

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

PENGUIN RANDOM HOUSE LLC, LAURIE)
HALSE ANDERSON, JOHN GREEN,)
MALINDA LO, JODI PICOULT, SCOTT BONZ)
as parent and next friend of H.B., IOWA STATE)
EDUCATION ASSOCIATION, MARI BUTLER)
ABRY, ALYSON BROWDER, AND DANIEL)
GUTMANN,)

Plaintiffs,

v.

JOHN ROBBINS in his official capacity as)
President of the Iowa State Board of Education,)
MCKENZIE SNOW in her official capacity as)
Director of the Iowa State Department of)
Education, CHAD JANZEN in his official)
capacity as Chair of the Iowa State Board of)
Educational Examiners, URBANDALE)
COMMUNITY SCHOOL DISTRICT BOARD)
OF DIRECTORS, ROSALIE DACA, in her)
official capacity as Urbandale Community School)
District Superintendent, NORWALK)
COMMUNITY SCHOOL DISTRICT BOARD)
OF DIRECTORS, AND SHAWN HOLLOWAY,)
in his official capacity as Norwalk Community)
School District Superintendent,)

Defendants.

Case No. 4:23-cv-00478-SHL-SBJ

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

EXPEDITED RELIEF REQUESTED

ORAL ARGUMENT REQUESTED

Plaintiffs Penguin Random House LLC, Laurie Halse Anderson, John Green, Malinda Lo, Jodi Picoult, Scott Bonz as next friend of H.B., the Iowa State Education Association, Mari Butler Abry, Alyson Browder, and Daniel Gutmann (“Plaintiffs”), move this Court pursuant to Rule 65(a) of the Federal Rules of Civil Procedure to issue a preliminary injunction restraining the Defendants from enforcing and acting in furtherance of the following sections of the Code of Iowa as enacted by Senate File 496 (2023) (“SF 496”): Iowa Code § 256.11(9) (as codified by SF 496 § 2); Iowa

Code § 256.11(19) (as codified by SF 496 § 4); and, to the extent it is applied to books in school libraries and classroom collections, Iowa Code § 279.80 (codifying SF 496 § 16). Pursuant to Local Rule 7(i), the Plaintiffs request expedited relief. In support of their motion, the Plaintiffs state as follows:

1. Plaintiffs seek to restrain each of the Defendants from enforcing and acting in furtherance of portions of Senate File 496, and the sections of the Code of Iowa that codified that legislation, that violate the First and Fourteenth Amendments to the United States Constitution. This matter is urgent because penalties against educators intended to enforce unconstitutional provisions of SF 496 go into effect on January 1, 2024. The Plaintiffs' injunction request should therefore be resolved expeditiously regardless of the speed with which this Court resolves the preliminary injunction request in *GLBT Youth in Iowa Schools Task Force et al. v. Reynolds et al.*, Case No. 4:23-cv-000474 (the "GLBT Youth case").¹

2. In this motion, the Plaintiffs seek to do three things. First, they will concisely describe the basis for their request for preliminary injunctive relief, with the remainder of that explanation in the brief they are filing in support of this motion. Second, they will address the urgency of this motion and why the motion is timely filed. Finally, the Plaintiffs will request that their injunction motion be heard before the preliminary injunction motion filed in the GLBT Youth case and explain the basis for that request.

¹ The Court should note that, to simplify and expedite resolution of their motion, the Plaintiffs are not seeking preliminary injunctive relief on every ground for relief pleaded in their Complaint. They are limiting their preliminary injunction request to those grounds alleged in Counts I, II, III, and VII of their Complaint along with that part of Count IV alleging overbreadth. Put another way, the Plaintiffs seek injunctive relief based on all of their claims pertaining to the Age-Appropriate Standard but are only seeking injunctive relief on the Identity and Orientation Prohibition on the basis of the Prohibition's unconstitutional overbreadth and vagueness.

Plaintiffs Are Entitled To A Preliminary Injunction

3. The Plaintiffs comprise a range of individuals and entities unconstitutionally burdened by the provisions of SF 496 challenged here, the Age-Appropriate Standard and the Identity and Orientation Prohibition. (Together the Age-Appropriate Standard and the Identity and Orientation Prohibition are referred to in this motion as the “Challenged Provisions.”)

4. Plaintiff Penguin Random House LLC (“PRH”) is a publisher of books distributed in schools in Iowa. The Challenged Provisions deprive PRH of the ability to have those books read by Iowa students.

5. Plaintiffs Laurie Halse Anderson, John Green, Malinda Lo, and Jodi Picoult are authors of books for school-aged children and young adults whose ability to distribute their books in schools in Iowa and speak to their chosen audience is constricted by the Challenged Provisions.

6. Plaintiff H.B. is suing through her parent Scott Bonz and is an Urbandale High School student whose ability to read books and acquire information of her choosing in the school setting is restricted by the Challenged Provisions.

7. Plaintiffs Mari Butler Abri, Alyson Browder, Daniel Gutmann, and the Iowa State Education Association (the “Educator Plaintiffs”) are and represent educators whose ability to provide access to and teach about important books in the school setting is constrained and chilled by the Challenged Provisions. Further, the Educator Plaintiffs are examples of educators facing the possibility of discipline or professional loss of licensure if they do not comply with the Challenged Provisions.

8. The Challenged Provisions violate the constitutional rights of the Plaintiffs. First, the Age-Appropriate Standard requires the removal from Iowa school libraries of books containing a description of a “sex act.” This violates the United States Constitution in the following ways:

- a. The Age-Appropriate Standard violates the right of students under the First Amendment to receive information.
- b. The Age-Appropriate Standard violates the First Amendment because it is an impermissible content-based restriction.
- c. The Age-Appropriate Standard is unconstitutionally overbroad.
- d. The Age-Appropriate Standard is unconstitutionally vague.

9. Additionally, the Identity and Orientation Prohibition, which bars the provision of any program or promotion “relating to gender identity or sexual orientation to students in kindergarten through grade 6,” Iowa Code § 279.80 (codifying SF 496 § 16), is unconstitutional to the extent it is applied to books in school libraries and classroom collections because:

- a. The Identity and Orientation Prohibition is an overbroad content-based restriction.
- b. The Identity and Orientation Provision is unconstitutionally vague.

10. The Defendants must each be enjoined from enforcing and acting in furtherance of the challenged provisions of SF 496 in order to provide relief to the Plaintiffs. The Iowa State Board of Education, the Iowa Department of Education, and the Iowa State Board of Educational Examiners are the state agencies that promulgate rules of conduct and policy to be followed by school districts in Iowa, enforce statutory and regulatory directives on those schools, and would carry out the penalties on educators provided for in SF 496 for violations of the Challenged Provisions. Accordingly, each of those agencies, through their designated chief executives or board chairs, should be enjoined from enforcing the Challenged Provisions.

11. The Urbandale Community School District and the Norwalk Community School District have each, as evidence supporting this motion shows, removed books from school

libraries, precluded students from having access to books, and taken other actions in violation of the constitutional rights of the Plaintiffs described here, all on the strength of, or in fear of the consequences of, the Challenged Provisions. Plaintiffs request an order that prohibits imposition of any penalty upon any Iowa School District for failure to remove any book from a school library and permits any of those districts to return, without fear of penalty, any books previously removed in order to comply with Senate File 496.

12. As is more fully described in the accompanying brief, the Plaintiffs establish the familiar elements for preliminary injunctive relief enumerated in *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (likelihood of success on the merits, irreparable harm, balance of harms favoring the plaintiff, and public interest). Indeed, where, as here, the plaintiff shows a high likelihood that First Amendment rights are being violated, that showing is effectively conclusive of all of the *Dataphase* elements. *See Willson v. City of Bel-Nor, Mo.*, 924 F.3d 995, 999 (8th Cir. 2019).

13. The Plaintiffs request that this Court waive any requirement that they post a bond. A court granting a preliminary injunction is not required to impose a bond, and its decision about that is discretionary. *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016). No measurable “costs and damages” will be imposed on any Defendant by an inability to enforce or rely upon the Challenged Provisions. Fed. R. Civ. P. 65(c). Courts find that a bond is unnecessary “when a plaintiff is seeking to prevent a government entity from violating the First Amendment.” *Goyette v. City of Minneapolis*, 338 F.R.D. 109, 121 (D. Minn. 2021) (waiving bond in First Amendment case). *See also Dakotans for Health v. Anderson*, --- F.Supp.3d ---, 2023 WL 3968218, at *16 (D.S.D. June 13, 2023) (same).

This Matter Is Urgent, And This Motion Is Timely

14. This Court has set a schedule for adjudication of this motion and the parallel motion in the GLBT Youth case that accounts for the urgency of these matters, *see* ECF 24, so the Plaintiffs will not discuss that issue further other than where they address the order of presentation of the motions in paragraphs 17–22 below.

15. To the extent the timing of this motion becomes an issue on its merits, however, the Plaintiffs will respond to the suggestion of the State defendants in the GLBT Youth case that the Plaintiffs should have challenged SF 496 earlier. Case No. 4:23-cv-00474, ECF 27 at 1-2. That argument is misplaced against these Plaintiffs. A substantial portion of their constitutional attack on SF 496 concerns the overbreadth and vagueness of both the Age-Appropriate Standard and the Identity and Orientation Prohibitions. The proposed regulations that purported to interpret and give definition to the statutory language were only issued on November 15 of this year. *See* Complaint, ECF 1, Exhibit 2. Had the Plaintiffs brought their constitutional challenge before the promulgation of those regulations, the State defendants’ inevitable response would have been that the attack was premature—the scope of the statute was not yet established.

16. Additionally, the one part of the statute that the State concedes takes effect on January 1, 2024 is the part that is the absolute centerpiece of the Age-Appropriate Standard – the enforcement mechanism that calls for personal sanctions against educators who fail to follow that Standard. Iowa Code § 256.11(9) (codifying SF 496 § 2). This lawsuit is brought at the exact right time – after the regulations, but before the enforcement.²

² SF 496 is not clear whether the Identity and Orientation Prohibition is part of and thus enforced in the same way as the Age-Appropriate Standard. Even if it is not, there are separate provisions in the Iowa Code that more generally provide for disciplinary and licensure consequences for failing to follow educational standards such as the Identity and Orientation Prohibition. *See* Complaint, ECF 1, ¶ 82 (citing Iowa Code §§ 272.2(4), 279.27(1) & (2)).

This Motion Should Be Litigated First

17. Although this motion and the motion of the GLBT Youth plaintiffs will be litigated at the same hearing, the Plaintiffs urge that the Court hear their motion *separately* and *first*. To facilitate this, the Plaintiffs request that this motion be heard on the afternoon of December 21, 2023.

18. The Plaintiffs should have this motion heard *separately* because it presents different issues than those presented by the motion of the GLBT Youth plaintiffs. Superficially, one might say that because the GLBT Youth plaintiffs seek to have all of SF 496 held unconstitutional, while the Plaintiffs challenge a portion of that statute, this motion is fully subsumed by the preliminary injunction motion in the GLBT Youth case. The Venn diagram in these two cases is not nearly so simple.

19. First, the plaintiffs in the GLBT Youth case consist entirely of students or their proxy organization. As is apparent from the Plaintiffs' brief, however, the constitutional violations in this case are different for the different classes of Plaintiffs – publishers, students, authors, and educators – included in this lawsuit. This Court can only adjudicate all the constitutional claims by addressing the claims of all the different Plaintiffs here.

20. Second but relatedly, the GLBT Youth brief in support of its preliminary injunction, though well-reasoned and persuasive, argues the point from one perspective – that of LGBTQ+ students. Not only does its focus on those students prevent adjudication of all the constitutional rights at issue in this motion, it does not capture all of the legal and factual reasons the Challenged Provisions should be enjoined. The constitutional analysis here requires consideration of issues not presented in the GLBT Youth brief.

21. Third, the GLBT Youth plaintiffs have not named a key defendant in this case, the Iowa State Board of Educational Examiners (acting through its Chair). That is the agency that metes out the penalties against individual educators that give much of the teeth to SF 496. *See* Iowa Code §256.11(9) (codifying SF 496 §2) (referencing licensing discipline procedures by the Board of Educational Examiners in Iowa Code §272.2(14)). Absent adjudicating the injunction against that Board, this Court cannot grant complete relief.

22. The Plaintiffs seek to have their motion addressed *first* because the relief the Plaintiffs seek is far narrower than that sought in the GLBT Youth case, and the rationale supporting that relief is much less susceptible to factual dispute. The GLBT Youth motion is legally and factually broad in its scope. It raises a number of issues that are more likely than this motion to present factual disputes that require resolution by this Court . Whether this permits adjudication by January 1 of all the issues in both cases is not a question this Court needs to answer now, but it is a question. What the Court should do now is first address the part of these cases that is (1) most susceptible to rapid adjudication and, (2) because of the January 1 trigger for the imposition of penalties, most in need of it.

WHEREFORE, the Plaintiffs, Penguin Random House LLC, Laurie Halse Anderson, John Green, Malinda Lo, Jodi Picoult, Scott Bonz as next friend of H.B., the Iowa State Education Association, Mari Butler Abry, Alyson Browder, and Daniel Gutmann pray this Court for an order setting the Plaintiffs' motion for preliminary injunction for a hearing on December 21, 2023 in the afternoon and, following that hearing, granting the following relief:

- a. Entering a preliminary injunction restraining the Defendants from enforcing or acting in furtherance of the Age-Appropriate Standard, i.e., Iowa Code § 256.11(9) (as codified by SF 496 § 2); Iowa Code § 256.11(19) (as codified by SF 496 § 4),

which injunction will include, without limitation, a term restraining the Defendants from imposing any penalty upon any School District or employees of any School District for (1) failing to remove any book from a school library, (2) determining to return a removed book back to a school library, or (3) determining to purchase or obtain any book for a school library;

- b. To the extent it is applied to books in school libraries and classroom collections, entering a preliminary injunction restraining the Defendants from enforcing or acting in furtherance of the Identity and Orientation Prohibition, i.e., Iowa Code § 279.80 (codifying SF 496 § 16), which injunction will include, without limitation, a term restraining the Defendants from imposing any penalty upon any School District or employees of any School District for (1) failing to remove any book from a school library, (2) determining to return a removed book back to a school library, or (3) determining to purchase or obtain any book for a school library;
- c. Finding that there is no necessity for, and therefore waiving, any requirement for a bond; and
- d. Granting such other relief as is equitable under the circumstances.

THE WEINHARDT LAW FIRM

By /s/ Mark E. Weinhardt
Mark E. Weinhardt AT0008280
Todd M. Lantz AT0010162
Jason R. Smith AT0014862
2600 Grand Avenue, Suite 450
Des Moines, Iowa 50312
Telephone: (515) 244-3100
mweinhardt@weinhardtlaw.com
tlantz@weinhardtlaw.com
jsmith@weinhardtlaw.com

Frederick J. Sperling
Adam J. Diederich
Kirstie Brenson
Meera Gorjala
ArentFox Schiff LLP
233 South Wacker Drive, Suite 7100
Chicago, Illinois 60606
Telephone: (312) 258-5500
frederick.sperling@afslaw.com
adam.diederich@afslaw.com
kirstie.brenson@afslaw.com
meera.gorjala@afslaw.com
Admitted Pro hac vice

Attorneys for Plaintiffs

Christy A.A. Hickman AT0000518
Becky S. Knutson AT0004225
Iowa State Education Association
777 Third Street
Des Moines, Iowa 50309
Telephone: (515) 471-8004
Christy.Hickman@isea.org
Becky.Knutson@isea.org

Attorneys for the Educator Plaintiffs

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy all attorneys of record on December 8, 2023 via CM/ECF.

By: /s/ Taylor Sellers