United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Susan E. Bindler
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

September 15, 2025

Ann E. Sternhell Blackwell
BRYAN & CAVE
3600 One Metropolitan Square
211 N. Broadway
Saint Louis, MO 63102-2186

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

Dear Counsel:

The amicus curiae brief of the amicus Iowa School Counselor 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.

Susan E. Bindler
Clerk of Court

BNW

Enclosure(s)

cc: Joshua Armstrong
Shefali Aurora
Rita N. Bettis Austen
Christopher James Blythe
Diane Brinkley
Sasha Buchert
Effiong Dampha
Daniel Roberto Echeverri
Laura Joy Edelstein
Christy Ann Aumer Hickman
Devin C Kelly
Justin D. Kingsolver

Becky S. Knutson
Annalisa C. Kolb
Elizabeth Catherine Kramer
Katherine Elmlinger Lamm
Karen Loewy
Karen Lou
Anna Lyons
Katherine Mather
Nathan A. Maxwell
Keira McNett
Alice O'Brien
Connor S.W. Rubin
Katie Schoolen
Kurt M. Steinhouse
Thomas Dillon Story
Camilla B. Taylor
Kenneth D Upton Jr.
Patrick Cannon Valencia
Jason Walta
Eric H. Wessan
Owen Richard Wolfe

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

No. 25-2186

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

IOWA SAFE SCHOOLS, formerly known as GLBT Youth in Iowa Schools Task Force; et al.,

Plaintiffs-Appellees,

vs.

KIMBERLY REYNOLDS, in her official capacity as Governor of the State of Iowa; et al.,

Defendants-Appellants,

MATT DEGNER, in his official capacity as Iowa City Community School District Superintendent; et al.,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
No. 4:23-cv-474
Honorable Stephen H. Locher

BRIEF OF *AMICUS CURIAE* IOWA SCHOOL COUNSELOR ASSOCIATION IN SUPPORT OF APPELLEES AND AFFIRMANCE

A. Elizabeth Blackwell (Bar No. 07-0412)
Justin D. Kingsolver
Kurt M. Steinhouse
Annalisa C. Kolb
BRYAN CAVE LEIGHTON PAISNER LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, Missouri 63102-2726
Telephone: +1 314 259 2000
Facsimile: +1 314 259 2020
Email: liz.blackwell@bclplaw.com

Attorneys for Amicus Curiae
Iowa School Counselor Association

DISCLOSURE STATEMENT

The amicus curiae here, Iowa School Counselor Association, through its undersigned counsel, submits this Disclosure Statement pursuant to Federal Rule of Appellate Procedure 26.1.

ISCA is not a for-profit organization, ISCA does not have any parent company, and no person or entity owns ISCA or any part of ISCA. ISCA is unaware of any publicly held corporations not a party to this proceeding with a financial interest in its outcome.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

INTEREST OF AMICUS CURIAE[1]

Amicus are the members of the Iowa School Counselor Association ("ISCA"),[2] which provides advocacy for and support to Iowa's school counselors as they implement school counseling programs consistent with the American School Counselor Association ("ASCA") national models and guidance. For nearly sixty years, ISCA's dedicated professionals have committed to guiding, advocating, and empowering the Iowan students they serve across all nine area education districts in the state. The heart of ISCA's mission lies in supporting the professional school counselors of Iowa as it strives to ensure that each student has access to a comprehensive school counseling program.

---

[1] In accordance with Federal Rule of Appellate Procedure 29(a)(2), amicus curiae state that all parties have consented to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than amicus curiae or its counsel made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

[2] The views expressed in this brief are those of ISCA and do not reflect the opinions of any specific, individual counselor affiliated with ISCA.

SUMMARY OF THE ARGUMENT

The importance of school counselors in many students' lives cannot be overstated. Providing academic support and college counseling does not even scratch the surface of the efforts of Iowan school counselors. In accordance with ethical guidelines established by the American School Counselor Association, school counselors serve as "leaders, advocates, collaborators, and consultants" with "unique qualifications and skills" to address the "academic, career and social/emotional development needs" of all students.[3] School counselors help students navigate life issues taking place both inside and outside the classroom, such as parental divorce, economic uncertainty, housing insecurity and homelessness, substance abuse issues, truancy, academic underperformance, and mental health concerns, including self-harm. The school counselor plays an outsized role in ensuring the safety and wellbeing of all students, especially LGBTQ+ students who sometimes face ostracism and rejection from their own peers and families. For these students, a school counselor's ability to fulfill their ethical obligations can literally be a matter of life and death.

[3] *ASCA Ethical Standards for School Counselors*, at Preamble, https://www.schoolcounselor.org/getmedia/44f30280-ffe8-4b41-9ad8-f15909c3d164/EthicalStandards.pdf (last visited Sept. 9, 2025) (hereinafter "ASCA Ethical Standards").

Senate File 496 of 2023 (hereinafter "SF496")[4] all but destroys a school counselor's ability to fulfill these professional and ethical obligations. SF496's broad ban on any discussion or promotion of gender theory or sexual orientation and its forced disclosure to parents when a student seeks gender-related accommodations are not only cruel, but impermissibly broad and vague. Absent court intervention, school counselors are left wondering whether they will be penalized by the state and potentially lose their license for discussing parental divorce, dating, or even using a student's nickname, all of which are based in gender, sexual orientation, or identity affirmation. The broad strokes of SF496 certainly suggest so. SF496 places school counselors in a bind where the counselors do not know whether they even can perform their duties and do not understand what is required from them under the law.

In light of SF496's vagueness, the District Court entered a preliminary injunction that blocks the State from enforcing certain aspects of SF496 that are constitutionally infirm, including narrowing the parental notification section to require notice only when a student requests to be addressed with a different pronoun than that reflected in school records. *See* Add. 32–34; App. 558–560; R. Doc. 141, at 32–34. The District Court enjoined enforcement of the remainder of the parental

[4] Senate File 418 of 2025 amended Iowa Code § 279.80(2) to replace "[g]ender identity" with "[g]ender theory," effective July 1. This amendment is not relevant to the District Court's preliminary injunction insofar as it enjoins enforcement of this section with respect to any "program" or "promotion."

notification provision because it is unconstitutionally vague and vulnerable to arbitrary enforcement. *See id.*; *see also FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253–54 (2012). The District Court further enjoined enforcement of the ban on any program or promotion relating to gender identity or sexual orientation, finding that the prohibition would necessarily extend to non-mandatory activities, like GSAs, and would likely constitute viewpoint discrimination in violation of the First Amendment or, alternatively, be void for vagueness. *See* Add. 25–27; App. 551–553; R. Doc. 141, at 25–27; *see also Gay & Lesbian Students Ass'n v. Gohn*, 850 F.2d 361, 367–68 (8th Cir. 1988). Reversal of the District Court's injunction would leave school counselors unable to understand what SF496 permits and what it bans. And the staggeringly broad language of SF496 would leave it vulnerable to arbitrary enforcement. In this brief, amicus ISCA respectfully urges the panel to affirm the District Court's preliminary injunction, which resolves important aspects of SF496's vagueness as applied to school counselors.

ARGUMENT

I. SCHOOL COUNSELORS OFFER STUDENTS NECESSARY AND PRACTICAL RESOURCES FOR THE INDIVIDUAL SUCCESS OF EACH STUDENT, PLAYING A PIVOTAL ROLE FOR STUDENTS IN IOWA SCHOOLS.

School counselors are key figures in the lives of their students. During their formative years, students experience safety, connection, and guidance from counselors in their schools. Counselors discuss everything from academic

performance, standardized testing, and college applications to family dynamics, bullying, homelessness, and questions about students' own identities. As the ethical guidelines established by ASCA articulate, the role of a school counselor is to "advocate for students' physical and emotional safety" and create safe spaces for students to truly be themselves.[5]

School counselors are a crucial part of the American education system. Childhood and adolescence can be emotionally turbulent, and students often need guidance that goes beyond mere classroom instruction or standardized testing. While school counselors conduct proactive lessons as educators, they must also embody the responsive role of the counselor who can provide a space where students can express their needs and emotions without fear of judgement or punishment. To serve that pivotal role, counselors must be able to fully and confidentially address each student's unique needs.

Confidentiality is crucial to school counselors' professional responsibilities, given that all students have the right to "privacy that is honored to the greatest extent possible," balanced against other competing interests.[6] For decades, the ASCA has recognized that school counselors' "primary obligation regarding confidentiality is

[5] ASCA Ethical Standards, A.12(d).
[6] *Id.* at preamble.

to the student,"[7] not the student's parents, and Iowa law recognizes the special status of counselor-student communications by privileging them and prohibiting school counselors from providing testimony "disclos[ing] any confidential communications properly entrusted to the counselor by a pupil . . . in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties." Iowa Code § 622.10(8). Guidance published by the U.S. Department of Education interpreting this provision advises against disclosing such information entrusted to the counselor without a written authorization from the student.[8]

School counselors are held to rigorous standards, including training and licensure, and are bound by state regulations and professional ethical guidelines accredited by national organizations. Many of these standards are established by ASCA, whose mission is to "create equitable opportunities and inclusive environments that enable all students to succeed."[9] ISCA adopts guidelines set forth

---

[7] ASCA, *The School Counselor and Confidentiality*, https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Confidentiality (last visited Sept. 9, 2025).

[8] *See School Guidance Counselors and Confidential Communications: Responding to Subpoenas and Testimony in Court in Iowa* (1990), https://files.eric.ed.gov/fulltext/ED325797.pdf (last visited Sept. 9, 2025).

[9] *About ASCA, American School Counselor Association*, https://www.schoolcounselor.org/About-ASCA/Vision,-Mission-Goals (last visited Sept. 9, 2025).

by ASCA, meaning that school counselors in Iowa adhere to the same professional obligations as school counselors around the country. Within the ASCA Model, school counselors adhere to professional standards and competencies which require an understanding and respect of differences in sexual orientation and gender identity, [10] as well as an understanding of issues like suicidal ideation, which impact almost all adolescent populations, but disproportionately affect adolescents coping with issues of sexual orientation or gender identity.[11]

On its face, SF496 prevents Iowa's school counseling professionals from adhering to these nationally-recognized practices, and potentially punishes counselors for adhering to professional standards by, *inter alia*, (1) punishing accurate and informative discussions related to "gender theory" or "sexual orientation" including any discussions of basic familial life or important values such as respect or kindness (Iowa Code § 279.80(2)), and (2) forcing counselors to break student confidentiality with a mandatory parental reporting requirement if any student "requests an accommodation" related to gender identity regardless of student safety concerns (Iowa Code § 279.78(3)). SF496 presents an intractable problem for

---

[10] *ASCA School Counselor Professional Standards & Competencies*, American School Counselors Association, at 3, https://www.schoolcounselor.org/getmedia/a8d59c2c-51de-4ec3-a565-a3235f3b93c3/SC-Competencies.pdf (last visited Sept. 10, 2025).

[11] *Facts About Suicide Among LGBTQ+ Young People*, The Trevor Project (Jan. 1, 2024), https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide/.

school counselors, who cannot faithfully perform their roles in accordance with professional and ethical standards while also complying with the law. The statute harms Iowa's young people by depriving them of critical support school counselors are charged with providing.

A. School Counselors in Iowa Must Satisfy Rigorous Standards and Follow a Nationally-Standardized Ethical Code.

To become a counselor in an Iowa school, applicants must have earned both a bachelor's degree and a master's degree in school counseling. Even if an applicant already holds a different master's degree, they must complete additional educational coursework to qualify for counselor positions, which includes specialized training in counseling techniques specific to child development; collaboration methods to engage families, school environments, and communities; and navigation of educational institutions.[12] Applicants must also complete clinical hours in the school setting including one-hundred hours of supervised practicum, and six-hundred hours of a supervised internship.[13] The qualifications for these positions are rigorous.

Because of their trust-based relationship with students, counselors are held to heightened ethical standards and obligations. Counselors must ensure that students are "treated with dignity and respect as unique individuals." *ASCA Ethical Standards*

---

[12] *See Becoming a School Counselor in Iowa: I Already Earned a College Degree*, Iowa School Counselor Association, https://iaschoolcounselor.org/I-have-a-college-degree (last visited Sept. 9, 2025).
[13] *Id*.

at A.1(a). Binding ethical guidelines require counselors to "actively work to establish a safe, equitable, affirming school environment in which all members of the school community demonstrate respect, inclusion and acceptance." *Id.* at A.10(a). Regardless of race, gender, sexual orientation, and religion, counselors must "foster and affirm all students and their identity." *Id.* at A.1(b).

Counselors are required to respect "students' sexual orientation, gender identity and gender expression." *Id.* at A.1(h). It is important that counselors "advocate for the equitable right and access to free, appropriate public education for all youth in which students are not stigmatized or isolated" based on their "gender identity, gender expression, [or] sexual orientation." *Id.* at A.10(f). Counselors must also "advocate with and on behalf of students to ensure they remain safe at home, in their communities and at school," while recognizing that a "high standard of care includes determining what information is shared with parents/guardians and when information creates an unsafe environment for students." *Id.* at A.10(a).

B. School Counselors Assist Students in Key Risk Factor Areas, Many of Which are Heightened for LGBTQ+ Students.

School counselors support students with academic needs, but also with social and emotional learning. They help students navigate issues related to familial instability; economic uncertainty; housing insecurity; substance abuse; truancy; academic underperformance, especially as related to out-of-classroom issues; and mental health concerns, including self-harm and suicide. That last category is

crucial; suicide is the second leading cause of death among young people aged 10 to 14 and the third leading cause of death among 15 to 19-year-olds.[14]

As has been widely reported, many LGBTQ+ youth endure discrimination, harassment, and abuse due to their actual or perceived identities, particularly in school settings. As a result, LGBTQ+ youth face elevated risks for depression and other mental illness compared to those who are cisgender (*i.e.*, whose gender identity corresponds with the sex registered for them at birth) and heterosexual.[15] Research by the Trevor Project—a non-profit suicide prevention organization that provides 24/7 crisis support services for LGBTQ+ young people—found that 52% of LGBTQ+ youth who were enrolled in middle or high school reported being bullied either in person or electronically in the past year, and those who were bullied were three times more likely to attempt suicide in the past year.[16]

Overall, LGBTQ+ young people are more than three times as likely to attempt suicide than their peers.[17] The Trevor Project "estimates that more than 1.8 million LGBTQ+ young people. . .seriously consider suicide each year in the U.S.—and at

---

[14] *See Child Health*, Centers for Disease Control and Prevention, https://www.cdc.gov/nchs/fastats/child-health.htm (last visited Sept. 9, 2025); *see also Adolescent Health*, Centers for Disease Control and Prevention, https://www.cdc.gov/nchs/fastats/adolescent-health.htm (last visited Sept. 9, 2025).
[15] *See Facts About Suicide Among LGBTQ+ Young People, supra* note 5.
[16] *Id.*
[17] Michelle M. Johns et al., *Trends In Violence Victimization and Suicide Risk By Sexual Identity Among High School Students—Youth Risk Behavior Survey, United States*, 2015-2019, 69(1) Morbidity and Mortality Weekly Report 19-27 (2020).

least one attempts suicide every 45 seconds."[18] To be clear, LGBTQ+ students are not inherently prone to suicide risk simply because of their sexual orientation or gender identity, but rather because they are often mistreated and stigmatized by their families, fellow students, and society at large.

Specifically in Iowa, according to the most recent published results of the Iowa Youth Survey administered by the Iowa Department of Public Health, **over half of LGB+ student respondents (55%)** reported suicidal ideation in the past year compared to 15% of students identifying as heterosexual. Additionally, of those LGB+ students who reported suicidal ideation, **62% had made a plan for suicide** in the past 12 months and **32% had attempted suicide**.[19]

Various medical and psychiatric organizations have acknowledged the importance of providing affirming care to LGBTQ individuals, most notably the American Psychiatric Association.[20] The Trevor Project has found that LGBTQ+ individuals who have trusted adults within their schools report higher levels of self-

---

[18] *Facts About Suicide Among LGBTQ+ Young People, supra* note 5.
[19] *See* 2021 Iowa Youth Survey State Report, Center for Social and Behavioral Research, University of Northern Iowa, 58 (March 2022), https://publications.iowa.gov/46186/1/ae0f13b7-8afd-49a8-9d87-84d2e0b846ab.pdf.
[20] *See e.g.*, Position Statement on Discrimination Against Transgender and Gender Diverse Individuals, American Psychiatric Association (July 2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf.

esteem and a lower rate of mental health concerns.[21] The existence of people who play the role school counselors do in Iowa is a critical, life-saving resource for LGBTQ+ students.

C. Since Iowa Enacted Senate File 496, School Counselors Have Struggled to Assist Students.

On May 26, 2023, Iowa Governor Kim Reynolds signed SF496 into law. SF496 has sweeping ramifications for all school educators but specifically impacts school counselors. Since SF496's enactment, school counselors have had to reconsider the books used to assist students, consider sweeping limits on potential instruction, and institute new processes for mandatory reporting of students seeking gender-affirming accommodations. This staggeringly broad law puts school counselors in an impossible situation, unable to perform their duties within the bounds of the law, if they can even determine what the law even is.

1. Senate File 496 is unclear, punitive in nature, and conflicts with school counselors' ethical obligations.

Several provisions of SF496 concern school counselors across Iowa. SF496 vaguely prohibits "any program, curriculum, test, survey, questionnaire, promotion or instruction relating to gender theory or sexual orientation" in grades K-6. Iowa Code § 279.80(2) (the "Promotion Ban"). SF496 also contains a forced outing provision that requires school counselors to inform school administrators and parents

[21] *See Facts About Suicide Among LGBTQ+ Young People, supra* note 5.

when a student seeks to use alternative names or pronouns. Iowa Code § 279.78(2-3) (the "Forced Outing Provisions"). Other prohibitions in SF496 are similarly broad, such as the survey ban (Iowa Code § 279.79) and the book ban (Iowa Code §§ 256.11(19)(a)(1), 256.11(9)(a)(2)). Taken together, these measures significantly interfere with school counselors' professional responsibilities and undermine their role as trusted advisors to students.

The Promotion Ban's broad prohibition on any discussion "relating to gender theory or sexual orientation" is obviously vague and extraordinarily broad. Read literally, a school counselor would be legally prohibited from discussing some of the most common issues affecting students—like parental divorce, relationships with other students, or bullying based upon a student's perceived sexual orientation. What if a student, not a counselor, brings up their parents? Is the school counselor allowed to discuss or affirm that child's family in any way? Is this promotion or instruction? Is the answer to the question different if that student has same-sex parents? Questions like this—and many others—have been raised by multiple counselors to ISCA leadership.[22]

[22] *See* Iowa Association of School Boards, *FAQ: Senate File 496*, https://www.isea.org/sites/isea/files/2023-09/sf_496_faq.pdf (last visited Sept. 11, 2025); *see also* ISCA, *ISCA Response Statement for Senate File 496 (Pronoun Legislation)*, https://iaschoolcounselor.org/advocacy/recent-isca-position-statements (last visited Sept. 11, 2025) (noting "many and varying interpretations of" SF496).

Concerns about how broadly and arbitrarily "promotions" relating to "sexual orientation" could be construed are not hypothetical. In 2012, the American Family Association characterized an anti-bullying initiative called Mix It Up Lunch Day as "a nationwide push to promote the homosexual lifestyle in public schools" and urged parents to boycott.[23] Implemented across more than 2,500 schools, the initiative had nothing to do with sexual orientation and was instead about breaking up social cliques. But allegations that the anti-bullying initiative "promote[d] the homosexual agenda" led approximately 200 schools to cancel the day out of fear of retaliation.[24]

The Promotion Ban's prohibitions directly interfere with the nature of a school counselors' role to serve all students. The ethical guidelines for school counselors require them to "actively work to establish a safe, equitable, affirming school environment" and to "foster and affirm all students and their identity," regardless of the race, gender, sexual orientation, or religion of their students. *See supra* Section I.A. By prohibiting all "programs," "curriculum," "promotion" and "instruction" that in any way relates "to gender theory or sexual orientation" (*see* Iowa Code § 279.80(2)), SF496's Promotion Ban directly prevents school counselors from fulfilling these obligations. If an LGBTQ+ student struggling with their identity feels

[23] *See* Kim Severson, *Christian Group Finds Gay Agenda in an Anti-Bullying Day*, N.Y. Times (Oct. 14, 2012), https://www.nytimes.com/2012/10/15/us/seeing-a-homosexual-agenda-christian-group-protests-an-anti-bullying-program.html (last visited Sept. 11, 2025).
[24] *Id.*

it necessary to speak with a counselor, the Promotion Ban forces that counselor to remain silent to that student's struggles.

The Forced Outing Provisions are no better. SF496 forces disclosure to parents when any student requests any accommodation "intended to affirm" that student's "gender identity," Iowa Code § 279.78(3), defined as "an individual's *subjective* identification as male, female, or neither male nor female," *id.* at § 279.78(1) (emphasis added). The Forced Outing Provisions require "licensed practitioner[s]" – defined to include school counselors – to inform a school district administrator if a student "requests an accommodation that is intended to affirm the student's gender identity . . . including a request that the licensed practitioner 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." *Id.* The school district administrator must then "report the student's request to the student's parent or guardian." *Id.*

The Forced Outing Provisions are impermissibly vague. A school counselor can only determine whether the Forced Outing Provisions are triggered by knowing a student's "subjective identification as male, female, or neither male nor female" and whether a requested accommodation is "intended" to be gender affirming. *Id.* Both requirements invite ad hoc application. Further, broadly read, requests "intended to affirm the student's gender identity" would include every time a student

requests use of a nickname, requests an exception to the dress code, or seeks to participate in any gender-designated sports team, as in a male student seeking to participate on the male soccer team, which would affirm his gender identity. What rises to "request[ing] an accommodation[?]" If a student discusses gender identity with a counselor must the counselor report the conversation to a parent? And by mandating reporting when a student requests "that the licensed practitioner address the student using a name or pronoun that is different than the name or pronoun assigned to the student[,]" a school must inform parents whenever a male student named Samuel requests to be called Sam. The broad discretion provided by this statutory language invites discriminatory application – *i.e.*, that schools will only report such requests from non-cisgender students.

The sweep of SF496 leaves school counselors in the dark as to how they can abide by the law and still fulfill their professional responsibilities and ethical obligations to the students they serve.

2. School counselors do not know what is allowed or prohibited by SF496.

ISCA conducted a survey of its member counselors in Spring 2024 to collect data on counselors' questions related to SF496 and its impacts on counselors. 145 practicing licensed school counselors across Iowa provided responses to sixty-six questions. The responding counselors represent all grade levels and student population sizes and represent all nine area education agency districts. The survey

asked about school district implementation of SF496 and included open-ended questions allowing counselors to provide narrative answers.

The responses show that SF496 has made it impossible for Iowa school counselors to serve their students and comply with the law. Counselors are concerned that the requirements of SF496 conflict with their ethical obligations, with one survey respondent articulating that "[Senate File 496] **contradicts our ethical code as school counselors and hurts students**." Indeed, **over 60% of the responding counselors**—said they **have noticed either negative or severely negative impacts on students due to SF496**.

Counselors are unsure of how to implement the provisions of SF496. A counselor shared that "in a recent suicide prevention course, school counselors from one district **questioned** whether teachers/staff **could ask a student how they were doing if they had exhibited a change in behavior**, as staff in their district had been **cautioned not to ask these types of questions of students**."

Similarly, various counselors flagged that it is unclear whether they can use survey tools without explicit parental consent on each survey question in light of SF496. One counselor stated "[w]e screen[ed] 200 kids in 2022 and 40% flagged for at risk suicide / self-harm. This year we screen[ed] 30 kids with [parental] consent and 10% flagged. **[SF496] has made it difficult for us to support and identify kids in need for counseling and supports.**" The ambiguity created by SF496 strips

school counselors of one of their key tools to identify and intervene for students considering self-harm or suicide, lest they risk punishment.

The Forced Outing Provisions of SF496 require school officials, including school counselors, to notify a student's parent or guardian whenever a student asks for an identity accommodation, such as a name or pronoun change. *See* Iowa Code § 279.78(3). This mandatory reporting necessarily requires counselors to break confidentiality with students. School counselors—and entire school districts—within Iowa are unsure about how to implement this rule. The term "requests an accommodation" might mean a formal request by a student made officially with the school, but it could also mean an informal to use a nickname. Nor is it clear to school counselors in every instance what "affirm the student's gender identity" means, which will lead to arbitrary enforcement, most likely against LGBTQ+ students.

Beyond these Forced Outing Provisions, what are counselors supposed to do when *students* raise questions *to school counselors* that may be "related to gender theory or sexual orientation," which may implicate other provisions of SF496, like the Promotion Ban? Should counselors refuse to answer? Can the counselor provide any information to the student about sexual orientation or would doing so constitute "instruction" or "promotion"? Does the Promotion Ban include discussion of heterosexual couples? Can counselors counsel a male student who is being bullied for "talking with a lisp," or counsel a female student facing harassment for "dressing

too much like a boy"? Because SF496 is so staggeringly broad and vague, school counselors must over-restrict the guidance they provide, or risk punishment by the state.

These risks are not hypothetical. Some counselors are now providing a warning to students that they will be required to break confidentiality regarding name or pronoun change requests due to SF496's vague mandatory reporting requirement. One counselor described the process as "students need a warning ahead of time that if they are going to share or request a pronoun / name change, it will go to their parents. That's only fair to them." But counselors report concerns about whether even providing *this warning* is allowed under SF496. Not only are counselors concerned this may put students at risk in some scenarios, but it also limits a counselor's ability to be perceived as reliable and trustworthy to students. As one counselor stated the lack of clarity has "**generally create[d] an atmosphere of don't ask / don't tell in my district.**"

The erosion of trust is a primary concern of ISCA's member counselors. Another counselor commented, "I feel this really **limits what students are willing to share when they are already hurting and feeling alone**. There are **several students** that come to mind **who have not come in to see a counselor at all this year** when they would come in as needed the year before." This deprivation of support is the direct result of the vagueness of SF496.

One ISCA survey respondent shared that "[s]ince the passing of SF496, our administration still allows [nicknames], if the name fits the current legal name (example: Josephine requests Jo). Unfortunately, we do not have written guidance and there is still a lot of grey area to what is expected of us."

In so many ways, SF496 creates confusing, impractical, and unrealistic standards for school counselors, who must cautiously implement its provisions under threat of losing their job or worse. Amicus ISCA thus respectfully urges this Court to affirm the District Court's ruling.

II. SENATE FILE 496 IS VOID FOR VAGUENESS.

The District Court's narrow injunction prohibiting enforcement of certain provisions of SF496 should be affirmed; otherwise, SF496 is unconstitutionally vague and leaves school counselors unable to discern what is forbidden under the law and vulnerable to arbitrary enforcement. "The void-for-vagueness doctrine is embodied in the due process clauses of the fifth and fourteenth amendments." *D.C. v. City of St. Louis*, 795 F.2d 652, 653 (8th Cir. 1986). That doctrine "addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *FCC*, 567 U.S. at 253. Thus, "[a] governmental policy 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 Cmty. Sch. Dist.*, 83 F.4th 658, 668 (8th Cir. 2023) (quoting *United States v. Barraza*, 576 F.3d 798, 806 (8th Cir. 2009)). For school counselors, without the limitations imposed by the District Court, SF496 does both, and is thus unconstitutional. This Court should affirm.

A. Senate File 496 Does Not Adequately Tell School Counselors What is Prohibited.

As written, SF496 is unconstitutionally vague because it does not give school counselors sufficient notice to determine what is impermissible. *See, e.g.*, *Parents Defending Educ.*, 83 F.4th at 668. Vague laws offend due process because, if the law "assume[s] that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Without this required level of definiteness, "[v]ague laws may trap the innocent by not providing fair warning." *Id.*

As the frontline statements of school counselors cited above show, SF496 does not provide fair guidance as to what it permits and what it outlaws. *See id.* (requiring that "laws must provide explicit standards for those who apply them."). Counselors have no way to know what questions they may ask students, how they may respond to student questions that raise issues of orientation or gender, what might trigger a mandatory reporting requirement, or the scope of topics on which

they can permissibly advise students. This is a classic example of an impermissibly vague law. *See, e.g.*, *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) ("No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.").

B. Senate File 496 Invites Arbitrary Enforcement.

The district court properly found that certain aspects of SF496 are unconstitutional because they invite arbitrary enforcement. A law is void for vagueness not only if fails to define what is prohibited clearly enough, but also if it fails "to establish standards to permit police to enforce the law in a non-arbitrary, non-discriminatory manner." *Woodis v. Westark Cmty. Coll.*, 160 F.3d 435, 438 (8th Cir. 1998). "As important as the Fifth Amendment's guarantee of fair notice to individuals is the Amendment's prohibition against 'arbitrary enforcement' by government officials." *VanDerStok v. Garland*, 86 F.4th 179, 209 (5th Cir. 2023) (Oldham, J., concurring). To be constitutional, a law must have "minimal guidelines to govern law enforcement." *Kolender v. Lawson,* 461 U.S. 352, 358 (1983) (citations omitted). "Indeed, statutes must provide explicit standards for those who apply them to avoid resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Thibodeau v. Portuondo*, 486 F.3d 61, 66 (2d Cir. 2007) (internal citation and quotation marks omitted).

A law is thus void for vagueness if it is susceptible to arbitrary enforcement. *See Parents Defending Educ.*, 83 F.4th at 668–69. A law is susceptible to arbitrary enforcement when it lacks clarity and terms are left "open to unpredictable interpretations," (*id.* at 669), or when it "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis[.]" *Grayned*, 408 U.S. at 108–09; *see also City of Chicago v. Morales*, 527 U.S. 41, 60 (1999) (quoting *Kolender*, 461 U.S. at 360).

If a law "is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case," then it cannot be enforced. *Giaccio v. Pennsylvania*, 382 U.S. 399, 402–03 (1966). And when a law implicates First Amendment concerns, which SF496 unquestionably does, it is even more important that it contain clear standards. *See Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 433 (1963) ("Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."); *see also Cramp v. Bd. of Pub. Instruction of Orange Cnty.*, 368 U.S. 278, 287 (1961) ("[S]tricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech") (citations omitted); *see also Grayned*, 408 U.S. at 109 ("[W]here a vague statute 'abuts upon sensitive areas of basic First Amendment freedoms,' it

'operates to inhibit the exercise of those freedoms.'") (cleaned up) (citations omitted).

As written, several aspects of SF496 are unconstitutionally vague because they invite arbitrary enforcement. As the district court found, the law's language is not just broad—it is "staggeringly broad," App. 519, R.Doc.65, at 41, inviting arbitrary enforcement. A state official is free to determine, with virtually unfettered discretion, whether material was given to students as part of a "program, curriculum, test, survey, questionnaire, promotion, or instruction." *See* Iowa Code § 279.80(2). As the district court noted, "the only plausible way to interpret the restriction on 'programs' and 'promotion' as non-viewpoint-based is to conclude that school districts are forbidden from providing programs or promotion relating to *any* gender identity or *any* sexual orientation . . . basically guaranteeing that state officials will determine on an ad hoc and subjective basis which speech is permitted and which is not." Add. 30; App. 556; R. Doc. 141, at 30 (internal quotation marks omitted).

This places school counselors in the same position as individuals subject to the law struck down in *Kolender* – at the whims of the enforcer. 461 U.S. at 358; *see also United States v. Cardiff*, 344 U.S. 174, 176 (1952) (holding that "[w]ords which are vague and fluid . . . may be as much of a trap for the innocent as the ancient laws of Caligula.") (internal citation omitted). "Where, as here, there are no standards governing the exercise of the discretion granted by the ordinance, the scheme

permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for 'harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.'" *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972) (citation omitted).

Because SF496 provides no guidance, school officials are free to enforce the law however they personally believe it should be applied, which is unconstitutional. First Amendment "freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." *Button*, 371 U.S. at 433. By placing school counselors under the threat of arbitrary punitive actions, SF496 chills the exercise of crucial rights and violates the federal constitution.

III. THE DISTRICT COURT'S PRELIMINARY INJUNCTION RESOLVED SENAT FILE 496'S VAGUENESS AS APPLIED TO SCHOOL COUNSELORS.

After exhausting all relevant canons of statutory construction, the District Court appropriately tailored its preliminary injunction with respect to the Promotion Ban and the Forced Outing Provisions, alleviating the foregoing vagueness concerns with respect to those aspects of SF496's application to school counselors. *See* Add. 4; App. 30; R. Doc. 141, at 4.

A. The Promotion Ban's Unconstitutional Vagueness.

First, with respect to the Promotion Ban, the District Court determined that prohibiting a "program" and "promotion" relating to "*any* gender or *any* sexual orientation" would be unconstitutionally vague because such a "capacious" reading would require school officials to make decisions on an "ad hoc and subjective basis." Add. 30–32; App. 556–558; R. Doc. 141, at 30–32.

Examining the word "program," the court noted that the education-related provisions of the Iowa Code frequently use the word "program" to describe non-mandatory activities, such as childcare programs and summer reading programs. In contrast, the court emphasized that when the Legislature intends the word "program" to refer to compulsory activities, it says so explicitly. As such, the court determined the word "program" in the Promotion Ban placed an unconstitutional limitation on non-mandatory activities, such as joining student organizations or how students express themselves. *See* Add. 16–22; App. 542–548; R. Doc. 141, at 16–22.

Turning to the word "promotion," the District Court noted two common meanings, both of which were unrelated to a promotion being mandatory or voluntary. The Iowa Code typically uses "promote" or "promotion" to refer to "elevating someone to a higher position," while other appearances use them as synonyms for "encourage," which is the meaning intended by the Promotion Ban. This meaning extends the Promotion Ban to "GSAs and other resources relating to

gender identity and sexual orientation available for students in grades six or below"[25] and is intended to unconstitutionally "forbid school districts from encouraging students to explore concepts of gender identity or sexual orientation" both inside and outside mandatory curriculum. Add. 18–19; App. 544–545; R. Doc. 141, at 18–19.

The District Court noted that interpreting the Promotion Ban as non-viewpoint-based would forbid programs or promotion "relating to *any* gender identity or *any* sexual orientation. But this gets back to the absurdity problem because it would mean the law bans 'girls' and 'boys' sports teams and any other classroom or extracurricular activity that recognizes and endorses gender identity." Add. 30; App. 556; R. Doc. 141, at 30. After finding Appellees likely to prevail in establishing that this reading of the Promotion Ban would be unconstitutionally vague for inviting decision-making on an "ad hoc and subjective basis,"[26] the District Court enjoined enforcement of the Promotion Ban's restrictions on programs and promotions revolving around gender identity and sexual orientation. Add. 30–32; App. 556–558; R. Doc. 141, at 30–32.

---

[25] The District Court rightly rejected the State's arguments that *noscitur a sociis* and the title-heading-cannon counsel an interpretation that the words "promotion" and "program" refer to mandatory curriculum. *See* Add. 20–21; App. 546–547; R. Doc. 141, at 20–21.

[26] The District Court also noted that an alternative reading applying the Promotion Ban to only some types of gender identity or sexual orientation would constitute unconstitutional viewpoint discrimination in contravention of the First Amendment. Add. 28–30; App. 554–556; R. Doc. 141, at 28–30.

B. The Forced Outing Provisions' Unconstitutional Vagueness.

Second, with respect to the Forced Outing Provisions, the District Court found SF496 unconstitutionally vague with respect to the requirement that school officials notify parents when a student requests an "accommodation that is intended to affirm the student's gender identity." *See* Add. 32–34; App. 558–560; R. Doc. 141, at 32–34. The District Court noted that "accommodation" has a broad meaning which renders the provision unconstitutionally vague. Without any definition set forth in the statute, application of "accommodation" would rely on "any number of judgment calls" in situations outside the sole example listed in the Forced Outing Provisions—just as this Court held regarding the word "respect" in *Parents Defending Education*, 83 F.4th at 669. Add. 33; App. 559; R. Doc. 141, at 33.

After finding that Appellees likely to prevail in establishing the Forced Outing Provision as being void for vagueness, the District Court enjoined enforcement of the Forced Outing Provisions except with respect to a formal request to use a "pronoun that is different than the . . . pronoun assigned to the student in the school district's registration forms or records," which is clear enough to provide fair notice. Add. 33–34; App. 559–560; R. Doc. 141, at 33–34 (quoting Iowa Code § 279.78(3)).

Accordingly, the District Court's preliminary injunction has resolved aspects of SF496's unconstitutional vagueness. Reversing that injunction would severely impair Iowa school counselors' ability to do their important work.

CONCLUSION

Accordingly, amicus ISCA respectfully urges the panel to affirm the District Court's preliminary injunction.

Dated: September 12, 2025

BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ A. Elizabeth Blackwell
A. Elizabeth Blackwell (Bar No. 07-0412)
Justin D. Kingsolver
Kurt M. Steinhouse
Annalisa C. Kolb
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, Missouri 63102-2726
Telephone: +1 314 259 2000
Facsimile: +1 314 259 2020
Email: liz.blackwell@bclplaw.com

Attorneys for Amicus Curiae
Iowa School Counselor Association

CERTIFICATE OF SERVICE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5), because this brief contains 6,432 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in 14-point Times New Roman font.

3. This brief complies with the requirements of Local Rule 28A(h)(2) because it has been scanned for viruses and is free of viruses.

Dated: Sept. 12, 2025

By: **BRYAN CAVE LEIGHTON PAISNER LLP**

/s/ A. Elizabeth Blackwell
A. Elizabeth Blackwell
Attorney for Amicus Curiae
Iowa School Counselor Association

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025, I electronically filed the foregoing brief with the Clerk of the Court of the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: Sept. 12, 2025

By: **BRYAN CAVE LEIGHTON PAISNER LLP**

/s/ A. Elizabeth Blackwell
A. Elizabeth Blackwell
Attorney for Amicus Curiae
Iowa School Counselor Association