

No. 24-1075

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

GLBT YOUTH IN IOWA SCHOOLS TASK FORCE, d/b/a IOWA SAFE
SCHOOLS, *et. al.*,

Plaintiffs-Appellees,

v.

KIM REYNOLDS, in her official capacity as Governor of the State of Iowa, *et.*
al.,

Defendants-Appellants,

JULIE MITCHELL, in their official capacities as BOARD MEMBERS OF THE
URBANDALE COMMUNITY SCHOOL DISTRICT, *et. al.*

Defendants.

Appeal from the United States District Court for the Southern District of Iowa
No. 4:23-cv00474-SHL, Honorable Stephen H. Locher, District Judge

**BRIEF OF AMICI CURIAE ONE IOWA AND THE LEAGUE OF
WOMEN VOTERS OF IOWA IN SUPPORT OF APPELLEES, AND IN
FAVOR OF AFFIRMANCE**

Thomas Foley
RSH Legal
425 2nd St. SE Suite 1140
Cedar Rapids, IA 52401
Telephone: 319-365-9200
Facsimile: 319-365-1114
tfoley@fightingforfairness.com
ATTORNEY FOR AMICI CURIAE

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	3
RULE 29(a)(4)(E) STATEMENT	3
CONSENT TO FILE.....	3
TABLE OF AUTHORITIES.....	4
IDENTITY AND INTERESTS OF AMICI.....	6
ARGUMENT	8
A. Preliminary Statement.	8
B. The Book Ban Impermissibly Requires the Removal of Books Based on Their Point of View.....	9
1. Legislative History of SF 496.	10
2. SF 496’s Overriding Focus is on LGBTQ+ Students and Their Families. 15	
C. The District Court Correctly Rejected the State’s Argument that the Book Ban is Governmental Speech Not Subject to Frist Amendment Viewpoint Limitations.	17
1. Local School Districts are Distinct Entities Under Iowa Law.	19
2. The Book Ban is Regulation, Not Speech.....	21
D. The District Court Correctly Concluded SF 496 Improperly encroached on Students’ Constitutionally Protected Right to Receive Information.	23
E. The Don’t Say Gay/Trans Restrictions Will Be Enforced Against LGBTQ+ Subject Matters to the Detriment of LGBTQ+ Students and Their Families.....	26
CONCLUSION	28
CERTIFICATE OF COMPLIANCE.....	29
CERTIFICATE OF SERVICE	30

CORPORATE DISCLOSURE STATEMENT

Amici Curiae One Iowa and the League of Women Voters of Iowa are not-for-profit corporations exempt from income tax under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. Sec. 501(c)(3). Neither entity has a parent corporation, and no publicly held corporation has a ten percent or greater ownership in either.

RULE 29(a)(4)(E) STATEMENT

No party's counsel authored this brief in whole or in part. No party's counsel contributed money that was intended to fund preparing or submitting this brief. This brief was prepared *pro bono publico* by attorneys for Amici Curiae.

CONSENT TO FILE

Plaintiffs-Appellants and Defendants-Appellees consent to the filing of this brief.

/s/ Thomas Foley _____
ATTORNEY FOR AMICI CURIAE
LEAGUE OF WOMEN VOTERS AND
ONE IOWA

TABLE OF AUTHORITIES

Cases

<i>Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico</i> , 457 U.S. 853 (1982).....	10, 18, 23
<i>Brown v. Louisiana</i> , 383 U.S. 131 (1966).....	18
<i>City of Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432, 440 (1996)	17
<i>Exira Comm. Sch. Dist. v. State</i> , 512 N.W.2d 787 (Iowa 1994).....	22
<i>Graham v. Worthington</i> , 259 Iowa 845, 146 N.W.2d 626 (1966)	19
<i>Gundy v. City of Jacksonville</i> , 50 F.4 th 60 (11 th Cir. 2022)	18
<i>Hills & Dales Child Dev. Ctr. v. Iowa Dep't of Educ.</i> , 968 N.W.2d 238 (Iowa 2021).....	19
<i>Keyishian v. Board of Regents</i> , 385 U.S. 589 (1967)	18
<i>Matal v. Tam</i> , 582 U.S. 218 (2017).....	17
<i>Miller v. California</i> , 413 U.S. 15 (1973).....	13
<i>Pratt v. Independent School District No. 831</i> , 670 F.2d 771 (8 th Cir. 1982)	10, 18, 20, 23
<i>Right to Read Defense Committee v. School Committee</i> , 454 F. Supp. 703 (Mass. 1978)	18
<i>U.S. Dep't of Agric. V. Moreno</i> , 413 U.S. 528 U.S. 534 (1973)	17
<i>Vil. Of Arlington Heights v. Metro Housing Dev. Corp.</i> , 429 U.S. 252, 265-266 (1977)	16

Statutes & Regulatory Authorities

Iowa Code §§ 216.2(1).....	26
Iowa Code §§ 216.2(14)	26
Iowa Code § 216.6(a).....	26
Iowa Code § 256.11(9)(a)(2).....	9
Iowa Code § 256.19(a)(1)	10

Iowa Code § 274.3(1).....19
Iowa Code § 279.80(1)(a).....26
Iowa Code § 279.80(1)(b).....26
Iowa Code § 279.80(2).....26
Iowa Code § 702.1710, 13, 16

IDENTITY AND INTERESTS OF AMICI

Amicus Curiae One Iowa is a statewide advocacy organization working to empower and improve the lives of lesbian, gay, bisexual, transgender, and queer/questioning Iowans, including LGBTQ+ students and their families. One Iowa was founded in 2005 to advocate for LGBTQ+ Iowans' right to marry. Once that right was secured, One Iowa expanded its mission to include the protection of LGBTQ+ Iowans' civil rights and the promotion of their dignity in every facet and stage of their lives.

One Iowa is committed to ensuring that LGBTQ+ children and young people have access to the same opportunities as other young persons have regardless of their sexual orientation or gender identity. This commitment includes securing equal access to educational opportunities and information that reflects their existing and future life experiences, as well as the life experiences of the entire LGBTQ+ community. Research demonstrates that equal educational opportunity and access to a variety of information improves mental health outcomes for LGBTQ+ students, reduces perceived feelings of isolation, and decreases negative attitudes toward those students in other populations. Equal educational opportunity is particularly important because of the long-term effects school experiences can have during the crucial developmental stages of a young LGBTQ+ person's life.

Amicus Curiae League of Women Voters of Iowa (“LWVIA”) is the Iowa state affiliate of the League of Women Voters (“the League”), which was established in 1920, just six months before the Nineteenth Amendment to the U.S. Constitution was ratified. LWVIA is a nonprofit, nonpartisan, grassroots organization dedicated to fostering an inclusive democratic government through public service, voter empowerment, and ensuring equal rights for all, irrespective of their identity, including gender, sexual orientation, and sexual identity. LWVIA comprises a statewide organization and twelve local Leagues across the state.

The League has participated as amicus curiae in numerous cases before the United States Courts of Appeals and the United States Supreme Court to advocate for equality and civil rights protections for all individuals, including LGBTQ+ individuals. The League and LWVIA are committed to the protection of individual rights, including freedom of speech, and believe the law should not discriminate against individuals based on gender, race, sexual orientation, or sexual identity or other protected classifications. Addressing speech suppression and discrimination in public schools are essential interests that correspond with LWVIA’s and the League’s larger objectives of protecting individual liberties and promoting an inclusive democracy.

ARGUMENT

A. Preliminary Statement.

In the spring of 2023, the Iowa General Assembly passed a bill, Senate File 496 (“SF 496”), that Governor Kimberly Reynolds signed into law on May 26, 2023. SF 496 is an expansive bill that, among other things, precludes Iowa schools, grades kindergarten through sixth, from providing “any program, curriculum, test, survey, questionnaire, promotion, or instruction relating to gender identity or sexual orientation” (the “Don’t Say Gay/Trans Restrictions”) and bans from school libraries “any materials with descriptions or visual depictions of a sex act” (the “Book Ban”). (*See App. 17-23, R. Doc. 1, at 18-24*).

After SF 496 became law, Plaintiffs-Appellees, a group of nonprofit organizations serving LGBTQ+ Iowa youth and eight LGBTQ+ students, filed this lawsuit challenging the constitutionality of the new law and asking the District Court to enjoin the State from enforcing the previously mentioned prohibitions. The District Court found Plaintiffs-Appellees were likely to prevail on their First Amendment and Due Process claims and issued a preliminary injunction on December 29, 2023, enjoining all Defendants, including the State, from enforcing or acting in furtherance of the Don’t Say Gay/Trans Restrictions and the Book Ban. *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, No. 4:23-CV-00474, 2023 WL

9052113, at *25-26 (S.D. Iowa Dec. 29, 2023). The State appealed that ruling to this Court.

Amici Curiae agree with the arguments contained in Plaintiffs-Appellees' comprehensive and well-reasoned brief, and they fully support and endorse the positions taken therein. Amici Curiae file this brief to provide the Court with additional perspective regarding issues in the case that are of particular importance to both One Iowa and LWVIA. Specifically, Amici address in turn the State's flawed arguments that (1) the Book Ban does not engage in viewpoint discrimination; (2) the Book Ban qualifies as government speech not subject to First Amendment restrictions no matter what its scope; (3) Iowa students, including LGBTQ+ students, do not have a First Amendment right to receive information; and (4) the Don't Say Gay/Trans Restrictions are not overly broad and not susceptible to arbitrary enforcement. Amici Curiae respectfully urge the Court to affirm the District Court's grant of a preliminary injunction.

B. The Book Ban Impermissibly Requires the Removal of Books Based on Their Point of View.

Under the new law's Book Ban, Iowa school districts must establish a "library program" that, among other things, "contains only age-appropriate materials." Iowa Code § 256.11(9)(a)(2). "Age-appropriate" materials are defined to include materials "suitable to particular ages or age groups of children, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group." Iowa Code §

256.19(a)(1). The phrase is further defined to exclude, no matter what the age or age groups’ cognitive, emotional, and behavioral maturity, “any material with descriptions or visual depictions of a sex act as defined in [Iowa Code Section] 702.17.”

The District Court correctly concluded the Book Ban violated the First Amendment, as interpreted in *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853 (1982) and *Pratt v. Indep. Sch. Dist. No. 831, Forest Lake, Minn.*, 670 F.2d 771 (8th Cir. 1982), because, by banning any book that depicts or describes a “sex act,” the Iowa legislature has “imposed a puritanical ‘pal of orthodoxy’ over school libraries.” *GLBT Youth in Iowa Sch. Task Force*, 2023 WL 9052113, at *19 (citations omitted). The District Court, however, incorrectly found the Book Ban, despite (or perhaps because of) its breadth, “does not on its face target any ideology. It simply forbids ‘sex acts’ for the sake of being ‘sex acts.’” *Id.* at *20. Although the later finding did not change the outcome, the conclusion that the Book Ban and the Don’t Say Gay/Trans Restrictions are viewpoint-neutral ignores SF 496’s legislative history and intended effect.

1. Legislative History of SF 496.

The unsavory process through which SF 496 became law is described in detail in the Complaint for Declaratory and Injunctive Relief. (App. 26-34, R. Doc. 1, at 27-35). That legislative history, as Plaintiffs-Appellees allege, “underscore[s] that

SF 496 is an attempt to target LGBTQ+ students and prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion in Iowa schools.” (App. 26, R. Doc. 1, at 27).

SF 496 has, from the beginning, been a solution in search of a problem. Prior to its enactment, local school districts were responsible for deciding what books would be included in the school libraries those districts maintained. Prior to its enactment, Iowa law prohibited the dissemination of obscene materials to minors and local school districts had established procedures through which parents could challenge any book contained in a school library or taught as part of the school’s curriculum. The procedures are described in detail in the parent declarations the State submitted in support of its resistance to Plaintiffs-Appellees request for temporary injunctive relief. (App. 272, *et. seq.* R. Doc. 53-1, at 1-89).

SF 496 began as a bill Governor Reynolds proposed in early February 2023. Governor Reynolds proposed the bill within days after the Iowa House of Representatives’ Oversight Committee conducted a public hearing that featured five members of Moms for Liberty who failed in their attempts to remove what they referred to as “obscene and sexually explicit” books from school libraries and were now advocating for a state-wide book ban.¹ During the public hearing, images taken

¹ See Katie Akin, ‘Moms for Liberty’ calls on lawmakers to help get ‘inappropriate’ books out of Iowa schools, Des Moines Register, Feb. 7, 2023, <https://www.desmoinesregister.com/story/news/politics/2023/02/07/obscen>

from books with LGBTQ+ themes and characters were projected on a screen and portions of those books and other books were read aloud. No one else was permitted to present during the public hearing, including individuals sitting in the audience who were opposed to book bans. *Id.*

Moms for Liberty is a well-known advocacy group that takes anti-LGBTQ+ positions on many public policy issues and has championed similar book bans in other states. (*See* App. 28, R. Doc. 1, at 29). Governor Reynolds spoke at a town hall meeting hosted by Moms for Liberty and the Leadership Institute. During that meeting, Governor Reynolds told those present that “an extreme and extremely loud minority” was trying to “indoctrinate our children” and that a legislative goal of hers was “to restore sanity” in Iowa schools. (App. 28, R. Doc. 1, at 29). Similar sentiments were expressed by Iowa legislators. As the 2023 legislative session opened, a senator accused “some” teachers of having “a sinister agenda” to “normalize sexually deviant behavior” and describing an “attack on our children [that] is no longer hidden.” (App. 27, R. Doc. 1, at 28).

Identical versions of the Governor’s proposed bill were introduced in the Iowa Senate and the Iowa House of Representatives. *See* S.S.B. 1145; H.S.B. 222. The Senate’s version of the Governor’s proposed bill progressed faster than the House

[e-books-dispute-returns-to-iowa-capitol-conservative-moms-call-for-action/69877178007/](https://www.legis.iowa.gov/legislation/bills/2023/summary/69877178007/).

version and eventually became SF 496. The initial bill did not include a book ban. Instead, the bill included a notification and right to opt out of “any activity or instruction that involves obscene or sexually explicit material.” (App. 29, R. Doc. 1, at 30). The bill defined the phrase “sexually explicit material” to include, among other things, material depicting, describing, or representing a “sex act,” but it did not incorporate, or even reference, the definition for “sex act” contained in Iowa Code § 702.17. *Id.* Consistent with the obscenity standard established in *Miller v. California*, 413 U.S. 15, 24 (1973), the definition for “sexually explicit” required the material “when taken as a whole” to “lack[] serious literary, artistic, political, or scientific value as to minors.” *Id.* The initial bill contained a version of the Don’t Say Gay/Trans Restrictions, although the restrictions applied only to “students in kindergarten through grade three,” and restricted “programs, curriculum” relating to “Gender identity” and “Sexual activity.” The term “sexual orientation” was not used.

In late March 2023, the Iowa Senate amended SF 496 to eliminate the definition of “sexually explicit material,” including the *Miller v. California* limitations discussed above. In place of those provisions, the amendment added what would eventually become the Book Ban provisions discussed herein. That same amendment expanded the Don’t Say Gay/Trans Restrictions to include “students in kindergarten through grade six,” and it substituted the phrase “sexual orientation” for the phrase “sexual activity.” This later change made it clear that the primary goal

behind the Don't Say Gay/Trans Restrictions was eliminating from grades kindergarten to six, any mention of LGBTQ+ individuals and their families. By conflating the two phrases, SF 496, as amended, improperly sexualized LGBTQ+ identities and people and conveyed the message that LGBTQ+ children and adults are unspeakable and vile, simply by virtue of who they are. (*See* App. 31, R. Doc. 1, at 31).

SF 496, as amended, passed the Senate the same day as it was amended to include the new provisions discussed above. SF 496 passed the House about a month later, and Governor Reynolds signed the bill into law on May 26, 2023. In addition to the Book Ban and Don't Say Gay/Trans Restrictions, the new law contained provisions requiring school districts to notify a student's parent or guardian if the student asks to be addressed by "a name or pronoun that is different than the name or pronoun assigned to the student in the school district's registration" or for any other gender affirming "accommodation." (the "Forced Outing Provisions"). (App. 22, R. Doc. 1, at 22). The Governor was surrounded by Moms for Liberty members during the bill signing ceremony. In her signing remarks, Governor Reynolds indicated the new law was designed to prevent "indoctrination" with "extreme ideas." (App. 34, R. Doc. 1, at 35).

2. SF 496's Overriding Focus is on LGBTQ+ Students and Their Families.

SF 496's legislative history shows the bill was, from the beginning, an initiative launched by anti-LGBTQ+ advocacy groups with the overriding purpose of silencing the voices of and otherwise diminishing the LGBTQ+ community. The Book Ban, Don't Say Gay/Trans Restrictions, and Forced Outing Provisions have a common theme and purpose. Both individually and together, the provisions connote an invidious preoccupation with, and animus against, members of the LGBTQ+ community, particularly students. As Plaintiffs-Appellees point out in their brief, "each provision of SF496 was deliberately designed to silence the voices of LGBTQ+ students and eliminate their access to resources and books that affirm who they are." Pls.' Br. 3.

The Iowa legislature worked hard to mask its intent to target LGBTQ+ students by using seemingly neutral terms throughout SF 496. For example, the Don't Say Gay/Trans Restrictions prohibit schools with students in grades kindergarten through six from providing "any program, curriculum . . . instruction" relating to gender identity or sexual orientation. (App. 17-23, R. Doc. 1, at 18-24). That restriction, on its face, appears to apply equally to all groups. However, the only instruction ever mentioned—what Governor Reynolds referred to as "indoctrination"—pertained to LGBTQ+ people and their families. Further, the narrowing of the bill over time, including the substitution of the phrase "sexual

orientation” for “sexual activity” confirms that limiting instruction about sex or sexual activity was never the bill’s purpose. The elimination of the reference to “sexual activity” also presents the anomalous and absurd result that, under the new law, sixth grade teachers can arguably read D.H. Lawrence’s “Lady Chatterley’s Lover” during class but are prohibited from reading “Heather Has Two Mommies.”

The Book Ban, on its face, appears to be neutral too. It prohibits any description or depiction of a “sex act” and not just sex acts between people of the same gender. It has, however, been clear from the beginning that books underlying the Book Ban are those involving LGBTQ+ themes and characters. As noted above, books involving LGBTQ+ themes were the only books Moms for Liberty members projected during the House Oversight Committee public hearing, and they are the book types emphasized and excised in the parent declarations the State submitted below. Two depictions that appear multiple times in the parent declarations show so-called sex acts being performed by a single individual which the Book Ban does not prohibit. *See* Iowa Code Section 702.17 (defining “sex act” as “any sexual contact between two or more persons . . .”).

Although SF 496 does not directly call them out by name, the new law’s intent to curb speech, expression, information, or discussion about LGBTQ+ students and their families violates their right to equal protection of the laws without any serving any compelling or legitimate governmental interests. *See Vil. Of Arlington Heights*

v. Metro Housing Dev. Corp., 429 U.S. 252, 265-266 (1977) (holding that facially neutral law may violate Equal Protection Clause if law has discriminatory purpose and effect). Further, even if the lowest level of scrutiny applies, the state cannot target a disfavored group for purely political reasons. *See U.S. Dep’t of Agric. V. Moreno*, 413 U.S. 528 U.S. 534 (1973) (stating that if equal protection means anything, “it must at the very least mean that a bare [legislative] desire to harm a politically unpopular group cannot constitute a legitimate governmental interest”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1996) (stating that some objectives like “a bare desire to harm a politically unpopular group” are “not legitimate state interests”).

C. The District Court Correctly Rejected the State’s Argument that the Book Ban is Governmental Speech Not Subject to First Amendment Viewpoint Limitations.

The State’s primary argument in asking this Court to overrule the District Court’s injunction is that the Book Ban constitutes government speech not subject to the First Amendment restrictions. *See Appellees’ Br.* 35-36. “Under the governmental speech doctrine, ‘the Free Speech Clause does not require government to maintain viewpoint neutrality when its officers and employees speak’ about governmental endeavors.” *Matal v. Tam*, 582 U.S. 218, 233 (2017). The State maintains that its “authority to speak is at a zenith in public schools,” and that “book

curation in a public-school library is governmental speech.” *See* Appellees’ Br. 39, 41.

The District Court correctly rejected the State’s governmental-speech argument holding instead that school libraries are limited public forums “for which the government may not impose unreasonable or viewpoint-specific restrictions.” *GLBT Youth in Iowa Sch. Task Force*, 2023 WL 9052113, at *18 (citations omitted). By banning any book that described or depicted a so-called sex act, the Book Ban was, according to the District Court, unreasonable and impermissibly restrictive. *Id.* at *19. The District Court’s holding is consistent with the established line of cases recognizing public libraries as places “dedicated to quiet, to knowledge, and to beauty,” and school libraries as the “principal locus” of a student’s freedom “to inquire, to study, and to evaluate, to gain new maturity and understanding,” and to “explore the unknown, and discover areas of interests and thought not covered by the prescribed curriculum.” *Pico*, 457 U.S. at 868-69 (citing and quoting *Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (opinion of Fortas, J.)); *Keyishian v. Board of Regents*, 385 U.S. 589, 142 (1967); *Right to Read Defense Committee v. School Committee*, 454 F. Supp. 703, 715 (Mass. 1978).

Because it applied the standard articulated in *Pico* and *Pratt*, the District Court did not directly address the State’s governmental speech arguments under the three-factor test that appears to control the issue. *See Gundy v. City of Jacksonville*, 50

F.4th 60, 71 (11th Cir. 2022) (setting forth factors used “to determine whether speech constitutes governmental speech”). The State’s arguments fail under that test for the reasons Plaintiffs-Appellees discuss in their brief. Pls.’ Br. 25-33. The State’s government speech arguments are undermined for the additional reason that under Iowa law, local school districts establish curricula and curate library books and materials. As explored below, the State does neither.

1. Local School Districts are Distinct Entities Under Iowa Law.

Public education in Iowa is delivered by local school districts, each of which exists “as a school corporation” expressly authorized to “sue and be sued,” to “hold property,” and to “exercise all powers granted by law.” Iowa Code § 274.1. Under Iowa law, local school district’s powers regarding pedagogical matters are plenary: Iowa law grants each local school district “exclusive jurisdiction *in all school matters* over the territory therein contained.” *Id.* (emphasis added). Iowa law limits the plenary discretion it affords local school districts by making them directly responsible to the communities they serve. School corporations are governed by an elected board of directors who serve limited terms of office. The law grants those elected officials the authority to “operate, control, and supervise all public schools located within the district’s boundaries” and to exercise “broad and implied power” “related to the operation, control, and supervision of those public schools.” Iowa

Code § 274.3(1); *see also Hills & Dales Child Dev. Ctr. v. Iowa Dep't of Educ.*, 968 N.W.2d 238, 241 (Iowa 2021).

Like Iowa cities and counties, local school districts are political subdivisions and not agencies of the state. *Graham v. Worthington*, 146 N.W.2d 626, 633 (Iowa 1966). For that reason, school district “officers, agents and employees . . . are not officers, agents and employees of the state while acting within the scope of their office or employment.” *Id.* Local school districts are “creatures of the state,” as the State points out in its brief. The State’s role in education has, however, been traditionally limited to establishing minimal accreditation standards and providing general oversight, neither dictating nor forbidding certain subject matters.

Local school districts, through administrators and teachers they employ, establish the curricula for the elementary, middle, and high schools located within the school district’s boundaries. The state oversees, but is not directly involved, in this process. Similarly, local school districts purchase most of the textbooks, books, and other materials used in their classrooms and shelved or stored in school libraries. The funds used to buy these textbooks, books, and other materials are generated through local property taxes, state aid, and other sources. But, again, the state is not directly involved in the acquisition process and, until now, has not been involved in the process of reconsidering the educational value or appropriateness of any purchased items. Iowa is like most other states in granting local school districts

primary control over education. *See Pratt* 670 F.2d at 775 (“[L]ocal authorities are the principal policymakers for the public schools.”).

2. The Book Ban is Regulation, Not Speech.

The Book Ban is the converse of governmental speech. The Book Ban is the State imposing its viewpoint and orthodoxy on separate and distinct governmental entities that, having purchased the books in the first instance, presumably disagree with the State’s viewpoint that any book describing or depicting a sex act has no place in a public education, no matter the nature of the description or depiction or the context within which it is made, the age or maturity level of the potential reader, or the book’s overall pedagogical value.

The parent declarations the State submitted in support of the Book Ban demonstrate the ban’s parochial nature. Those declarations primarily involve parents who used local school district procedures attempting to remove books they found offensive before turning to the Governor and their state legislators for relief. (*See* App. 856-65, R. Doc. 45-1, at 857-866; App. 868-870, R. Doc. 45-1, at 869-871; App. 891-910, R. Doc. 45-1, at 892-911; App. 912-919, R. Doc. 45-1, at 913-918; App. 930-947, R. Doc. 45-1, at 931-948). One declarant even got the book he found objectionable removed but remained unsatisfied. (App. 947, R. Doc. 45-1, at 948). In adopting the views of these parents, the State does not speak for the local school districts who purchased the books in the first instance and are now being required to

remove the books against their will. Contrary to what it claims in its brief, the State does not speak when it supplants the speech of local school districts.

In the brief it filed in the companion publisher case, the State argues the “democratic process has been thwarted by a preliminary injunction” because the Book Ban represents “Iowa voters . . . through their elected representative” fixing the “problem” of local school districts refusing “to remove books describing sexual activity despite objections from concerned parents.” Appellees’ Br. 4.² The State’s “democracy in action” argument ignores that the local school districts who refused to remove the books are separate entities operated by elected officials who are directly answerable to the communities they serve; officials who reflect the educational values and concerns of those communities.

Arguably, the State may impose its will on local school districts provided the State’s diktats do not violate the First Amendment, Due Process, and other constitutional limitations. However, when it imposes its will on separate and distinct governmental entities, the State is regulating, not speaking. The State is also acting

² The four local school districts named as defendants in this case took “no position” on Plaintiffs’ preliminary injunction motion, noting that they “[did] not have discretion to decide which state laws to follow and do not have standing to question the constitutionality of state statutes” (Def.’s Resp. to Pl. Mtn. for Preliminary Injunction, 2, Dec. 19, 2023, ECF No. 48, 4:23-cv-00474). (citing *Exira Comm. Sch. Dist. v. State*, 512 N.W.2d 787, 790 (Iowa 1994)).

contrary to the will of the voters who elected the school officials who purchased the books the Governor and select legislators categorically label as vulgar.

D. The District Court Correctly Concluded SF 496 Improperly encroached on Students’ Constitutionally Protected Right to Receive Information.

The District Court concluded Plaintiffs-Appellees had a First Amendment right to receive information or, as the Court put it, “a First Amendment right not to have books and materials removed from the school library based on ideological, religious, or other grounds designed to suppress ideas or impose a ‘pall of orthodoxy’ over the classroom” *GLBT Youth in Iowa Sch. Task Force*, 2023 WL 9052113, at *14. To justify any abridgement of that right, the District Court required the State “establish a ‘substantial and reasonable governmental interest’ that justifies the school library restrictions.” *GLBT Youth in Iowa Sch. Task Force*, 2023 WL 9052113, at *14 (citations omitted). The District Court’s holdings were based on a thorough and accurate interpretation of this Court’s decision in *Pratt* and the United States Supreme Court’s decision in *Pico*.

In its brief, the State argues that the District Court’s application of *Pico* and *Pratt* was erroneous because the “First Amendment right to receive information” line of cases, including *Pico* and *Pratt*, have been abrogated by the United States Supreme Court’s “elaboration of the governmental speech doctrine” as discussed above. Appellees’ Br. 35. The State argues in the alternative that even under *Pico*

and *Pratt*, the Book Ban does not violate the First Amendment because the Book Ban “is a viewpoint-neutral restriction [that reasonably furthers] the State’s legitimate interest in educating Iowa youth without risk of exposure to inappropriate materials, and it does not set out to achieve that goal in a religious, ideological, partisan, or political manner.” *Id.* Each of the State’s arguments are flawed; if accepted, both arguments will have deleterious effects on LGBTQ+ youth and their families.

Students spend many of their waking hours in school or participating in school-sponsored activities. In addition to teaching students how to read, write, and do arithmetic, elementary, middle, and high schools provide students with an opportunity to acquire the intellectual and social skills necessary to succeed and to become responsible members of society. These same schools provides students with the opportunity to find their passions and pursue their dreams, whatever those passions or dreams may be. These educational opportunities are both formative and introspective; and they are greatly diminished if students are deprived of the right to receive all types of information, even information that some regard as unorthodox or inappropriate.

The right to receive information is of particular importance to students who belong to marginalized groups; groups that, as here, tend to be on the receiving end of laws and policies seeking to ban information. The presence of books with varying

viewpoints gives all students the opportunity to discover the world and themselves and to learn that even their most intimate or audacious ideas, thoughts, and feelings are neither unsuitable nor abnormal. This aspect is particularly important to transgender and gender nonconforming students who are often teased and shamed by others and tend to feel isolated and shunned as a result. Plaintiffs-Appellees' Complaint states in detail the importance of literature with LGBTQ+ themes and characters has had on the education and lives of the student Plaintiffs. (*See* App. 34-35, R. Doc., at 35-36).

Ensuring school libraries offer myriad viewpoints comes at no cost to anyone, either. No student is forced to check out library books, and finding a book on a given subject typically involves a search of some sort. It is telling that the parents who offered testimony in favor of the Book Ban either failed to state how they learned the school libraries their children visit contain the books they found objectionable, or the parent declarants acknowledge they learned about the "offending" books' presence through other sources, including through "rumor." (*See* App. 861, R. Doc. 45-1, at 862; App. 868, R. Doc. 45-1, at 869; App. 891, R. Doc. 45-1, at 892; App. 912, R. Doc. 45-1, at 913; App. 930, R. Doc. 45-1, at 931). None of the parent declarants claim their child checked out one or more of the books they opposed or inadvertently stumbled upon the book while perusing the school library shelves.

More importantly, no declaration states one of the referenced children read or looked at the select portions of the book the parents found objectionable.

E. The Don't Say Gay/Trans Restrictions Will Be Enforced Against LGBTQ+ Subject Matters to the Detriment of LGBTQ+ Students and Their Families.

SF 496 added a new section to Iowa Code Chapter 279 that prohibits school districts from providing “any program, curriculum, test, survey, questionnaire, promotion, or instruction relating to gender indent or sexual orientation to students in kindergarten through grade six.” Iowa Code § 279.80(2). The new section incorporates the definitions of gender identity and sexual orientation contained in Iowa’s Civil Rights Act (“IRCA”). Iowa Code § 279.80(1)(a), (b). Ironically, those definitions, and the prohibition using the defined terms, were added to the ICRA to prohibit employers from discriminating against LGBTQ+ employees and individuals. *See* Iowa Code § 216.6(a) (prohibiting discrimination based on listed protected classifications including “sexual orientation” and “gender identity”); Iowa Code §§ 216.2(1) and (14) (defining “gender identity” and “sexual orientation”).

The District Court correctly held that the Don't Say Gay/Trans Restrictions contained in SF 496 were overly vague in violation of the Due Process Clause of the Fourteenth Amendment. The court found that the restrictions, literally interpreted, prevented a wide range of instruction and that the inclusion of “programs” within the restriction’s reach required school districts to prohibit a sixth grade LGBTQ+

student from joining “a GSA, thus interfering with her First Amendment rights to expressive association.” *GLBT Youth in Iowa Sch. Task Force*, 2023 WL 9052113, at *25.

The State argued below, and reasserts here, that the Don’t Say Gay/Trans Restrictions, while using neutral terms, apply only to compulsory instruction and pertain to matters of identity and perceived sexuality; they do not encompass mere passing reference to someone’s pronouns.” Appellees’ Br. 52. The State’s argument fails for two reasons: one, the argument conflicts with the statutory language; and two, to the extent the argument and the statutory language can be reconciled, the argument cuts only one way. As the District Court observed, the State’s “briefing and argument leave the unmistakable impression that [the State] believe[s] the law only forbids programs, promotion, and instruction relating to transgender people and non-heteronormative relationships.” *GLBT Youth in Iowa Sch. Task Force*, 2023 WL 9052113, at *25.

SF 496’s bias against LGBTQ+ students and their families is readily apparent. Since its passage, local school districts have, among other things, removed books with LGBTQ+ characters and themes from their libraries, disbanded LGBTQ+ clubs and support groups, removed pride flags from classrooms. LGBTQ+ students feel particularly restrained, as Plaintiffs-Appellees describe in detail in their brief. *See* Pls.’ Br. 9. Even with the law enjoined, LGBTQ+ students have suffered harm; they

have felt unsafe and unwanted, felt like they have targets on their backs and limited their self-expression for fear they will be harassed and bullied for being who they are. Many LGBTQ+ students self-censor to avoid the new law's naked intent and effect. SF 496 does not impose similar burdens on heterosexual, cisgender students.

CONCLUSION

For the foregoing reasons, Amici Curiae One Iowa and the League of Women Voters of Iowa urge this Court to affirm the preliminary injunction entered by the District Court.

Dated: April 23, 2024

Respectfully Submitted,

/s/ Thomas Foley

Thomas Foley AT0002589

tfoley@fightingforfairness.com

RSH LEGAL

425 2nd St SE, Suite 1140

Cedar Rapids, IA 52401

Phone: (319) 365-9200

Fax: (319) 365-1114

ATTORNEY FOR AMICI CURIAE
LEAGUE OF WOMEN VOTERS AND
ONE IOWA

CERTIFICATE OF COMPLIANCE

1. This brief complies with Rule 32(a)(7)(B) because it contains 5,296 words, excluding the parts exempted by Rule 32(f).
2. This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word Version 2403 in 14-point Times New Roman font.

The electronic version of the brief has been scanned for viruses and is virus-free.

Dated: April 23, 2024

Respectfully Submitted,

/s/ Thomas Foley

ATTORNEY FOR AMICI CURIAE
LEAGUE OF WOMEN VOTERS AND
ONE IOWA

CERTIFICATE OF SERVICE

I certify that, in compliance with 8th Cir. Local Rule 28A(d), ten paper copies of this brief were transmitted to the clerk of court via priority mail.

Dated: April 23, 2024

Respectfully Submitted,

/s/ Thomas Foley

ATTORNEY FOR AMICI CURIAE
LEAGUE OF WOMEN VOTERS AND
ONE IOWA