on "gender theory" rather than "gender identity."

should apply exacting scrutiny in its vagueness analysis because the law implicates protected speech and violations may have grave consequences. Under any level of scrutiny, however, the law is impermissibly vague, which is all the more apparent within the context of educators' practical experience and competing professional ethical obligations.

Second, the district court also rightly concluded that the Instruction Section is overbroad. As the court acknowledged, the government's broad control over the public-school curriculum includes directing mandatory classroom content. But the law's text is easily read to stretch beyond this, to reach activities like extracurricular clubs, student speech, and even library collections. These areas are not subject to the State's unbridled control and must be free of SF496's burdens.

Third, the district court properly adopted its reasoning from parallel litigation to also enjoin the Library Restriction here. The existence of another preliminary injunction, now on appeal, does not render plaintiffs' challenge moot. For the reasons stated in NEA's amicus brief in that case, *Penguin Random House v. Robbins*, No. 25-1819 (8th Cir.), the Library Restriction violates the First Amendment.

Finally, the district court correctly concluded that the balance of harms favored entering preliminary relief, as SF496 plainly harms students, educators, and the quality of education in Iowa by chilling protected speech, placing educators in fear of termination for simply doing their jobs, and censoring valuable content.

This Court should affirm.

ARGUMENT

As the Supreme Court has long and "unmistakabl[y]" held, neither "students [n]or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Consequently, "students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate," or "confined to the expression of those sentiments that are officially approved." *Id.* at 511.

Importantly, "[n]o single tradition in public education is more deeply rooted than local control over the operation of schools." *Milliken v. Bradley*, 418 U.S. 717, 741–42 (1974). As this Court has acknowledged, it is "teachers, parents, and elected school officials" who wield this "control" of the school system. *Henerey ex rel. Henerey v. City of St.*

Charles, Sch. Dist., 200 F.3d 1128, 1132 (8th Cir. 1999) (quotation omitted). One reason for this is that local officials and educators may tailor the educational program and environment to community needs and values. *See Milliken*, 418 U.S. at 741–742; *see also, e.g.*, *Zykan v. Warsaw Comm. Sch. Corp.*, 631 F.2d 1300, 1305 (7th Cir. 1980).

The challenged aspects of SF496 constitute an improper legislative intrusion on the constitutional rights of the educators who are traditionally charged with managing the school environment and the rights of the students they serve. The district court properly invalidated those components, mitigating the fear, uncertainty, and chilling effect that SF496 has had on students and educators, and enabling schools to remain welcoming and supportive environments for all community members, including those who identify as LGBTQ+.

I. The district court properly concluded that the Parental Notification Section is impermissibly vague in all but one respect.

A "vague law is no law at all" because such enactments defy the "first essential of due process of law": "fair notice of what the law demands of them." *United States v. Davis*, 588 U.S. 445, 447, 451 (2019) (quotation omitted). Vague laws also "offend" other "important values,"

as they are susceptible to arbitrary enforcement and may chill the exercise of fundamental freedoms. *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). Thus, a law whose "prohibitions are not clearly defined" is void and unenforceable. *Id.* at 108.

Here, the Parental Notification Section applies when a student "requests an accommodation that is intended to affirm the student's gender identity" from licensed school staff, "including a request [to] address the student using a name or pronoun that is different than the name or pronoun assigned to the student in the school district's registration forms or records." Iowa Code § 279.78(3). "Gender identity" is defined as the student's "subjective identification as male, female, or neither." *Id.* § 279.78(1)(a). An educator "shall report the student's request" to a school district administrator, who "shall report [it] to the student's parent or guardian." *Id.* § 279.78(3). Violations carry escalating consequences, from a written warning to a hearing and discipline, including license revocation. *Id.* § 279.78(4) (incorporating § 256.146).

The district court properly found that this Section is subject to heightened scrutiny for vagueness because it erodes constitutional rights and carries grave consequences, and that its imprecise language fails

that review (except as to the lone example provided in the statutory text). The Section's vagueness is only amplified when considered in the context of educators' practical reality and codified ethical obligations.

a. The Parental Notification Section is subject to heightened scrutiny.

A law "is unconstitutionally vague if it fails to provide adequate notice of the proscribed conduct and lends itself to arbitrary enforcement." *Parents Defending Educ. v. Linn Mar Community Sch. Dist.*, 83 F.4th 658, 668 (8th Cir. 2023) (quotations omitted). The "degree of vagueness that the Constitution tolerates," however, "depends in part on the nature of the enactment." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 498 (1982). Certain features will heighten the level of scrutiny applied in a vagueness challenge, including whether the law "threatens to inhibit the exercise of constitutionally protected rights" or whether a violation carries "severe" consequences. *Id.* at 498–99. Although the "public school setting" generally entails less scrutiny, a law that "reaches the exercise of free speech" enhances it. *Parents Defending Educ.*, 83 F.4th at 668 (quotation omitted).

First, the Section triggers heightened scrutiny because it implicates students' and educators' First Amendment rights around gender identity

and the use of pronouns. This Court has acknowledged that the use of a student's preferred pronouns is expressive conduct, albeit in the context of the *refusal* to do so. *Id.* at 666–68; *see also Meriwether v. Hartop*, 992 F.3d 492, 508 (6th Cir. 2021) ("Pronouns can and do convey a powerful message implicating a sensitive topic of public concern."). A student's assertion of their own gender identity or preferred pronoun—and an educator's acceptance of that identity—also must be considered forms of self-expression that implicate the First Amendment. *See ibid.*; *see also Tinker*, 393 U.S. at 510–11.

Here, students report that fear of triggering the Parental Notification Section has inhibited them from sharing their identities or using preferred pronouns. App.12, R.Doc.115-2, at 3; App.20, R.Doc.115-3, at 5; App.29–30, R.Doc.115-4, at 4–5; App.64, R.Doc.115-8, at 3; App.83, R.Doc.115-10, at 4. And educators have felt the need to take steps to avoid the Section's application—chilling students' speech, and their own, around gender identity. *See* App.57, R.Doc.115-7, at 12; App.74–76, R.Doc.115-9, at 4–6; App.103, R.Doc.115, at 8. Accordingly, heightened scrutiny applies.

Second, the Parental Notification Section is subject to exacting scrutiny because violations take on a "grave nature" and can result in "particularly severe" penalties. *Sessions v. Dimaya*, 584 U.S. 148, 157 (2018) (plurality). Although heightened scrutiny is generally reserved for criminal laws, it also applies in certain civil contexts, *see Dimaya,* 584 U.S. at 156–57 (plurality), 178–80 (Gorsuch, J., concurring) (noting Founding Era practice of declining to enforce vague civil laws). Justice Gorsuch's concurrence in *Dimaya* observed that some civil penalties are indistinguishable in severity from criminal ones, including those that "strip persons of their professional licenses and livelihoods." *Id.* at 184–85. At least one court already has followed Justice Gorsuch's lead to apply heightened scrutiny in a challenge similar to this one, where teachers stood to lose their licenses for violating a vague law. *Local 8027, Am. Fed'n of Teachers-N.H. v. Edelblut*, 651 F. Supp. 3d 444, 460 (D.N.H. 2023), *appeal docketed*, No. 24-1690 (1st Cir. argued Apr. 8, 2025). This Court should do the same.

b. The district court correctly concluded that the Parental Notification Section fails to provide notice of prohibited conduct and invites arbitrary conduct.

The district court properly found that the Parental Notification Section's requirement to report a student's request for an "accommodation that is intended to affirm the student's gender identity" is unconstitutionally vague (*see* App.558–60, R.Doc.141, at 32–34). Even without heightened scrutiny, the Section is "so vague and indefinite as really to be no rule or standard at all," *Horn v. Burns & Roe*, 536 F.2d 251, 254 (8th Cir. 1976) (cleaned up)—except as to the single statutorily specified application that the district court severed.[3]

The district court's application of this Court's precedent in *Parents Defending Education* was apt, not misplaced, as the State contends (Br. 24–25). There, this Court invalidated a district policy that subjected students and educators to discipline if they persistently failed to "respect a student's gender identity." 83 F.4th at 664. This Court took issue with the undefined statutory term "respect," which has "various meanings" and invited subjective judgments about whether conduct was

[3] Amici take no position on whether the district court properly relied on state law in deciding to sever and uphold this portion of the law. App.559, R.Doc. 141, at 33.

"disrespectful." *Id.* at 668. Nor could the Court take the district's word that the provision applied only to the use of "a student's preferred name and pronouns," especially given the capaciousness of the term "gender identity"—meaning a "person's deeply-held sense or psychological knowledge of their own gender." *Id.* at 668–69.

The district court rightly held that a similar analysis applies here. The term "accommodation" is "broad" and undefined: Merriam-Webster's Collegiate dictionary only confirms that the word is "capacious," reaching "the providing of what is needed for convenience," or "adaptation, adjustment." App.558-59, R.Doc.141, at 32–33. Adding to the Section's uncertain reach, it applies when a student's request is subjectively "intended to affirm the student's gender identity." Iowa Code § 279.78(3). Rightly, the district court identified "any number of judgment calls" that might arise when a student, for example, asks to use a gender-ambiguous nickname, or selects gender-coded clothing or school supplies. App.559, R.Doc.141, at 33.

Thus, the district court properly followed this Court's precedent to conclude that the Parental Notification Section is unconstitutionally vague, save for its express application to a student's request to use a

pronoun that differs from school records. App.559, R.Doc.141, at 33. There are even more reasons, however, that this Court should reach the same conclusion.

c. The context of educators' practical reality and competing ethical obligations further demonstrates the Parental Notification Section's lack of clarity.

The State asserts that educators are "equipped" or "should be able" to know what the Section means (Br. 17, 22–23, 26), but educators' actual experience and competing ethical obligations confirm the opposite is true. While the State insists that the Section is narrow, this Court cannot simply "rest assured that the policy is as narrow as [the State] asserts in litigation" when its "plain meaning" appears to reach boundlessly beyond. *Parents Defending Educ.*, 83 F.4th at 668–69.

1. The State's assurances of the law's clarity and narrowness do not stand up to scrutiny. The State's own attempt to define the term "accommodation," for example, is an inscrutable jumble: "any accommodation or 'the providing or what is needed or desired for convenience." Br. 26.

The State goes on to claim that educators "already understand and apply the concept of accommodations in a variety of contexts," citing

provisions of several federal disability-rights statutes. Br. 27. But the fact that teachers may be familiar with the concept of "accommodation" in the disability-rights context does not elucidate the meaning of that term here. Indeed, one educator plaintiff explained that the term "accommodation" is *more* confusing because it is a term of art that refers to tools "such as paraeducator support or an augmentative and alternative communication device." App.92, R.Doc.115-11, at 6. This has no obvious application to a student's gender identity. *Ibid.*

The State also claims that, even if the Section is vague, the existence of a single example of the statute's application—to a student's request to be called by a name or pronouns that differ from what appears in school records—renders the rest of its text understandable. *See* Br. 26–27. Not so. One educator plaintiff reported that some school districts have construed the statute to apply *only* to scenarios like the example provided, while others "require reports for things as benign as nicknames." App.103, R.Doc.115-12, at 8. In any event, there are many things in between—changes in a student's physical presentation, interest in gender-specific sports teams, posing questions about pronouns, etc.—

that might or might not be a request for affirmation of gender identity. *Ibid.*

Moreover, the statute's application depends on the student's subjective intent (*i.e.*, "an accommodation *that is intended* to affirm the student's gender identity," Iowa Code § 279.78(3)), which may be wholly unknown to the licensed staff whom the Parental Notification Section charges with reporting to the district. As one educator plaintiff explained, the Section's language "seems to assume I have insight into my students' thoughts that I do not." App.92, R.Doc.115-11, at 6. He cannot tell whether, for example, a student's interest in a book about a transgender child is that student's way of expressing their own transgender identity. *Ibid.* Even if the student were to say something more direct, how "express" must the student be for the Section to apply? *Ibid.*

The State also wrongly claims that educators' reported efforts to avoid triggering the law reflect their comprehension of what the law prohibits. Br. 27–29. To the contrary, educators have taken drastic steps because they cannot sort out what the law means, and they fear that any manner of student behavior might trigger the law, such as students "*using* their preferred names and pronouns" (an act that does *not*

squarely fall within the statutory "request" example). App.75, R.Doc.115-9, at 5. As another educator explained, the law's vagueness "means many educators don't know what is forbidden and what is allowed," and that she must "gamble with [her] career" to respect her students' dignity. App.104, R.Doc.115-12, at 9.

2. The Parental Notification Section's requirements are even harder to understand when taken in context with ethical obligations imposed by Iowa law. For example, educators may violate their ethical obligations if they:

- "Fail[] to make reasonable effort to protect the health and safety of the student or create[] conditions harmful to student learning."
- "[R]epeatedly expose[] students … to unnecessary embarrassment or disparagement."
- "[D]eny[] a student … participation in the benefits of any program, on the grounds of" several protected characteristics, including "gender identity."
- "Intentionally disclose confidential information."

Iowa Admin. Code 282-25.3(6). Given this, how is an educator to understand what the Parental Notification Section requires? What does the Section require of an educator who knows that a report home will put the student at risk of harm? Or if failing to use a student's preferred

name or pronoun will cause the student embarrassment, or prevent the student from participating fully in the classroom? What can be reported without violating the student's confidentiality? Iowa law offers no clear guidance on how to sort and comply with these competing obligations, rendering the Section's application all the more uncertain.

Educators' experiences underscore the problem. One educator explained that SF496 has "caused [her] great anguish both personally and professionally," largely due to this Section's operation. App.74, R.Doc.115-9, at 4. "It forces [her] to choose between" trying to avoid triggering the law (and its repercussions) and maintaining a welcoming school atmosphere where students may express themselves authentically. App.75, R.Doc.115-9, at 5. Another educator plaintiff expressed "great concern" about student questions around gender identity, because he does not know what his "obligations" are under the Section, but he does know that his response "could have immense consequences for the student," especially if the student's household is not accepting. App.91, R.Doc.115-11, at 5. Another described the prospect of "requests for affirmation" as "terrifying," because, depending on the

student's situation at home, this might have "tragic consequences." App.102, R.Doc. 115-12, at 7.

II. The district court correctly concluded that certain non-curricular activity and expression must fall outside the Instruction Section's reach in order to avoid constitutional concerns.

The State devotes the bulk of its argument regarding the Instruction Section to assailing the district court's handling of a facial First Amendment challenge. Br. 31–48. The State does little, however, to contest the district court's conclusion that to the extent this Section restricts certain expressive activity within schools, it violates the First Amendment. *Ibid.* The court was therefore correct to acknowledge certain expressive activity, outside of mandatory curricular instruction, may not be subject to viewpoint discrimination or overbroad regulation.

Specifically, the Instruction Section states that a "school district shall not provide any program, curriculum, test, survey, questionnaire, promotion, or instruction relating to gender theory or sexual orientation to students in kindergarten through grade six." Iowa Code § 279.80(2).[4]

[4] As noted above, *see* n. 2, *supra*, the phrase "gender identity" stood in place of the phrase "gender theory" at the time of the district court's ruling.

"Gender theory" is defined as "the concept that an individual may properly be described in terms of an internal sense of gender that is incongruent with the individual's sex as either male or female," while "sexual orientation" means "actual or perceived heterosexuality, homosexuality, or bisexuality." *Id.* §§ 279.80(1), 216.2. Violations of the law can lead to disciplinary action, including discharge and license revocation. Iowa Code § 256.146(13); Iowa Admin. Code § 282–25.3(256).

The district court concluded that the terms "curriculum, test, survey, questionnaire [or] instruction" could be construed narrowly to restrict only the content of compulsory classroom instruction, from which the State may exclude certain topics. *See* App.542–43, 551–53, R.Doc.141, at 15–16, 25–27. The court found that the terms "program" and "promotion," however, necessarily reached "activities outside the mandatory curriculum," such as "GSAs, informal guidance/support, and other activities" in which the State may not discriminate based on viewpoint—which the law inevitably does. App.542, R.Doc.141, at 16; *see* App.553–57, R.Doc.141, at 27–31. The court concluded that plaintiffs were likely to prevail in showing that the latter restrictions violated the First Amendment. App.560-61, R.Doc.141, at 34-35.

This Court should affirm and clarify that the Instruction Section may not reach beyond compulsory instruction.

a. The district court correctly concluded that the State's discretion over the public-school curriculum does not extend to suppression of speech in important non-curricular contexts.

The district court properly acknowledged that states have substantial "latitude" in crafting the public-school curriculum. App.551–52, R.Doc. 141, at 25–26 (quoting *Bd. of Educ. v. Mergens*, 496 U.S. 226, 241 (1990), and citing *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988)). Indeed, this Court recently held that the curriculum is a form of government speech in which neither students nor educators have their own First Amendment interests, and which is constrained only by other constitutional provisions and the political process. *Walls v. Sanders*, 144 F. 4th 995, 1003–06 (8th Cir. 2025).

But the State's broad ability to regulate "matters of *curriculum*" and "the compulsory environment of the classroom" does not mean that it may exert limitless control over all aspects of the school environment. *See Walls*, 144 F. 4th at 1004 (distinguishing curriculum from the "school library"). As the district court acknowledged, there is binding precedent holding that the State possesses more limited control over non-curricular

activity—whether outside the classroom or generated by students—and must not engage in viewpoint discrimination. *See* App.523, 553–57; R.Doc.141, at 16, 27-31.

1. Extracurricular clubs and activities. As the district court observed, when a school opens itself up for "organizations or speech outside the mandatory curriculum," it creates a "limited public forum" in which viewpoint discrimination is impermissible. App.554, R.Doc.141, at 28 (citing *Cajune v. Ind. Sch. Dist. 194*, 105 F.4th 1070, 1083 (8th Cir. 2024), and *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07 (2001)). This Court has held that an educational institution that permits student clubs may not treat some unfavorably because of their "motivating ideology" or "opinion or perspective" without triggering heightened scrutiny. *Gerlich v. Leath*, 861 F.3d 697, 704–05 (8th Cir. 2017) (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)). Indeed, this Court has held as much specifically with respect to a GSA. *Gay & Lesbian Students Ass'n v. Gohn*, 850 F.2d 361, 367 (8th Cir. 1988).

The State suggests that *Walls* may undermine this long tradition of requiring viewpoint neutrality in extracurriculars. Br. 38 ("It is not even

clear that if the law did prohibit certain clubs, that that would be unconstitutional."). But *Walls* does not address extracurricular activities or analyze the latter precedents, nor could it overrule Supreme Court precedent. Moreover, this Court already has held that "[t]he government speech doctrine"—on which the *Walls* analysis hinged—"does not apply if a government entity has created a limited public forum for speech." *Gerlich*, 861 F.3d at 707.

Accordingly, the district court properly concluded that the Instruction Section is constitutionally infirm to the extent it prevents students from participating in extracurricular activities or clubs that involve sharing content around LGBTQ+ identities.

2. Other student and educator speech. As noted earlier, neither "students [n]or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker*, 393 U.S. at 506. Indeed, students are neither "closed-circuit recipients of only that which the State chooses to communicate," nor "confined to the expression of those sentiments that are officially approved." *Id.* at 511. Thus, whether "in the classroom, or in the cafeteria, or on the playing field," students are permitted to share their own views as long as they are not disruptive.

Id. at 512–13*; see also Parents Defending Educ.*, 83 F.4th at 666–67 (construing students' expressions of views on gender identity as protected speech).

Moreover, as the district court explained, even during classroom instruction—when the State may prohibit "normative" content on gender identity or sexual orientation—students' questions on prohibited topics may properly "engender further discussion" in the form of an educator's neutral explanation. *See* App.552–53, R.Doc.141, at 26–27. To hold otherwise, the district court observed, would create problems of vagueness and overbreadth. *Ibid.*

The district court also properly understood that students and teachers should be able to communicate on topics within the Instruction Section's scope in the context of "informal counseling or guidance" outside the classroom. App.542, R.Doc.141, at 16. Although the State agreed with this proposition below, *see ibid.*, its suggestion that *Walls* has a limiting effect on *non-curricular* speech again merits clarification from this Court on where the First Amendment does not permit this law to reach. The prohibition on viewpoint discrimination in extracurricular activities would be meaningless if educators could not direct students to

appropriate clubs, like a GSA, or other resources. Moreover, the law may not inhibit educators' ability to exercise their own private speech rights on topics of public concern, including LGBTQ+ identities and issues, when they are on duty but not engaging in instruction. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 527–31 (2022).

3. Library content. The content of school library shelves is another area over which the State may not assert absolute control. This Court already rejected the idea that library shelves are a form of government speech in the first appeal in this case. *GLBT Youth in Iowa Schools Task Force v. Reynolds*, 114 F.4th 660, 667–68 (8th Cir. 2024).

Although the State does not actively press arguments relating to SF496's application to library content in this appeal, it remains relevant, for at least two reasons. First, in the pending appeal in the *Penguin Random House* challenge to the Library Restriction, the State has asserted that it is a form of government speech. *See* State Br. 59–67, *Penguin Random House v. Robbins*, No. 25-1819 (8th Cir. June 13, 2025). That argument is wrong in light of binding precedent, and also for the reasons cited in NEA's amicus brief in that case. *See* NEA Amicus Br. 13–15, *Penguin Random House*, No. 25-1819 (8th Cir. Aug. 7, 2025).

Second, it is important for this Court to acknowledge that library shelves are not government speech in light of the Instruction Section's express application to "programs," which students and educators have understood to restrict library content. *See, e.g.*, App.17–18, R.Doc.115-3, at 2–3; App.36, R.Doc.115-5, at 3; App.90–91, R.Doc.115-11, 4–5; App.100, R.Doc.115-12, at 5. This makes sense, because Iowa law uses the word "program" to refer to the library function in public schools. Iowa Code § 256.11(9)(a) (describing "library program").

b. Reinforcing First Amendment principles surrounding non-curricular activity affords local officials and educators appropriate discretion to meet student and community needs.

Reaffirming the foregoing principles both protects free speech and properly returns discretion over the school environment to those closest to students' needs—school officials and educators. As noted above, *supra* pp. 5–6, the long precedent of state control over public education focuses on the control that *local* arms of the state may exercise over content and conduct in schools. School officials and educators *should* be able to cater to students' needs and community values in these important non-curricular contexts. In some communities, this may mean supporting a popular and active GSA; in others, it simply may mean continuing to

make developmentally appropriate books and resources available for students seeking information on LGBTQ+ topics.

Moreover, as discussed, Iowa imposes ethical obligations on educators that seemingly *require* being able to facilitate or offer content relating to gender identity and sexual orientation as needed. *See* Part I.c.2, *supra* pp. 16–17. For example, the ethical code prohibits educators from denying students' access to "varying points of view." Iowa Admin. Code § 282-25.3(6)(a). Limiting the Instruction Section's reach to curricular content ensures that educators may continue to offer classroom libraries that respect students' interest in LGBTQ+ stories and perspectives. As for the obligation to protect student health and safety, an educator who advises a GSA might guide students exploring LGBTQ+ identity toward targeted resources on physical and emotional wellbeing, or assist them in identifying strategies for healthy engagement with parents. *See* Iowa Admin Code § 282-25.3(6)(c); App.99–100, R.Doc.115-12, at 4–5. Or, an educator might avoid disparaging or discriminating against a student—as the ethical code requires—by permitting a student-generated presentation about identity that expresses admiration for

LGBTQ+ artists or pride in LGBTQ+ family members. *See* Iowa Admin. Code § 282-25.3(6)(d), (e); App.143, R.Doc.115-15, at 6.

Accordingly, this Court should acknowledge the limits of the State's control to enable appropriate local discretion around these sensitive topics.

III. The Library Restriction's censorship of school library content is excessive and improperly overrides the judgment of local officials and educators.

The Library Restriction's censorship of content that describes or depicts a "sex act" is overbroad and improper, as NEA argued in its amicus brief in *Penguin Random House v. Robbins*, No. 25-1819 (8th Cir.). Reasons that support the Restriction's invalidation include that: it invades local officials' and educators' role in managing the public-school environment; it adds unnecessary, duplicative controls on inappropriate content in Iowa schools; its vagueness and overbreadth have led to confusion, fear, and the needless elimination of important texts. The district court thus properly enjoined the Library Restriction here; the existence of the preliminary injunction in *Penguin Random House*, which is on appeal, does not render plaintiffs' challenge moot. *See, e.g.*, *Florida*

v. Dep't of Health & Human Servs., 19 F.4th 1271, 1280–86 (11th Cir. 2021).

IV. Each of the challenged aspects of SF496 irreparably harms students, educators, and the quality of education in Iowa.

As the district court noted, the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." App.560, R.Doc. 141, at 34 (quoting *Powell v. Noble*, 798 F.3d 690, 702 (8th Cir. 2015)). The court correctly concluded that this principle applies here, where the challenged provisions of SF496 inhibit students' rights of free expression and association. *Ibid.* Moreover, the law's vagueness and overbreadth put educators in fear of discipline and loss of licensure simply from doing their jobs ethically. *Ibid.* This alone outweighs any injury to the State from halting SF496's censorship regime, especially given the function of school districts and educators to ensure that content is both enriching and appropriate. *Ibid.*

But these harms are not all. While Iowa's educators strive to create a welcoming environment for all, the Parental Notification and Instruction Sections reinforce harmful sex stereotyping and stigmatize members of the LGBTQ+ community, promoting a culture of fear and

intolerance. In combination with the Library Restriction, these provisions also promote a culture of ignorance. The law harms students, educators, and the Iowa public at large, and it was rightly enjoined.

a. SF496 harms students by suppressing expression, information, and supports related to gender identity and sexual orientation, and by censoring important books.

The unsurprising effect of SF496's restrictions is that students are afraid to express themselves authentically and engage with trusted adults at school, lose access to crucial supports like GSAs, and miss out on academic opportunities. While SF496 hits LGBTQ+ students most directly—a population that already experiences a disproportionately high risk of suicide as a result of bullying and discrimination, as well as barriers to needed mental health care[5]—every student stands to lose.

The Parental Notification Section creates an ambiguous trigger for educators to alert the school officials and parents about signs that a student may be gender non-conforming, presumably through guesswork and sex stereotyping that might sweep in *any* student who is not "boy" or

[5] *See* The Trevor Project, *2023 U.S. National Survey on the Mental Health of LGBTQ+ Young People*, https://www.thetrevorproject.org/survey-2023/#intro (last visited Sept. 12, 2025).

"girl" enough. Students who are questioning their gender identity feel they must choose either to be outed without their consent, or to hide their identities from their teachers. *See, e.g.*, App.12, R.Doc.115-2, at 3; App.19–20, R.Doc.115-3, at 4–5; App. 29, R.Doc. 115-4, at 4. Both paths can be harmful.

A forced disclosure policy that thrusts school personnel into decisions about when and how families discuss these issues violates a student's confidentiality and may thwart students' ability to prepare for safely confiding in parents and handling their responses.[6] Particularly where, as here, there are no exceptions for concerns about harm to the student, this may increase students' risk of self-harm or suicidality, and may provoke rejection and even violence that lead to students being kicked out of the home or running away.[7] On the other hand, when students withhold their identities from trusted educators, they lose opportunities for support, resources, and potentially lifesaving benefits

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[6] National Assoc. of School Psychologists, *Safe and Supportive Schools for Transgender and Gender Diverse Students* 3–4 (2022).

[7] *Id.* at 4; Adam P. Romero, *et al.*, *LGBT People and Housing Affordability, Discrimination, and Homelessness* 7 (2020).

that come from developing relationships with caring instructors, including reduction of suicidality and depression.[8]

Both the Parental Notification and Instruction Sections also reduce students' access to supports like GSAs outside of class, including prohibitions on the public posting of GSA information, barring students under sixth grade from joining, or shutting GSAs down altogether. *See, e.g.*, App.534, 545, 554; R.Doc.141, at 8, 19, 28. This denies students access to an important space for developing a sense of belonging, improving self-esteem, and sharing resources.[9] Indeed, GSAs are associated with positive outcomes like school safety, academic success, and student wellbeing.[10]

Finally, *all* students will suffer from SF496's censorship of books. The district court here acknowledged that the Instruction Section limits

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[8] The Trevor Project, *Research Brief: The Relationship Between Caring Teachers and the Mental Health of LGBTQ Students* 1–2 (May 2023).

[9] *See* Nhan Truong, *et al.*, *The GSA Study: Results of National Survey About Students' and Advisors' Experiences in Gender and Sexuality Alliance Clubs* 30–31, GLSEN (2021); Enoch Leung, *et al.*, *Social support in schools and related outcomes for LGBTQ youth: a scoping review* 3:10, Discover Education (Nov. 10, 2022), https://pubmed.ncbi.nlm.nih.gov/36407890/.

[10] Leung 3:10.

which books educators may use in the classroom, and how they may use them. App.551, R.Doc.141, at 25. As the district court observed in the *Penguin Random House* decision, great works and modern classics were targeted for removal, including materials that districts had chosen for upper-level curricula and were used in teaching Advanced Placement courses. *Penguin Random House v. Robbins*, 774 F. Supp. 3d 1001, 1034 (S.D. Iowa 2025). This will leave Iowa students less prepared for intellectual development and academic success.

b. SF496 harms educators by forcing them to choose between their jobs and their students.

As the district court held, SF496 also irreparably harms educators, who operate in fear of "termination, loss of licensure, or other consequences if they are deemed to have violated the unconstitutional portions" of SF496. App.560, R.Doc.141, at 34. Educators are at risk many times over: teaching in the classroom, offering a classroom library, decorating classroom walls, advising clubs like a GSA, fielding seemingly benign questions from young students—the list goes on. App.539–40, R.Doc.141, at 13–14; *see also* App.75–76, R.Doc.115-9, at 6–7; App.89–90, R.Doc.115-11, at 3–4; App.100, R.Doc.115-12, at 5. Indeed, one educator plaintiff recalled experiencing his "greatest fear" when district leaders

told him that SF496 prohibited him from referencing his husband: "that I will be forced out of education, my calling, or choose to go back into the closet." App.89, R.Doc.115-11, at 3. The district leader's interpretation proved wrong, but it is a stark illustration of SF496's vagueness, chilling effect, and susceptibility to "stun[ning]" and "dehumanizing" interpretations. *Ibid.*

SF496 also harms educators by forcing teachers to make choices that may be unethical and detrimental to students. As one educator put it, having to weigh the harm of personal job loss against students' "constitutional rights," "dignity and trust," or safety at home, simply becomes "too much." App.76–77, R.Doc.115-9, at 6–7. Because of this, that educator was "seriously planning to leave [her] career as a teacher behind"—a career she described as a "true calling." *Ibid.*

Indeed, one study has shown that a significant proportion of educators believe that state legislatures' restrictions on addressing diverse or marginalized groups diminish the educational environment, whereas very few, even in conservative communities, find restrictions

positive.[11] Another study found that the overwhelming majority of educators believe in the importance of teaching students to "value and respect the humanity of every person"; 37% of the respondents said they would be more likely to leave the profession within a year if "a push for laws that 'prevent honest teaching and conversations' reaches their classrooms." [12]

Not surprisingly, ISEA's President has reported that SF496 is a reason that members are choosing to leave the profession in Iowa. Doc.104-10, at 4, *Penguin Random House v. Robbins*, No. 4:23-cv-00478 (S.D. Iowa Jan. 3, 2025). At a time when educators have been fleeing the field in record numbers, the last thing Iowa public schools need is an additional layer of fear and anxiety to contribute to staff attrition.[13]

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[11] Ashley Woo, *et al.*, *Policies Restricting Teaching About Race and Gender Spill Over into Other States and Localities* 22-23, RAND (Feb. 15, 2024), https://www.rand.org/pubs/research_reports/RRA1108-10.html.

[12] Anna Merod, *Survey: 37% of teachers will likely quit if K-12 censorship laws reach them*, K-12 DIVE (Jan. 24, 2022), https://www.k12dive.com/news/survey-37-of-teachers-will-likely-quit-if-k-12-censorship-laws-reach-them/617581/.

[13] See National Cent. for Educ. Stats., Teacher Turnover: Stayers, Movers, and Leavers, Inst. of Educ. Sciences (2024), https://nces.ed.gov/programs/coe/indicator/slc/teacher-turnover.

CONCLUSION

For the foregoing reasons, the district court's judgement should be affirmed.

Respectfully submitted,

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September 12, 2025

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