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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

EQUALITY UTAH; JANET DOE, as next
friend and parent of JOHN DOE; JUSTINE
DOE, as next friend and parent of JAMES
DOE; and JESSIE DOE, as next friend and
parent of JANE DOE,

Plaintiffs,

v.

UTAH STATE BOARD OF EDUCATION;
SYDNEE DICKSON, in her official capacity as
State Superintendent of Public Instruction of the
State of Utah; BOARD OF EDUCATION OF
CACHE COUNTY SCHOOL DISTRICT;
CACHE COUNTY SCHOOL DISTRICT;
BOARD OF EDUCATION OF JORDAN
SCHOOL DISTRICT; JORDAN SCHOOL
DISTRICT; BOARD OF EDUCATION OF
WEBER SCHOOL DISTRICT; and WEBER
SCHOOL DISTRICT,

Defendants.

Civil Action No. 2:16-cv-01081-BCW

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

JURY DEMANDED

INTRODUCTION

1. This action seeks to enjoin enforcement of Utah laws that infringe upon the constitutional rights of students and teachers by facially targeting lesbian, gay, and bisexual persons for disparate treatment; by prohibiting positive student and teacher speech about “homosexuality,” while permitting positive speech about the sexual orientation of heterosexual persons; and by prohibiting the equal treatment of student clubs that are supportive of students who are lesbian, gay, bisexual, or transgender (“LGBT”). The state laws and regulations challenged in this action—hereinafter the “Anti-Gay School Laws”—expressly prohibit speech that “advocat[es] homosexuality” in public school classrooms and student clubs. Moreover, some local school officials have applied the Anti-Gay School Laws to speech about gender identity as well. In at least one instance, a school has prohibited discussions about a student’s gender non-conformity and has failed to take reasonable steps to protect him from bullying and harassment. Facially and as applied, the Anti-Gay School Laws violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the First Amendment to the United States Constitution, Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (“Title IX”), and the Equal Access Act, 20 U.S.C. §§ 4071-4074 (“EAA”).

2. The Anti-Gay School Laws violate the Equal Protection Clause of the Fourteenth Amendment by expressly singling out a class of persons—those who are “homosexual”—for negative treatment by prohibiting classroom instruction and extracurricular activities that “advoca[te] . . . homosexuality” without imposing any comparable restriction on speech about heterosexuality. This discriminates against students and teachers on the basis of sexual orientation and sex in violation of the Equal Protection Clause of the Fourteenth Amendment.

3. In addition, the Anti-Gay School Laws violate the Free Speech Clause of the First

Amendment by prohibiting student and teacher speech that expresses a positive view about “homosexuality.” In practice, these laws are used by some school officials to silence virtually any reference even to the existence of LGBT persons, while imposing no such restrictions on speech about heterosexuality or heterosexual persons or on speech that expresses negative views about “homosexuality” or LGBT persons. These restrictions constitute impermissible content and viewpoint discrimination and also impose an overbroad and impermissibly vague restriction on protected speech, all in violation of the Free Speech Clause of the First Amendment.

4. The Anti-Gay School Laws violate Title IX by creating a hostile environment for LGBT students, preventing teachers and other school officials from appropriately supporting LGBT students or taking reasonable steps to protect LGBT students against bullying and harassment.

5. The Anti-Gay School Laws violate the EAA by prohibiting the equal treatment of, and imposing impermissible restrictions upon the speech of, student clubs that address the topic of “homosexuality,” while imposing no such restrictions on student clubs addressing heterosexuality or heterosexual persons.

6. Research has found that laws prohibiting the expression of positive views about “homosexuality” in public schools, like the Anti-Gay School Laws here, harm LGBT students. Such laws foster school climates that stigmatize and isolate LGBT youth, putting them at heightened risk of bullying and discouraging and preventing them from participating openly and equally in school activities.

7. The Anti-Gay School Laws were enacted in order to express moral disapproval of “homosexuality” and of LGBT persons and to discriminate against them. They do not serve any legitimate state interest.

8. In sum, the Anti-Gay School Laws single out “homosexuality” and LGBT persons for negative treatment, improperly restrict student and teacher speech about “homosexuality” and LGBT persons, and create a culture of silence and non-acceptance for LGBT students and teachers, all of which puts LGBT students at heightened risk of isolation, harassment, and long-term negative impacts on their health and well-being while serving no legitimate state interest. Plaintiffs have sustained severe and irreparable harm due to the Anti-Gay School Laws. Accordingly, the Court should declare the Anti-Gay School Laws unconstitutional and in violation of federal education law, and enjoin their enforcement.

JURISDICTION AND VENUE

9. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States and federal statutes, including Title IX, 20 U.S.C. §§ 1681-1688, and the EAA, 20 U.S.C. §§ 4071-4074.

10. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and it may issue a declaratory judgment and grant further relief pursuant to 28 U.S.C. §§ 2201 and 2202.

11. Venue appropriately lies in this District pursuant to 28 U.S.C. § 1391.

12. The Anti-Gay School Laws constitute an immediate infringement on the constitutional and statutory rights of Plaintiffs. Therefore, an actual and justiciable controversy exists between Plaintiffs and Defendants.

13. Plaintiffs have standing to bring this action.

PARTIES

14. Plaintiff Equality Utah is a nonprofit, public interest organization whose goal is to secure equal rights and protections for the LGBT community in Utah. It is the state’s largest

LGBT rights advocacy group, with more than ten thousand members throughout the state. Equality Utah's membership includes LGBT students who attend Utah public schools, LGBT parents whose children attend Utah public schools, non-LGBT students who support LGBT equality and who attend Utah public schools, LGBT teachers who teach in Utah public schools, and non-LGBT teachers who support LGBT equality and who teach in Utah public schools. Equality Utah is based in Salt Lake City, Utah.

15. Plaintiff John Doe is a seven-year-old child and former student at a public elementary school in the Weber School District. John Doe is a gender non-conforming boy who sometimes wears clothing traditionally worn by girls. John Doe resides with his family in Weber County, Utah.

16. Plaintiff James Doe is a minor who currently attends a public high school in the Cache County School District. James Doe formerly attended public primary and middle schools in the Cache County School District. James Doe is a gay male who resides with his family in Cache County, Utah.

17. Plaintiff Jane Doe is a minor who currently attends a public high school in the Jordan School District. Jane Doe formerly attended a public middle school in the Jordan School District. Jane Doe is a lesbian who resides with her family in Salt Lake County, Utah.

18. Defendant Utah State Board of Education has general control and supervision of the state's public education system, and is the recipient of federal financial assistance.

19. Defendant Sydnee Dickson is sued in her official capacity as State Superintendent of Public Instruction of the State of Utah. The State Superintendent of Public Instruction is the executive officer of Defendant Utah State Board of Education. Under Utah law, Ms. Dickson's responsibilities include administering all State Board of Education programs, including

curriculum requirements. *See* UTAH CODE ANN. § 53A-1-301; § 53A-13-101.

20. Defendant Weber School District operates public schools in Weber County, Utah, and is the recipient of federal financial assistance.

21. Defendant Board of Education of Weber School District is the governing body of Defendant Weber School District and its responsibilities under Utah law include implementing standards regarding curriculum requirements and student clubs. *See* UTAH CODE ANN. § 53A-3-301; § 53A-3-402; § 53A-11-1201 *et seq.*; § 53A-13-101; UTAH ADMIN. CODE r. 277-113-6(9); r. 277-474-3; r. 277-474-5(5).

22. Defendant Cache County School District operates public schools in Cache County, Utah, and is the recipient of federal financial assistance.

23. Defendant Board of Education of Cache County School District is the governing body of Defendant Cache County School District and its responsibilities under Utah law include implementing standards regarding curriculum requirements and student clubs. *See* UTAH CODE ANN. § 53A-3-301; § 53A-3-402; § 53A-11-1201 *et seq.*; § 53A-13-101; UTAH ADMIN. CODE r. 277-113-6(9); r. 277-474-3; r. 277-474-5(5).

24. Defendant Jordan School District operates public schools in Salt Lake County, Utah, and is the recipient of federal financial assistance.

25. Defendant Board of Education of Jordan School District is the governing body of Defendant Jordan School District and its responsibilities under Utah law include implementing standards regarding curriculum requirements and student clubs. *See* UTAH CODE ANN. § 53A-3-301; § 53A-3-402; § 53A-11-1201 *et seq.*; § 53A-13-101; UTAH ADMIN. CODE r. 277-113-6(9); r. 277-474-3; r. 277-474-5(5).

FACTUAL BACKGROUND

A. The Anti-Gay School Laws

26. The Anti-Gay School Laws were originally enacted in 1996, in response to the formation of a gay-straight alliance (“GSA”) student club at a Salt Lake City high school. The Legislative History and Intent Language for S.B. 1003, UTAH S. JOURNAL, 51st Leg., 2nd Spec. Sess. 1243 (Apr. 17, 1996) (“Legislative Intent”), shows that the Anti-Gay School Laws were premised on prejudice and fear. In his opening statement, the sponsor of S.B. 1003 referred to “homosexuality” as “unhealthy,” “dangerous,” and “destructive.” *Senate Bill 1003 – Responsibility of School Employees and Limitations Regarding Student Clubs: Senate Floor Debate*, 51st Leg., 2nd Spec. Sess. (Utah Apr. 17, 1996) (statement of Senator Craig Taylor). The sponsor’s written explanation of the legislative intent behind the bill cites “reducing the risk that children will become homosexual” and protecting “waverers” who “might succumb to the temptations of homosexuality” as the reason for barring GSAs and other in-school “gay-affirmative” speech. Legislative Intent at 1243-45 (internal citations omitted).

27. The Anti-Gay School Laws fall into two categories: (1) Anti-Gay Curriculum Laws, codified at UTAH CODE ANN. § 53A-13-101 and UTAH ADMIN. CODE r. 277-474-3; and (2) Anti-Gay Student Club Laws, codified at UTAH CODE ANN. § 53A-11-1201 *et seq.* and UTAH ADMIN. CODE r. 277-113-6(9).

28. The Anti-Gay Curriculum Laws include several provisions that facially target lesbian, gay, and bisexual persons.

29. First, these laws provide that educational materials adopted by local school boards must “prohibit[] instruction in . . . the advocacy of homosexuality.” UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A). By facially discriminating against “homosexuality,” this law specifically

targets and expressly discriminates against lesbian, gay, and bisexual persons.

30. Second, the Anti-Gay Curriculum Laws also facially target lesbian, gay, and bisexual persons by referencing Utah's unconstitutional marriage laws. Specifically, the Anti-Gay Curriculum Laws require local school boards to adopt instructional materials "emphasizing abstinence before *marriage* and fidelity after *marriage*," while "prohibiting instruction in . . . the advocacy of sexual activity outside of *marriage*." UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) (emphasis added). Under Utah law, "Marriage consists only of the legal union between a man and a woman." Utah Constitution, Article I, Section 29. Moreover, a marriage between two "persons of the same sex" is "prohibited and declared void." UTAH CODE ANN. § 30-1-2(5). Of course, Plaintiffs recognize that Utah's definition of marriage has already been declared unconstitutional as applied to two consenting adults who are otherwise eligible to be married or have entered into a legally valid marriage in another state. *See Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir.), *cert. denied*, 135 S. Ct. 265 (2014). However, the Utah Legislature has not repealed the state's unconstitutional definition of marriage. As a result, on their face, Utah's laws continue to restrict teachers and students from discussing marriage between two persons of the same sex in Utah public schools.

31. Third, the Anti-Gay Curriculum Laws target lesbian, gay, and bisexual persons by referencing Utah's unconstitutional criminal laws. Specifically, the Anti-Gay Curriculum Laws prohibit school employees, volunteers, local school boards, and the State Board of Education from doing anything that might be construed to "support or encourage *criminal conduct* by students, teachers, or volunteers." UTAH CODE ANN. § 53A-13-101(4)(a) (emphasis added). This restriction applies even to "responses to spontaneous questions from students," UTAH CODE ANN. § 53A-13-101(1)(b)(ii)(A), "training of school employees or volunteers," UTAH CODE

ANN. § 53A-13-101(4)(c), and in specified circumstances, “to school employees or volunteers acting *outside* of their official capacities.” UTAH CODE ANN. § 53A-13-101(4)(b) (emphasis added). Under Utah law, “criminal conduct” includes private, adult, consensual relationships between two persons of the same sex. *See* UTAH CODE ANN. §§ 76-5-403(1), 76-5-403(3), 76-2-204(2), 76-3-301(1)(d). Even though this prohibition is unconstitutional under *Lawrence v. Texas*, 539 U.S. 558 (2003), it has not been repealed. As a result, Utah’s laws continue to facially restrict school employees, volunteers, local school boards, and the State Board of Education from doing anything that might be construed to “support or encourage” private, adult, consensual relationships between two persons of the same sex—even in the context of marriage.

32. In the Utah Code, the Anti-Gay Curriculum Laws appear under a section titled “Instruction in health.” UTAH CODE ANN. § 53A-13-101. However, in the Utah Administrative Code, Defendant Utah State Board of Education has promulgated a rule extending the Anti-Gay Curriculum Laws to “any course or class” UTAH ADMIN. CODE r. 277-474-1(D). In this rule, the State Board of Education has explicitly provided: “The following may not be taught in Utah public schools through the use of instructional materials, direct instruction, or online instruction: . . . the advocacy of homosexuality; . . . or . . . the advocacy of sexual activity outside of marriage.” UTAH ADMIN. CODE r. 277-474-3(A). By promulgating these rules, Defendant Utah State Board of Education has broadly prohibited speech that expresses a positive view about “homosexuality” in “any course or class.”

33. The Anti-Gay Student Club Laws require that: “A school shall limit or deny authorization or school facilities use to a club . . . if a club’s proposed charter and proposed activities indicate students or advisors in club related activities would as a substantial, material, or significant part of their conduct or means of expression . . . involve human sexuality.” UTAH

CODE ANN. § 53A-11-1206(1)(b)(iii). Under the Anti-Gay Student Club Laws, “involve human sexuality” is defined to include “(a) presenting information in violation of laws governing sex education, including Section[] 53A-13-101,” and “(b) advocating or engaging in sexual activity outside of legally recognized marriage or forbidden by state law.” UTAH CODE ANN. § 53A-11-1202(8). Another section requires schools to annually approve a “faculty supervisor” for all student clubs, who “shall provide oversight to ensure compliance with the approved club purposes, goals, and activities and with the provisions of this part and other applicable laws, rules, and policies.” UTAH CODE ANN. § 53A-11-1207(3). In addition, Defendant Utah State Board of Education has promulgated a rule requiring local school boards and public charter schools to ensure compliance with the Anti-Gay Student Club Laws. UTAH ADMIN. CODE r. 277-113-6(9).

34. The Anti-Gay School Laws have been and are being enforced broadly against teachers and students. The text of these laws applies to student and teacher speech in “any course or class” and in “student clubs.” In some instances, school officials have enforced the Anti-Gay School Laws to prevent teachers and students even from making statements recognizing that LGBT people exist, or expressing any positive views about “homosexuality” or LGBT people.

B. The Anti-Gay School Laws’ Harmful Effect on Plaintiffs

35. The Anti-Gay School Laws impose serious harms on LGBT students and students with LGBT parents, including preventing them from having equal educational opportunities and participating equally in student clubs and other activities. These laws harm LGBT teachers by subjecting them to an environment of non-acceptance, chilling and censoring speech that is readily permitted for non-LGBT teachers, and discouraging or preventing them from offering

acceptance, support, or validation to LGBT youth. The Anti-Gay School Laws also stigmatize LGBT students and teachers. These laws “generate[] a feeling of inferiority as to the[] status [of LGBT students and teachers] in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Brown v. Board of Education*, 347 U.S. 483, 494 (1954). In addition, these laws “injure[] . . . children . . . who . . . are gay or lesbian, and who will grow up with the knowledge that the State does not believe they are as capable of creating a family as their heterosexual friends.” *Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 1213 (D. Utah 2013).

36. LGBT students who lack support and face harassment and discrimination at school experience increased isolation, depression, and risk of suicide and are more likely than their peers to miss school, often in an effort to avoid abuse. *See, e.g.*, M. Birkett, D.L. Espelage, & B. Koenig, *LGB and Questioning Students in Schools: The Moderating Effects of Homophobic Bullying and School Climate on Negative Outcomes*, 38 J. YOUTH & ADOLESCENCE 989 (2009). These negative experiences can have serious long-term negative impacts on these students’ health and well-being. *Id.* By contrast, LGBT students who attend schools allowing equal and open discussion about their identities on a par with the recognition and discussion of heterosexual identities, *e.g.* by having GSAs, are safer and healthier. *See, e.g.*, Stephen T. Russell, *Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth*, 12 ANN. REV. CLINICAL PSYCHOL. 465 (2016).

37. The harms caused to LGBT youth by laws such as Utah’s Anti-Gay School Laws are of particular concern because, as a group, LGBT youth are already at significantly heightened risk of suicide and other negative health impacts due to family and social rejection. A nationally representative study of adolescents in grades 7 through 12 found that lesbian, gay, and bisexual youth were more than twice as likely to have attempted suicide as heterosexual youth. S.T.

Russell & K. Joyner, *Adolescent Sexual Orientation and Suicide Risk: Evidence from a National Study*, 91 AM. J. PUB. HEALTH 1276 (2001). Research indicates that transgender youth are at even higher risk, with one study finding that 26% had attempted suicide, while 45% had seriously thought about doing so. A.H. Grossman & A.R. D'Augelli, *Transgender Youth and Life-Threatening Behaviors*, 37 SUICIDE & LIFE-THREATENING BEHAV. 527, 533 (2007).

38. Similarly, Defendant Utah State Board of Education has expressly recognized that LGBT youth “have an increased risk of suicide” and that “[t]his risk can be increased further when these kids are not supported by parents, peers, and schools.” *Bullying Prevention—Risk Factors*, UTAH STATE BOARD OF EDUC., <http://www.schools.utah.gov/prevention/Bullying-Prevention/Risk-Factors.aspx> (last visited Nov. 14, 2016). That risk is especially great in Utah, whose overall youth suicide rate is more than double the national rate and climbing. *See* Michelle L. Price, *Utah Officials Unsure Why Youth Suicide Rate Has Nearly Tripled Since 2007*, SALT LAKE TRIB. (July 3, 2016), <http://www.sltrib.com/news/4075258-155/story.html> (last visited Nov. 14, 2016); *see also* *Suicide Among Teens and Young Adults*, UTAH DEP’T OF HEALTH, VIOLENCE & INJURY PREVENTION PROGRAM, <http://www.health.utah.gov/vipp/teens/youth-suicide/> (last visited Nov. 14, 2016) (noting that “Utah has consistently had a higher youth suicide rate compared to the U.S. for more than a decade”).

39. The Plaintiffs’ experiences illustrate some of the harms caused by the Anti-Gay School Laws.

1. Equality Utah

40. Equality Utah is the state’s largest LGBT rights advocacy group, with more than ten thousand members throughout the state. The Anti-Gay School Laws inflict serious and ongoing harm on Equality Utah members.

41. Equality Utah's membership includes families with LGBT students attending Utah public schools. The Anti-Gay Curriculum Laws deny equal educational opportunities to LGBT students, who are not free to express positive views about "homosexuality" and LGBT people in class. LGBT students are deprived of information about "homosexuality" and LGBT people in health classes and other classes where such information would be relevant. Non-LGBT students do not face comparable restrictions in discussing and receiving information about heterosexual relationships.

42. The Anti-Gay Curriculum Laws restrict expression *outside* of the classroom as well. LGBT students have been disciplined for engaging in conduct for which heterosexual students are not (such as holding hands with a partner), on the grounds that such conduct advocates "homosexuality." The Anti-Gay Curriculum Laws foster bullying and harassment by stigmatizing LGBT students and effectively prohibiting teachers and school administrators from making reasonable efforts to provide protection and guidance to them.

43. LGBT students are harmed by the Anti-Gay Student Club Laws, which deny their right to freely associate and discuss LGBT people or issues in GSAs. LGBT students do not have the same freedom of expression enjoyed by students in other student clubs, and are often denied the same protection against bullying and harassment provided to other students.

44. Equality Utah's membership includes LGBT parents whose children attend Utah public schools. These children cannot freely discuss their parents' identities in the classroom or in student clubs. Children of married LGBT parents cannot freely discuss their parents' marriages in the same way that children of non-LGBT parents can. The Anti-Gay School Laws "humiliate . . . children now being raised by same-sex couples" by making "it even more difficult for the children to understand the integrity and closeness of their own family and its concord

with other families in their community and in their daily lives.” *U.S. v. Windsor*, 133 S. Ct. 2675, 2694 (2013).

45. Equality Utah’s membership includes teachers in Utah public schools. Some of these teachers have LGBT students whom they would like to support, but they refrain from doing so because they are concerned about violating the Anti-Gay School Laws.

46. Teachers suspected of violating the Anti-Gay School Laws face serious harm. Under UTAH ADMIN. CODE r. 277-474-5(5), teachers who violate the prohibitions in UTAH ADMIN. CODE r. 277-474-3—including the prohibition of the “advocacy of homosexuality”—are reported by the superintendent and subjected to “discipline” by the Utah Instructional Materials Commission. This Commission is appointed by and reports to Defendant Utah State Board of Education. UTAH ADMIN. CODE r. 277-469-2.

47. Some Equality Utah teachers would like to serve as faculty advisors for GSAs or other student clubs addressing “homosexuality” or LGBT persons, but do not for fear of losing their jobs.

48. Equality Utah teachers would like to protect LGBT students from bullying and harassment, but cannot take reasonable steps to do so, because they reasonably fear that doing so could be viewed as advocating “homosexuality” in violation of the Anti-Gay School Laws, and could lead to their termination or other adverse employment actions.

49. Equality Utah also has LGBT teachers who, because of the Anti-Gay School Laws, are afraid to identify themselves as LGBT at school because they reasonably fear losing their jobs. LGBT teachers cannot present information about “homosexuality” or LGBT people to their students. LGBT teachers must censor themselves in ways that heterosexual teachers are not asked to. LGBT teachers reasonably fear that simply acknowledging the existence of a

same-sex spouse to students would be considered a violation of the Anti-Gay School Laws, and could lead to their termination or other adverse employment actions.

50. The experiences of the individual Plaintiffs are representative of those of many Equality Utah members. The individual Plaintiffs are students who have been and are being singled out for discriminatory and adverse treatment. Their constitutionally protected freedoms of speech and association have been and are being restricted because of the Anti-Gay School Laws.

2. John Doe

51. John is a gender non-conforming boy who sometimes wears clothing traditionally worn by girls.

52. In fall 2014, John's mother (a.k.a. Janet Doe) enrolled him in kindergarten at a public elementary school in the Weber School District. Soon after he started attending this school, John was subjected to harassment, physical abuse, and sexual intimidation because of his gender non-conformity. John's mother reported this harassment, physical abuse, and sexual intimidation to school authorities, but the school and the Weber School District did not adequately investigate her reports or take sufficient steps to protect her son.

53. John experienced constant harassment because of his gender non-conformity. He was regularly teased and beaten by his fellow students. John quickly began to suffer panic attacks and often missed days of school.

54. Not long into the school year, John's mother arrived just in time to stop another student from bashing John's head against a brick wall at school, preventing an assault that could have caused him a serious injury. John's mother reported this incident to school authorities, but the incident was not adequately investigated by the school or by the Weber School District.

55. John also was subjected to sexual intimidation because of his gender non-conformity. On one occasion a group of boys cornered John in the school bathroom. They forcibly pulled his pants down, saying they wanted to know “what kind of underwear” he was wearing. John’s mother reported this incident to school authorities, but the incident was not adequately investigated by the school or by the Weber School District.

56. John’s mother made many attempts to get help for her five-year-old son from school administrators. She spoke to the school principal, the school guidance counselor, and John’s kindergarten teacher about the harassment of her son, but no one provided adequate assistance to John, or took reasonable steps to prevent the bullying and harassment. John’s teacher said that there was nothing she could do to protect John from his classmates when the children were at recess.

57. The school officials declined to take obvious and reasonable steps to respond to the bullying and harassment. For example, John’s mother requested that the student primarily responsible for the bullying be moved to a different class, but the principal declined to do so. Nor did the school officials impose adequate discipline on any of the students involved in the bullying and harassment.

58. John was not allowed to discuss his gender non-conformity with his classmates. For show-and-tell one day, John brought his favorite book to school with him, *My Princess Boy*, which is about a four-year old boy who enjoys wearing dresses and other clothing traditionally worn by girls. The teacher did not allow him to show it to the other students and refused to discuss his gender non-conformity with the class. She told his mother that she was concerned about other parents finding out that John had shared this book at school and said that it was not an acceptable topic to talk about at school.

59. John's mother also spoke to the school guidance counselor. The guidance counselor said that she could tell the other students not to be bullies, but could not tell them that it was okay for a boy to wear a dress or for a person to be gay. The school principal specifically declined to investigate the harassment directed at John as a violation of Title IX. He said that, at their age, some children just need time to learn how to be friends with people.

60. John's mother also sought help from the Weber School District's designated Title IX coordinator, who erroneously said that Title IX did not apply to a child of John's age and refused to help him or take any action to address the harassment he suffered on account of his gender non-conformity. The Title IX coordinator told John's mother that young children could not be sexually harassed and that protecting students from sexual harassment was something that only happened when the children were older.

61. John's mother then went to the Weber School District's Student Services Coordinator and showed him the Title IX enforcement policy she had printed from a website hosted by the Weber School District. The Student Services Coordinator told her that he had never heard of the Title IX policy before, and the policy document subsequently disappeared from the webpage where she had found it.

62. Even the parents of other students harassed John and called him names. When John's mother was dropping him off for picture day early in the school year, she heard a group of parents saying that she was "turning him into a faggot" by allowing John to wear dresses to school. His mother reported the incident to the principal, but he said that there was nothing he could do if she did not know the names of the parents and could not prove what they had said.

63. The abuse that John suffered escalated through the first several weeks of the school year. On a hot day, one of the other students held John's hand to a hot metal slide. He

screamed for help and the boy finally let him go. John showed his hand to a teacher, who said he would be fine and administered no first aid. John complained through the day that his hand was hurting him. When his mother picked him up from school, she saw his injury and took him to urgent care. In urgent care, the doctor said that John had suffered second-degree burns on his hand.

64. A final incident involving potential sexual abuse was particularly traumatic. One day, John's main tormentor followed John into the school bathroom during recess. John's absence was not noticed for several minutes. By the time John was found, he was highly upset and visibly shaken. He later experienced vomiting and severe panic attacks. He would not tell his mother what happened to him in the bathroom, and still refuses to talk about this incident two years later. John drew a picture afterwards of "how it made [him] feel" when the other boy followed him into the bathroom, which was a page of angry scribbles. John's mother reported this incident to school authorities, but the incident was not adequately investigated by the school or by the Weber School District. After this incident, John did not return to school.

65. By October 2014, less than three months after school had started, the principal said that he could not keep John safe at school and suggested that his mother home-school him. John's mother withdrew him from school and quit her job so that she could home-school him, and has been doing so for two years. However, home-schooling has been difficult and financially burdensome for John's family. He has not been able to go on field trips, learn from trained teachers, or have other experiences that children in school have.

66. Before he stopped attending school, John had been planning to dress up for Halloween as a Disney princess. Soon after she began home-schooling him, John's mother found out that the school had announced a rule that any student who cross-dressed on Halloween

would be suspended.

67. John continues to experience the effects of the trauma he encountered in kindergarten, although he does not have the panic attacks and vomiting that he used to when he was going to school. If it were safe for John to return to school, his mother would send him back. For now, however, she is too scared of what the bullies would do to him, since the school did not protect him from the harassment and abuse that he suffered on account of his gender non-conformity when he was previously enrolled in public school.

3. James Doe

68. James is a gay student at a public high school in the Cache County School District who has been bullied because of his sexual orientation. His speech has been infringed both inside and outside of the classroom because of the Anti-Gay School Laws.

69. Beginning when he was attending primary school in the Cache County School District, James has been bullied by other students because of his sexual orientation and perceived gender non-conformity, and school administrators have not protected James. That harassment continued while James attended middle school in the Cache County School District. James would regularly be pushed while walking in the hallway, shoved into his locker, and taunted by other students. Once he was shoved into the girls' bathroom and told that he might as well be a girl because he was worthless. In seventh grade, another student called James a "fag" in class. James had to ask the teacher multiple times to be moved to another seat in the class where he would feel safer. Administrators told James and his parents that the bullies would grow out of it. They also said that the bullying was being documented in student files, even though no such documentation was actually being made.

70. By eighth grade, James was seeing a therapist and no longer wanted to go to

school. James was so afraid of being harassed that he would not use the bathroom at school, instead waiting until he got home at the end of the school day. James's school failed to provide adequate protection from bullying. James and his family spoke with Cache County School District administrators, who suggested that James move to a charter school, because the school administrators could not protect him. Instead of taking reasonable steps to protect James and punish the perpetrators, the Cache County School District urged James to leave the school district.

71. James returned to the Cache County School District beginning in the tenth grade, as the charter school he attended did not teach students beyond the ninth grade. Since his return to the District, he has continued to be regularly harassed because of his sexual orientation. In one incident, a student stole an item from James's backpack and when James asked for it back, the boy asked why James wears skinny jeans. The boy returned the item and then yelled "Homo!" at James loudly and repeatedly before a friend intervened. Because of his experiences with bullying, James does not want to participate in physical education classes or use the locker rooms at school.

72. In a high school English class, James and his classmates were given an assignment to write and present a family history to the other students. James wanted to talk about his uncle, who is married to another man, but the teacher would not allow him to do so. Instead, the teacher told James that if he wanted to do his report about his uncle, he would need to do the oral presentation *after* class, in a one-on-one presentation to the teacher with no other students present. Other students were allowed to present family histories based on married heterosexual couples during class. Because of the teacher's resistance to his choice of his uncle, James ultimately chose to present a report about his grandmother instead.

73. James is active in his high school's GSA. When the club was being organized, James was in a meeting with members of the school board, who would need to approve its creation. One member strongly suggested that the club reconsider calling itself a "gay-straight alliance," claiming that name could be seen as "offensive."

74. James and the other members of the GSA requested that the school assist with transportation to an event in Salt Lake City during Pride celebrations, but school administrators replied that the school's policy is not to provide transportation for student clubs. However, student groups including sports teams, performance groups, debate teams, and others are regularly provided transportation and even accommodations to events away from the school.

75. More recently, James and the other members of the GSA, like the other clubs in their school, designed posters commemorating homecoming. One of the GSA posters was torn down from the wall because it contained the word "gay." The school did not allow the poster to go back up until the word "gay" was removed and replaced with another word, fundamentally altering the students' message.

4. Jane Doe

76. Jane is a lesbian and is currently a student at a public high school in the Jordan School District. She has been selectively disciplined because of her sexual orientation. When Jane was in middle school in the Jordan School District, she faced discriminatory enforcement of school rules because of the Anti-Gay School Laws. Since then, Jane has been afraid to speak about her identity and ask questions about LGBT issues because she might get in trouble again.

77. Jane was formerly a student at a public middle school located in the Jordan School District. The school had rules prohibiting public displays of affection, but these rules were not enforced against heterosexual couples. In fact, it was common for heterosexual couples

to hold hands and kiss at school.

78. By contrast, Jane was targeted by school officials for merely holding hands with another girl. She was called into the principal's office and warned that disciplinary action would be taken if she did not stop holding hands with girls. The school officials refused to engage in a further discussion with Jane or her parents.

79. In high school, Jane and her classmates are discouraged from asking questions about LGBT issues. The Anti-Gay Curriculum Laws are used to curtail conversation and silence those students. On the first day of Jane's health class, the teacher handed out a disclosure document listing the topics that could not be discussed in the class, such as "homosexuality" and sexual activity outside of marriage, directly referring to the language of the Anti-Gay Curriculum Laws. A student asked if same-sex marriage would be discussed in the class, and the teacher flatly answered, "No." Jane had questions about "homosexuality" and same-sex marriage and wanted to push back on the teacher's outright refusal, but she was afraid the teacher would be upset and she would be punished, as she had been in middle school.

CLAIMS FOR RELIEF

CLAIMS CHALLENGING THE ANTI-GAY CURRICULUM LAWS

COUNT I

VIOLATION OF U.S. CONSTITUTION AMENDMENT XIV

(Brought pursuant to 42 U.S.C. § 1983 on behalf of all Plaintiffs against Defendants Dickson, Board of Education of Weber School District, Board of Education of Cache County School District, and Board of Education of Jordan School District)

80. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 79 as though fully set forth herein.

81. The Fourteenth Amendment provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

82. UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) and its implementing regulation, UTAH ADMIN. CODE r. 277-474-3, violate the Fourteenth Amendment because those laws and regulations discriminate against LGBT students, students with LGBT parents, students perceived as LGBT, and LGBT teachers, both facially and as applied, based on their actual or perceived sexual orientation and on the basis of sex.

83. UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) and UTAH ADMIN. CODE r. 277-474-3 single out LGBT students, students with LGBT parents, and students perceived as LGBT for differential and adverse treatment on the basis of their or their parents' actual or perceived sex, sexual orientation, and/or gender non-conformity. These laws prevent presentation of accurate information concerning lesbian, gay, and bisexual people in health class and other classes even when such information serves important educational purposes, while imposing no similar restrictions on discussion of heterosexuality or heterosexual people. The wholesale prohibition on positive discussion of lesbian, gay, and bisexual people and issues in the classroom stigmatizes LGBT students and students with LGBT parents and denies them equal educational opportunities on the basis of their sex, sexual orientation, and/or gender non-conformity.

84. UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) and UTAH ADMIN. CODE r. 277-474-3 have substantially contributed to the creation of a pervasive anti-LGBT climate in many Utah schools and exacerbated anti-LGBT harassment in the state's public schools. By forbidding presentation of accurate information concerning gay, lesbian, and bisexual people in health class and other classes, these laws chill much protected speech and create a culture of silencing and non-acceptance for LGBT students. They also discourage school officials from taking effective measures to prevent anti-LGBT harassment and from complying with their

constitutional, federal law, and state law obligations¹ to treat all students equally, without regard to actual or perceived sex, sexual orientation, or gender non-conformity.

85. That discrimination harms LGBT students, students with LGBT parents, and students perceived as LGBT by stigmatizing them, encouraging teachers and other students to view them as different and inferior, encouraging other students to bully and harass them, discouraging teachers and other school officials from including them in school activities and from protecting them against bullying and harassment, interfering with their healthy development and socialization, harming their long term health and well-being, and fostering an environment in which LGBT students are ostracized and harassed by other students.

86. That discrimination harms LGBT teachers by stigmatizing them, causing them to fear being fired or suffering other adverse consequences if they disclose their sexual orientation or LGBT identity, provide students with accurate information about sexual orientation or LGBT people, or provide appropriate support to an LGBT student. That discrimination also harms LGBT teachers by fostering a school environment in which the very existence of LGBT students and teachers is treated as shameful and wrong and something that must be hidden and censored.

87. That discrimination does not serve any legitimate purpose, pedagogical or otherwise.

¹ In addition to the federal Constitution and Title IX, the Utah Code and the Utah Administrative Code also include anti-bullying laws that require public schools to protect LGBT students from harassment. *See* UTAH CODE ANN. § 53A-11a-301(2)(b); UTAH ADMIN. CODE r. 277-613(1)(E)(4); *see also* UTAH ADMIN. CODE r. 277-515-3. The Anti-Gay School Laws prevent school districts from effectively enforcing the state's anti-bullying laws by discouraging teachers and school officials from acknowledging the existence of LGBT students, by fostering a culture of silence and non-acceptance of LGBT persons, by sending a message that "homosexuality" is shameful and wrong, and by deterring teachers and school officials from ensuring that LGBT students are supported and able to participate equally, on equal terms and conditions, in classrooms and other school activities.

COUNT II
VIOLATION OF U.S. CONSTITUTION AMENDMENT I: RIGHT TO RECEIVE
INFORMATION

(Brought pursuant to 42 U.S.C. § 1983 on behalf of all Plaintiffs against Defendants Dickson, Board of Education of Weber School District, Board of Education of Cache County School District, and Board of Education of Jordan School District)

88. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 87 as though fully set forth herein.

89. The First Amendment to the U.S. Constitution provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The First Amendment is applicable to the States under the Fourteenth Amendment to the U.S. Constitution.

90. Both facially and as applied, UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) and its implementing regulation, UTAH ADMIN. CODE r. 277-474-3, violate the First Amendment rights of Plaintiffs by preventing students from receiving accurate information concerning “homosexuality” or LGBT people, even when such information serves important educational purposes, while imposing no similar restrictions on discussions of heterosexuality or heterosexual people. *See Roberts v. Madigan*, 921 F.2d 1047, 1056 (10th Cir. 1990) (noting that the U.S. Supreme Court recognized that students have a protected First Amendment “‘right to receive’ information”) (quoting *Board of Educ. v. Pico*, 457 U.S. 853, 866-67 (1982)).

91. Those restrictions on students’ right to receive information are not justified by preventing disruption to the school environment and serve no legitimate purpose, pedagogical or otherwise.

COUNT III
VIOLATION OF U.S. CONSTITUTION AMENDMENT I: RESTRICTIONS ON
PRIVATE STUDENT SPEECH
(Brought pursuant to 42 U.S.C. § 1983 on behalf of all Plaintiffs against Defendants Dickson, Board of Education of Weber School District, Board of Education of Cache County School District, and Board of Education of Jordan School District)

92. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 91 as though fully set forth herein.

93. Both facially and as applied, UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) and its implementing regulation, UTAH ADMIN. CODE r. 277-474-3, violate the First Amendment rights of Plaintiffs by causing teachers and other school officials to discourage or prevent students from identifying themselves as LGBT both during class discussions and outside of class, while imposing no similar restrictions on heterosexual and non-transgender students; from expressing any positive views about “homosexuality” or about LGBT persons or issues both during class or in-class assignments and outside of class, while imposing no similar restrictions about the expression of positive views about heterosexuality or heterosexual persons or issues; and from even mentioning or acknowledging the existence of “homosexuality” or LGBT persons both in class or in-class assignments and outside of class.

94. Those restrictions apply to private student speech that does not substantially disrupt the school environment.

95. Those restrictions apply to private student speech even in GSAs and other student clubs.

96. Those restrictions on private student speech are not justified to prevent disruption to the school environment and serve no legitimate purpose, pedagogical or otherwise.

COUNT IV
VIOLATION OF U.S. CONSTITUTION AMENDMENT I: RESTRICTIONS ON
PRIVATE TEACHER SPEECH

(Brought pursuant to 42 U.S.C. § 1983 on behalf of Plaintiff Equality Utah against Defendants Dickson, Board of Education of Weber School District, Board of Education of Cache County School District, and Board of Education of Jordan School District)

97. Plaintiff realleges and incorporates by reference the preceding allegations in paragraphs 1 to 96 as though fully set forth herein.

98. Both facially and as applied, UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) and its implementing regulation, UTAH ADMIN. CODE r. 277-474-3, violate the First Amendment rights of Plaintiff Equality Utah by restricting the private speech of teachers in a variety of ways, including discouraging or preventing teachers from identifying themselves as LGBT, even when “the speech involved is not fairly considered part of the school curriculum or school-sponsored activities,” *Roberts*, 921 F.2d at 1057, while imposing no similar restriction on heterosexual and non-transgender teachers; and from expressing any positive views about “homosexuality” or about LGBT persons or issues, even when “the speech involved is not fairly considered part of the school curriculum or school-sponsored activities,” *id.*, while imposing no similar restrictions on the expression of positive views about heterosexuality or heterosexual persons or issues.

99. Those restrictions apply to private teacher speech that does not substantially disrupt the school environment.

100. Those restrictions on private student speech are not justified to prevent disruption to the school environment and serve no legitimate purpose, pedagogical or otherwise.

COUNT V
VIOLATION OF U.S. CONSTITUTION AMENDMENT I: OVERBREADTH
(Brought pursuant to 42 U.S.C. § 1983 on behalf of all Plaintiffs against Defendants Dickson, Board of Education of Weber School District, Board of Education of Cache County School District, and Board of Education of Jordan School District)

101. Plaintiffs reallege and incorporate by reference the preceding allegations in

paragraphs 1 to 100 as though fully set forth herein.

102. UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) and its implementing regulation, UTAH ADMIN. CODE r. 277-474-3, violate the First Amendment rights of Plaintiffs because they are facially overbroad insofar as they prohibit any positive mention of “homosexuality,” even when such information serves important educational purposes, and even when the speech is private student or private teacher speech, including in GSAs and other student clubs. This overbreadth has a chilling effect on both teachers and students. It prevents teachers from identifying themselves as LGBT, from providing students with accurate information about sexual orientation and LGBT people, and, in some instances, from providing legally required protection to students who are being harassed because of their actual or perceived sexual orientation, sex, or gender non-conformity. This chilling effect is exacerbated by UTAH ADMIN. CODE r. 277-474-5(5), which provides that teachers who violate the prohibitions in UTAH ADMIN. CODE r. 277-474-3—including the prohibition of the “advocacy of homosexuality”—shall be reported by the superintendent and subjected to “discipline” by the Instructional Materials Commission. This overbreadth also discourages or prevents students from coming out as LGBT or from discussing their parents’ LGBT identities, from openly associating with or expressing their affection for a same-sex boyfriend or girlfriend in the same appropriate ways that heterosexual students are permitted to do, from participating and speaking up equally, and from sharing their experiences and views about sexual orientation or LGBT people or issues in class or in student clubs.

103. Those restrictions on speech are not justified by preventing disruption to the school environment and do not serve any legitimate pedagogical or other purpose.

COUNT VI

VIOLATION OF US CONSTITUTION AMENDMENT I: VAGUENESS
(Brought pursuant to 42 U.S.C. § 1983 on behalf of all Plaintiffs against Defendants Dickson, Board of Education of Weber School District, Board of Education of Cache County School District, and Board of Education of Jordan School District)

104. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 103 as though fully set forth herein.

105. UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) and its implementing regulation, UTAH ADMIN. CODE r. 277-474-3, violate the First Amendment rights of Plaintiffs because they are impermissibly vague, both because they fail to provide a person of ordinary intelligence a reasonable opportunity to understand what speech is prohibited and, independently, because they encourage arbitrary and discriminatory enforcement. For example, the statutory prohibition on curricula that “advocat[e] homosexuality” is impermissibly vague and leaves teachers, students, and school officials unable to determine in a non-arbitrary manner what speech is and is not prohibited, resulting in the censoring and avoidance of a sweepingly broad category of speech, including the expression of any positive views about “homosexuality” or LGBT persons. This chilling effect is exacerbated by UTAH ADMIN. CODE r. 277-474-5(5), which provides that teachers who violate the prohibitions in UTAH ADMIN. CODE r. 277-474-3—including the prohibition of the “advocacy of homosexuality”—shall be reported by the superintendent and subjected to “discipline” by the Instructional Materials Commission.

106. Those restrictions on speech are not justified by preventing disruption to the school environment and do not serve any legitimate purpose, pedagogical or otherwise.

CLAIMS CHALLENGING THE ANTI-GAY STUDENT CLUB LAWS

COUNT VII

VIOLATION OF U.S. CONSTITUTION AMENDMENT XIV

(Brought pursuant to 42 U.S.C. § 1983 on behalf of Plaintiffs James Doe and Equality Utah against Defendants Dickson and Board of Education of Cache County School District)

107. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 106 as though fully set forth herein.

108. Both facially and as applied, UTAH CODE ANN. § 53A-11-1201 *et seq.* discriminate based on sexual orientation because they expressly incorporate, by reference, the facial prohibition of speech “advoca[ting] . . . homosexuality,” *see* UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A), and because they are broadly applied to discriminate against LGBT students, including, in some instances, by attempting to prevent them from forming GSAs or other student clubs involving “homosexuality” or LGBT issues and, within student clubs, by imposing restrictions on the expression of positive views about “homosexuality” and LGBT people.

109. Utah’s laws do not impose any similar restrictions on the formation of student clubs involving heterosexuality or heterosexual persons or issues or on student speech within clubs about heterosexuality or heterosexual persons or issues.

110. That discrimination harms LGBT students in a variety of ways, including by preventing them from participating equally in student clubs, stigmatizing them as inferior and unequal, interfering with their healthy development and socialization, harming their long-term health and well-being, and fostering an environment of censorship and non-acceptance in which LGBT students are not fully integrated or accepted and are at heightened risk of being ostracized and harassed by other students.

111. The restrictions are not justified by preventing disruption to the school environment and do not further any legitimate interest, pedagogical or otherwise.

COUNT VIII
VIOLATION OF U.S. CONSTITUTION AMENDMENT I
**(Brought pursuant to 42 U.S.C. § 1983 on behalf of Plaintiffs James Doe and Equality Utah
against Defendants Dickson and Board of Education of Cache County School District)**

112. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 111 as though fully set forth herein.

113. Both facially and as applied, UTAH CODE ANN. § 53A-11-1201 *et seq.* violate the rights of students and teachers to freedom of speech and freedom of association under the First Amendment because they expressly incorporate, by reference, the facial prohibition in UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) of speech “advocating homosexuality,” and because they are broadly and arbitrarily applied, for example, to try to prevent students from forming GSAs or other student clubs involving “homosexuality” or LGBT issues; to discourage or prevent teachers from acting as faculty advisors to such clubs; and, within student clubs, to discourage or prevent or censor the expression of positive views about “homosexuality” and LGBT people.

114. Utah’s laws do not impose any similar restrictions on the formation of student clubs involving heterosexuality or heterosexual persons or issues or on student speech within clubs about heterosexuality or heterosexual persons or issues.

115. Those restrictions impermissibly restrict speech based on its content by categorically excluding speech related to “homosexuality.”

116. Those restrictions also impermissibly restrict speech based on its viewpoint by categorically excluding speech that views “homosexuality” or LGBT people in a positive light, while permitting speech that views heterosexuality and heterosexual persons in a positive light, and by permitting heterosexual persons to speak freely about their sexual orientation and relationships while censoring or chilling the ability of LGBT persons to do so.

117. These restrictions are not justified by preventing disruption to the school

environment and do not further any legitimate interest, pedagogical or otherwise.

COUNT IX

VIOLATION OF U.S. CONSTITUTION AMENDMENT I: OVERBREADTH

(Brought pursuant to 42 U.S.C. § 1983 on behalf of Plaintiffs James Doe and Equality Utah against Defendants Dickson and Board of Education of Cache County School District)

118. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 117 as though fully set forth herein.

119. Both facially and as applied, UTAH CODE ANN. § 53A-11-1201 *et seq.* violate the rights of students and teachers to freedom of speech and freedom of association because they are overbroad, insofar as they permit schools to prohibit, discourage, or impose additional barriers to the formation of GSAs and other student clubs, even when the freedom to form such associations is constitutionally protected, and also insofar as they prohibit any positive mention of “homosexuality,” even when the freedom to discuss “homosexuality” and to express positive views of LGBT people is constitutionally protected.

120. The restrictions are not justified by preventing disruption to the school environment and do not further any legitimate interest, pedagogical or otherwise.

COUNT X

VIOLATION OF U.S. CONSTITUTION AMENDMENT I: VAGUENESS

(Brought pursuant to 42 U.S.C. § 1983 on behalf of Plaintiffs James Doe and Equality Utah against Defendants Dickson and Board of Education of Cache County School District)

121. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 120 as though fully set forth herein.

122. Both facially and as applied, UTAH CODE ANN. § 53A-11-1201 *et seq.* violate the rights of students and teachers to freedom of speech and to freedom of association because they are impermissibly vague, both because they fail to provide a person of ordinary intelligence a reasonable opportunity to understand what speech is prohibited and, independently, because they

encourage arbitrary and discriminatory enforcement.

123. The restrictions are not justified by preventing disruption to the school environment and do not further any legitimate pedagogical or other interest.

COUNT XI
VIOLATION OF EQUAL ACCESS ACT, 20 U.S.C. §§ 4071-4074

(Brought on behalf of Plaintiffs James Doe and Equality Utah against Defendants Utah State Board of Education, Board of Education of Cache County School District, and Cache County School District)

124. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 123 as though fully set forth herein.

125. The federal Equal Access Act provides: “It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.” 20 U.S.C. § 4071(a).

126. On information and belief, Defendants Utah State Board of Education, Board of Education of Cache County School District, and Cache County School District are recipients of federal financial assistance.

127. Both facially and as applied, UTAH CODE ANN. § 53A-11-1201 *et seq.* violate the rights of students and teachers under the EAA by prohibiting the equal treatment of, and imposing impermissible restrictions upon the speech of, GSAs or other student clubs that address the topic of “homosexuality,” including by preventing students within student clubs from expressing supportive or positive views about “homosexuality” or about LGBT persons or same-sex relationships, while imposing no such restrictions on student clubs addressing heterosexuality or heterosexual persons.

128. The restrictions imposed upon the formation of student clubs and upon the speech of students in student clubs and of faculty sponsors of student clubs undermine, rather than support, the well-being of students and do not serve any legitimate pedagogical or other purpose.

CLAIMS CHALLENGING ALL ANTI-GAY SCHOOL LAWS
AT ISSUE IN THIS ACTION

COUNT XII

VIOLATION OF TITLE IX, 20 U.S.C. §§ 1681-1688

(Brought on behalf of all Plaintiffs against Defendants Utah State Board of Education, Board of Education of Cache County School District, Cache County School District, Board of Education of Jordan School District, Jordan School District, Board of Education of Weber School District, and Weber School District)

129. Plaintiffs reallege and incorporate by reference the preceding allegations in paragraphs 1 to 128 as though fully set forth herein.

130. Title IX of the U.S. Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, provides that “[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

131. On information and belief, Defendants Board of Education of Cache County School District, Cache County School District, Board of Education of Jordan School District, Jordan School District, Board of Education of Weber School District, and Weber School District (the “School District Defendants”), as well as Defendant Utah State Board of Education, are recipients of federal financial assistance.

132. The School District Defendants are responsible for enforcement of the Anti-Gay School Laws within their respective jurisdictions, including the curriculum requirements established by Defendant Utah State Board of Education pursuant to UTAH CODE ANN. § 53A-13-101; UTAH ADMIN. CODE r. 277-113-6(9); r. 277-474-3; r. 277-474-5(5).

133. Both facially and as applied to Plaintiffs, the Anti-Gay School Laws prevent LGBT students from enjoying equal educational opportunities and from participating equally in school activities, including student clubs and other extracurricular activities, and foster a hostile and censoring environment of silence and non-acceptance for LGBT students, discriminating against them and subjecting them to stigma and harassment based on sex, including actual or perceived gender non-conformity, being in a same-sex relationship, or being transgender.

134. Both facially and as applied to Plaintiffs, the Anti-Gay School Laws prevent teachers, school administrators, schools, and school districts from taking reasonable steps to respond to known acts of severe, pervasive, and objectively offensive harassment of LGBT students by other students.

CLAIMS ON BEHALF OF PLAINTIFF JOHN DOE

COUNT XIII

VIOLATION OF TITLE IX, 20 U.S.C. §§ 1681-1688

(Brought on behalf of Plaintiff John Doe against Defendants Weber School District and Board of Education of Weber School District)

135. Plaintiff realleges and incorporates by reference the preceding allegations in paragraphs 1 to 134 as though fully set forth herein.

136. Title IX of the U.S. Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, provides that “[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” 20 U.S.C. § 1681(a).

137. Plaintiff John Doe was a student at a school within and operated by Defendants Weber School District and Board of Education of Weber School District in 2014.

138. On information and belief, Defendant Weber School District, Defendant Board of Education of Weber School District, and the school within the District attended by Plaintiff John

Doe are recipients of federal financial assistance.

139. Defendant Weber School District, Defendant Board of Education of Weber School District, and the school within the District attended by Plaintiff John Doe exercised substantial control over Plaintiff John Doe and the context in which the harassment of Plaintiff John Doe based on sex took place.

140. The acts and omissions of Defendants Weber School District and Board of Education of Weber School District violated Plaintiff John Doe's rights under Title IX by discriminating against him on the basis of sex, including nonconformity with sex stereotypes and actual or perceived sexual orientation.

141. Defendants Weber School District and Board of Education of Weber School District had actual notice that the harassment of Plaintiff Doe based on sex was so severe, pervasive, and objectively offensive that it created a hostile climate based on sex, including nonconformity with sex stereotypes and actual or perceived sexual orientation, that deprived Plaintiff John Doe of access to educational programs, activities, and opportunities.

142. Defendants Weber School District and Board of Education of Weber School District exhibited deliberate indifference to the harassment of Plaintiff John Doe based on sex, including nonconformity with sex stereotypes and actual or perceived sexual orientation, in violation of Title IX. This indifference caused Plaintiff John Doe to be subjected to the described sex discrimination, sexual harassment, and gender-based harassment.

143. Defendants Weber School District and Board of Education of Weber School District's violations of Title IX were the actual, direct, and proximate cause of injuries suffered by Plaintiff John Doe as alleged.

COUNT XIV
VIOLATION OF U.S. CONSTITUTION AMENDMENT XIV
(Brought pursuant to 42 U.S.C. § 1983 on behalf of Plaintiff John Doe against Defendant Board of Education of Weber School District)

144. Plaintiff realleges and incorporates by reference the preceding allegations in paragraphs 1 to 143 as though fully set forth herein.

145. Defendant Board of Education of Weber School District, acting under color of state law, has deprived Plaintiff John Doe of the rights, privileges, or immunities secured by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, in that Defendant Board of Education of Weber School District, without justification, has treated Plaintiff John Doe differently than other similarly situated students and student groups on the basis of sex, including sex stereotypes and actual or perceived sexual orientation.

146. Defendant Board of Education of Weber School District had actual notice that harassment based on sex, including sex stereotypes and actual or perceived sexual orientation, was so severe, pervasive, and objectively offensive that it created a hostile climate that deprived Plaintiff John Doe of access to educational programs, activities, and opportunities.

147. Defendant Board of Education of Weber School District was deliberately indifferent to the harassment of Plaintiff John Doe based on sex, including sex stereotypes and actual or perceived sexual orientation, in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. Defendant Board of Education of Weber School District's deliberate indifference caused Plaintiff John Doe to be subjected to the described discrimination and harassment.

148. Defendant Board of Education of Weber School District's conduct was the actual, direct, and proximate cause of injuries suffered by Plaintiff John Doe as alleged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and that the Court:

- (A) Declare that the Anti-Gay School Laws violate the First and Fourteenth Amendments to the Constitution of the United States, Title IX of the U.S. Education Amendments of 1972, and the Equal Access Act;
- (B) Preliminarily and permanently enjoin Defendants from enforcing the Anti-Gay School Laws;
- (C) Declare that the term “marriage” in the Anti-Gay School Laws must be construed to include marriages between two persons of the same sex;
- (D) Declare that the terms “any violation of federal or state law” and “criminal conduct” in the Anti-Gay School Laws do not include private, adult, consensual relationships between persons of the same sex, which are constitutionally protected by *Lawrence v. Texas*, 539 U.S. 558 (2003);
- (E) Preliminarily and permanently enjoin Defendants from enforcing, in the context of Utah public schools, any law that purports to prohibit or deny recognition to marriages between two persons of the same sex;
- (F) Preliminarily and permanently enjoin Defendants from enforcing, in the context of Utah public schools, any law that purports to criminalize private, adult, consensual relationships between persons of the same sex, which are constitutionally protected by *Lawrence v. Texas*, 539 U.S. 558 (2003);
- (G) Preliminarily and permanently enjoin Defendant Weber School District and Defendant Board of Education of Weber School District from violating Title IX and the

Fourteenth Amendment of the United States Constitution with respect to Plaintiff John Doe;

(H) Award Plaintiff John Doe nominal, actual, and punitive damages according to proof, together with interest thereon;

(I) Award Plaintiffs the costs incurred in pursuing this action, including attorneys' fees pursuant to 42 U.S.C. § 1988, and reasonable expenses; and

(J) Grant such other and further relief as the Court deems proper.

This 15th day of November, 2016.

Respectfully submitted,

/s/ Jeremiah L. Williams

Douglas H. Hallward-Driemeier (admitted *pro hac vice*)

Jeremiah L. Williams (admitted *pro hac vice*)

Rebecca C. Harlow (admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non registered participants on November 15, 2016.

/s/ Jeremiah L. Williams
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