UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

EQUALITY FLORIDA, *et al.*, Plaintiffs, v. FLORIDA STATE BOARD OF EDUCATION, *et al.*, Defendants.	Case No. 4:22-cv-00134 (AW) (MJF)

NOTICE OF SUPPLEMENTAL AUTHORITY
IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

Pursuant to Local Rule 7.1(j), Plaintiffs hereby notify the Court of the recent decision in *Honeyfund.com, Inc. v. DeSantis*, 2022 WL 3486962 (N.D. Fla. Aug. 18, 2022) (Walker, C.J.), which preliminarily enjoined the Florida Attorney General and the Florida Commission on Human Rights from enforcing the Individual Freedom Act, also known as the "Stop WOKE" Act. That decision is relevant to the pending motions to dismiss for several reasons.

First, the "Stop WOKE" Act makes it an "unlawful employment practice" to require employees to attend any "activity that espouses, promotes, advances, inculcates, or compels such individual to believe any of" eight "concepts." *Id.* at *1. Chief Judge Walker held that the law was impermissibly vague because it provides no guidance on what it means to "inculcate," "advance," or "espouse," and because several proscribed "concepts" were inherently vague. *Id.* at *11-13. As Plaintiffs

explained in our opposition, H.B. 1557 is vague for essentially the same reasons: it provides no guidance on what "classroom instruction" means and its disfavored topics involving "sexual orientation" or "gender identity" are also vague. In fact, as we previously argued, "Florida lawmakers made a significantly greater effort [in the "Stop WOKE" Act] than in H.B. 1557 to spell out the scope of a statutory prohibition." ECF 91 at 20.

Second, the *Honeyfund* court found a separate vagueness problem in a provision of the statute that permitted "discussion" of the prohibited concepts so long as it does not involve "endorsement," because that distinction was not at all clear. *Honeyfund*, at *13-14. Here, Defendants similarly have tried to draw an inscrutable, atextual line between "instruction" and "referencing." *See, e.g.*, ECF 68 at 19.

Third, as to standing, the *Honeyfund* court held that employers established injury-in-fact because they intended to change their trainings to avoid liability and training consultants had standing because the law already "had a chilling effect on Florida employers." *Honeyfund*, at *4-5. Redressability was satisfied because an injunction would "provide at least partial redress," even if employees might still sue. *Id.* at *4. These same principles, of course, apply in this case. ECF 91 at 18-22, 26.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(J)

Pursuant to Local Rule 7.1(j), I hereby certify that this Notice of Supplemental Authority complies with the word count requirement and contains 350 words according to the word count feature of Microsoft Word.

/s/ Roberta A. Kaplan
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