UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

M.A., et al.,

Plaintiffs,

v. Case No.: 4:22-cv-134-AW-MJF

FLORIDA STATE BOARD
OF EDUCATION, et al.,
_____/

DEFENDANT, SCHOOL BOARD OF MANATEE COUNTY'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT

Defendant, the School Board of Manatee County, Florida, ("School Board"), moves to dismiss Plaintiffs' Second Amended Complaint (Dkt. No. 123) pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and for failure to comply with Rules 8(a) and 10(b) of the Federal Rules of Civil Procedure. In support of the foregoing, the School Board states as follows:

MEMORANDUM OF LAW

I. BACKGROUND

A. The Operative Complaint.

On October 27, 2022, Plaintiffs filed a Second Amended Complaint ("SAC") against the School Board and several other Defendants. (Dkt. No. 123). Of the seven

counts set forth therein, six are alleged against the School Board in addition to other Defendants. (*See id.* generally). In support of their claims against the School Board, Plaintiffs allege that H.B. 1557[1] violates the First and Fourteenth Amendments. (*Id.*).

H.B. 1557 prohibits classroom instruction by school personnel or third parties on sexual orientation or gender identity in kindergarten through third grade "or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards." (*See* Dkt. No. 123, ¶ 33). This general requirement that classroom instruction comply with state standards is consistent with preexisting statutory law governing a school board's duties with respect to distribution of appropriate K-12 instructional materials. *See* FLA. STAT. § 1006.28(2)(b); *see also* Dkt. No. 123, at ¶ 16 (stating the Next Generation Sunshine State Standards are the core content to be taught in K-12 public schools).[2]

B. The Parties.

The School Board is responsible for the operation of schools within its district in Manatee County, Florida, pursuant and subject to its duties and obligations as defined by statutory law. *See, e.g.*, FLA. STAT. § 1001.41-42.

The SAC identifies nine Plaintiffs. (Dkt. No. 123, ¶ 8). These remaining

[1] H.B. 1557, 24th Sess. (Fla. 2022).
[2] *See also* FLA. STAT. § 1003.41 (establishing the core content of the curricula to be taught in Florida and specifying the core content knowledge and skills that K-12 public school students are expected to acquire).

Plaintiffs are individuals, which include parents, teachers, and students. More specifically, they include six parents—Amy Morrison and Cecile Houry, Lourdes Casares and Kimberly Feinberg, Anh Volmer, and Myndee Washington. None of these individuals are parents of students enrolled in a school within the School Board's district. (*Id.* at ¶¶ 11-13, 15).

Plaintiffs include two teachers—Scott Berg and Myndee Washington. Neither individual is employed by a school in the School Board's district. (*Id.* at ¶¶ 14, 15).

Plaintiffs include two students—M.A. and S.S. (*See id.* at ¶¶ 9-10). M.A. is the only student Plaintiffs allege attends school within the School Board's district.

M.A. is a seventeen-year-old junior at Manatee School for the Arts (MSA), a charter school. (*Id.* at ¶ 9). Despite MSA being a charter school,[3] Plaintiffs allege that the School Board "operates" MSA. (*Id.* at ¶ 20).

In support of their claims, Plaintiffs allege that M.A. started a Gay-Straight

[3] Despite Plaintiffs' concession that "there are reasonable arguments that H.B. 1557 does ***not*** apply in charter schools", they allege that "the State is likely to take the position that it does…" (Dkt. No. 123, at note 2) (emphasis added). However, even the article upon which Plaintiffs rely in support of this position quotes the Senate Bill sponsor as stating that "the law would be applied to traditional public schools—not the nontraditional charters." *See* Danielle J. Brown, *Does the so-called 'Don't Say Gay' law apply to Florida charter public schools?*, FLORIDA POLITICS (Mar. 30, 2022), https://floridapolitics.com/archives/512625-does-the-so-called-dont-say-gay-law-apply-to-florida-charter-public-schools/ (last accessed June 23, 2022). In any event, and even if the new law ***does*** apply to charter schools as alleged, this does not otherwise affect or alter the School Board's position that none of the Plaintiffs have standing to sue the School Board in the present lawsuit.

Alliance (GSA) in eighth grade, and that today M.A. is the president of his school's GSA, which typically has between 15 and 30 members, but that since H.B. 1557 went into effect, no teacher will serve as an advisor to the club due to fears of violating the law. Plaintiffs further allege M.A. and other unknown students have been barred from participating in a GSA and allege they have therefore been denied equal educational opportunities. (*Id.* at ¶¶ 77-78).

Plaintiffs additionally allege that M.A. was told by a student in middle school about a policy that would require transgender or non-binary sixth grade students to wear clothing consistent with their gender assigned at birth and would prohibit dancing between persons of the same gender, though M.A. has not confirmed whether either such policy exists, and it is not alleged that these are policies enforced by the School Board. (*Id.* at ¶ 79). Plaintiffs allege that as a result of such alleged policies, students will be denied educational opportunities and treated disparately from other students, and that because it is allegedly unclear whether H.B. 1557 prohibits students from wearing clothing or engage in conduct perceived to be LGBTQ in nature, students are being prohibited from engaging in speech and conduct at school that they would "otherwise like to engage in." (*Id.*).

C. The Relationship Between MSA and the School Board.

Though Plaintiffs generally allege that the School Board "operates" MSA, statutory law indicates otherwise. Florida law prohibits the School Board from

unilaterally applying its policies to MSA. FLA. STAT. § 1002.33(b)(1)(d). The School Board, as MSA's sponsor, must merely monitor and review MSA's progress towards the goals as set forth in the Charter Contract. Additionally, Florida law expressly states that the School Board's duties to monitor MSA "**shall not constitute the basis for a private cause of action**." FLA. STAT. § 1002.33(b)(1)(j) (emphasis added).

While the School Board may terminate the Charter Contract if it finds that MSA has committed a "[m]aterial violation of law," this authority is not absolute. To the contrary, the School Board is required to provide a 90-day notice of its intent to not renew or terminate the Charter Contract and then the charter school's governing board may request a hearing before an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings. *See* FLA. STAT. § 1002.33(8)(a)-(b).

The School Board also may "immediately" terminate the Charter Contract if: (1) the sponsor sets forth in writing the particular facts and circumstances demonstrating an immediate and serious danger to the health, safety, or welfare of the charter school's students exists; (2) the immediate and serious danger is likely to continue; and (3) an immediate termination is necessary. *See* FLA. STAT. § 1002.33(8)(c). Notably, however, such a decision is also subject to review and a hearing before an ALJ. *See id.*

The numerous hurdles imposed by Florida law that the School Board must

overcome before terminating the Charter Contract, immediately or otherwise, demonstrates the extreme limitations on the School Board's ability to exercise control over MSA—especially as it pertains to what occurs in the classroom on a daily basis. And it is ***MSA's*** governing board—not the School Board—that is obligated to exercise continuing oversight over MSA's operations and be responsible for promoting and encouraging compliance with applicable laws. FLA. STAT. § 1002.33(i)(-(j).

Consistent with the foregoing, Florida's Division of Corporations website ("Sunbiz.org")[4] shows that the not-for-profit corporation that operates MSA—Renaissance Arts and Education, Inc.—has a separate mailing address and has its own Officers, Directors, and Registered Agent.[5]

II. LEGAL ARGUMENT

The most notable and most fundamental limits on the federal court's

---

[4] The School Board respectfully asks the Court to take judicial notice for the limited purpose of acknowledging the contents of this public record. *See Sziranyi v. Allan R. Dunn, M.D., P.A.*, No. 07 CV 21762 (SJ), 2009 WL 6613675, at *2 (S.D. Fla. Sept. 30, 2009), *aff'd,* 383 F. App'x 884 (11th Cir. 2010) (taking judicial notice of Florida Department of State, Division of Corporations, available at Sunbiz.org).

[5] *See* FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS, https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=RENAISSANCEARTSEDUCATION%20N980000011790&aggregateId=domnp-n98000001179-e749eab1-49dc-48e1-8658-ca36fb237515&searchTerm=Renaissance%20Arts%20and%20Education%2C%20Inc.&listNameOrder=RENAISSANCEARTSEDUCATION%20N980000011790 (last accessed June 23, 2022).

jurisdiction are set forth in Article III of the Constitution, which limits the courts' jurisdiction to cases and controversies. *Gardner v. Mutz*, 962 F.3d 1329, 1336 (11th Cir. 2020). This case-or-controversy requirement is comprised of three elements: (1) standing, (2) ripeness, and (3) mootness. *Id.* Standing is generally considered the most important or, alternatively, the most central of Article III's jurisdictional requirements. *Id.* at 1337. Therefore, the threshold question in every federal case is whether the plaintiffs have standing. *See Warth v. Seldin*, 422 U.S. 490, 498 (1975).

To have standing, Plaintiffs have the burden of establishing three elements: (1) Plaintiffs must have suffered an "injury in fact;" (2) a causal connection must exist between said injury and the conduct complained of; and (3) it must be "likely" as opposed to "speculative" that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). In other words, Plaintiffs must show that Defendants harmed them and that a court decision can either eliminate the harm or compensate them for it. *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 924 (11th Cir. 2020).

While standing concerns Plaintiffs' identity and asks whether they may appropriately bring suit, ripeness concerns the timing of the suit. *Mulhall v. UNITE HERE Loc. 355*, 618 F.3d 1279, 1291 (11th Cir. 2010). As such, the ripeness doctrine is designed to protect federal courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes. *Id.*

Though general factual allegations of injury may suffice at the pleading stage, such allegations must at least plausibly and clearly allege a concrete injury. *Id.* Indeed, Courts have long recognized that even at the pleading stage plaintiffs must clearly and specifically set forth facts to satisfy Article III's requirements. *Id.* (quoting *Whitemore v. Arkansas*, 495 U.S. 149, 155 (1990)).

For the reasons detailed below, dismissal is warranted because: (1) none of the Plaintiffs have standing, (2) Plaintiffs' claims are not ripe for adjudication, and (3) the SAC is a shotgun pleading, which—due to the Plaintiffs' lack of standing and the premature nature of their claims—cannot be cured by amendment.[6]

A. The Plaintiffs Do Not Have Standing.

1. Plaintiffs Did Not Suffer an Injury in Fact.

To establish an "injury in fact," Plaintiffs must demonstrate that the School Board has invaded some "legally protected interest," which is (1) concrete and particularized, and (2) actual or imminent, not conjectural or hypothetical. *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 984 (11th Cir. 2005). For an injury to be "particularized," it must affect Plaintiffs in a personal and individual way. *Lujan*, 504 U.S. at 560. In other words, the injury cannot be undifferentiated. *Gardner*, 962 F.3d at 1342. It must be distinct to the plaintiff. *Id.* Further, while a "concrete" injury

[6] Alternatively, if the Court does not dismiss the SAC on other grounds, the School Board moves for a more definite statement pursuant to Rule 12(e).

need not be tangible, psychic injuries arising from disagreement with government action—for instance "conscientious objection" and "fear"—do not qualify. *Id.* at 1341. "[O]ne cannot demonstrate standing merely by announcing a chill. A plaintiff must show that the challenged law arguably forbids the chilled speech and that exercising the speech may have real consequences. That is what [remains] missing here." (Doc. 102, at p. 8) (citations omitted).

First and foremost, the SAC is devoid of ***any*** alleged connection between parents Amy Morrison and Cecile Houry, Lourdes Casares and Kimberly Feinberg, and Anh Volmer, teachers Scott Berg and Myndee Washington, and/or student S.S., and the School Board. In the absence of any alleged connection between the above-mentioned Plaintiffs and the School Board or any alleged harm committed by the School Board as it pertains to any of these individual Plaintiffs, it follows that these Plaintiffs have not suffered any distinct injuries particular to them or due to any act or omission by the School Board. For identical reasons, it follows that these Plaintiffs also cannot establish a causal connection between any alleged act or omission by the School Board or that a favorable decision against the School Board would redress any of their alleged injuries.

Though Plaintiffs at least allege ***some*** type of connection between M.A. and the School Board—though attenuated by the fact that the School Board does not "operate" MSA as Plaintiffs seem to think it does—Plaintiffs have failed to allege

that the School Board has invaded any particularized, concrete, actual, and/or imminent legally protected interest belonging to M.A.

M.A. is a seventeen-year-old junior at MSA. (Dkt. No. 123, ¶ 9). In terms of constitutional harms imposed by H.B. 1557, Plaintiffs allege: (1) that despite M.A. actively serving as the president of the MSA GSA, which has between 15 and 30 members and "creates a welcoming space for other LGBTQ students and their allies," no teacher will serve as an advisor to the club due to fears of violating H.B. 1557 and so M.A. and others have been barred from participating in the GSA (*Id.* at ¶¶ 77-78), and (2) that a middle school student told M.A. that there is a policy that would require transgender and non-binary sixth grade students to wear clothing consistent with their gender assigned at birth and would prohibit dancing between person of the same gender and so LGBTQ students will be denied educational opportunities, treated disparately, and prohibited from engaging in speech and conduct they would like to engage in, despite M.A.'s inability to confirm whether such a policy exists. (*Id.* at ¶ 79).

According to Plaintiffs, this is evidence of their conclusory assertion that since H.B. 1557 became effective on July 1, 2022, "it has caused numerous concrete harms to Plaintiffs and other LGBTQ students, parents, and teachers—as well as others in Florida schools who want the educational environment, including curriculum, to be inclusive of the LGBTQ community." (*Id.* at ¶ 70).

But this does not evidence an injury in fact that is particular to M.A. or otherwise evidence the School Board's invasion of a particularized, concrete, actual, and/or imminent legally protected interest belonging to M.A.—Plaintiffs have failed to allege that the law arguably forbids the chilled and/or feared action, *i.e.* serving as teacher-advisor, or sixth graders dancing with same-sex partners or wearing gender nonconforming clothing. Further, the inability to find a teacher advisor for the GSA is based on nothing more than the teachers' fears of violating H.B. 1557 (not even M.A.'s fears). (Dkt. 123, ¶ 78). Such fears do not result in an injury in fact. *See Gardner*, 962 F.3d at 1342. Confusingly, Plaintiffs have not alleged that teachers volunteered to serve as advisor for the GSA prior to the enactment of H.B. 1557, and Plaintiffs allege that M.A. is the current GSA president, and that the club actively "creates a welcoming space for other LGBTQ students and their allies" (Dkt. 123, ¶ 77), thus seemingly accomplishing its mission sans advisor. Despite the conclusory allegation that no advisor results in M.A. and other interested students having been barred from participating in a GSA, M.A. has not alleged that an advisor is required to participate in the GSA.

Neither do the rumored "policies" M.A. allegedly learned of from an unknown middle school student. (Dkt. No. 123, ¶ 79). These alleged policies, which Plaintiffs concede they do not even know exist, and which are not alleged to have been enforced by the School Board, apparently apply to transgender or non-binary *sixth*

grade students—M.A. is a high school junior. It is unclear how M.A., a high school junior, would be injured by alleged policies regarding sixth grade students' clothing and dance partners. Therefore, there is no injury in fact to M.A. or any other Plaintiff. *See Gardner*, 962 F.3d at 1342.

Therefore, neither M.A. nor any other Plaintiff has suffered an injury in fact due to the School Board's alleged invasion of a legally protected interest. Accordingly, Plaintiffs fail to establish this first element.

2. No causal connection exists.

To establish a causal connection, the alleged injury must be fairly traceable to Defendants' challenged action. *Lujan*, 504 U.S. at 560. Plaintiffs again fail to establish a causal chain linking their alleged injuries to the challenged action of the defendants. (Doc. 120, at p. 3) (internal quotations and citations omitted).

Plaintiffs allege that M.A. and others are banned from participating in the GSA because teachers fear that serving as advisor to the group may violate H.B. 1557. (Dkt. No. 123, ¶ 78). But, as previously discussed, Plaintiffs have not alleged that an advisor is required for participation in the group, and even if it were required, it would not be the School Board's requirement as applicable law prohibits the School Board from unilaterally applying its policies to MSA. FLA. STAT. § 1002.33(b)(1)(d). Rather, it is ***MSA's*** governing board—not the School Board—that is obligated under applicable law to exercise continuing oversight over MSA's

operations and responsible for promoting and encouraging compliance with applicable laws. FLA. STAT. § 1002.33(i)(-(j). The same is true of the rumored policies affecting sixth graders: *MSA*'s governing board—not the School Board—would promulgate and implement such policies in conjunction with exercising continuing oversight over the charter school's operations.

Consistent with the foregoing, MSA is solely responsible for selecting its own employees—not the School Board. *See* FLA. STAT. § 1002.33(12). And MSA's employees are not employees of the School Board. *See id.* It would be an MSA employee and/or MSA's governing board that would be the final decisionmaker on the issues of whether the GSA may convene with or without a teacher-advisor, or whether the rumored policies might govern MSA sixth graders. Therefore, it follows that any alleged injury suffered by M.A. due to the alleged denial of participation in the GSA would not be the result of any action taken by the School Board. Rather, the sole cause of such injury would be the result of a decision by MSA through its employees and/or governing board.

Of course, Plaintiffs have not come close to alleging this—instead, Plaintiffs allege that teachers have merely chosen not to advise the club, and that there might be some policy regarding sixth grade students' clothing and dancing partners. Again, "Plaintiffs' alleged harm is not plausibly tied to the law's *enforcement* so much as the law's very *existence*," which this Court has already found insufficient. (Doc. 120,

at p. 3).

Additionally, though the School Board may terminate the Charter Contract for one of the reasons enumerated under Section 1002.33(8), Florida Statutes, the allowable reasons for termination are narrowly limited to: (1) failure to participate in the state's education accountability system; (2) failure to meet generally accepted standards of fiscal management; (3) material violation of law; and (4) other good cause shown. FLA. STAT. § 1002.33(8)(a). And as previously discussed (*see* Part I.C. *supra*), the circumstances under which the School Board may terminate the Charter Contract immediately are even narrower. *See* FLA. STAT. § 1002.33(8)(c).

None of M.A.'s alleged constitutional harms give rise to circumstances that would enable the School Board to terminate the Charter Contract, even if they were proven. Further, given that M.A. is not even enrolled in a grade that is subject to H.B. 1557's prohibition on classroom instruction on sexual orientation or gender identity, it is unclear whether an MSA teacher-advisor of the GSA or a policy regarding sixth grade clothing and dancing would constitute "good cause" or a "material violation of law" to justify termination. Even more unclear is whether a termination by the School Board on such grounds could survive subsequent review by an Administrative Law Judge. *See* FLA. STAT. § 1002.33(b). Considering the numerous statutory hurdles that the School Board would have to overcome to terminate the Charter Contract on such grounds and the increasingly stringent

requirements where termination is immediate, it is at best speculative to imagine a situation where a violation of H.B. 1557 would result in circumstances that warrant lawful intervention by the School Board.[7]

What does remain clear is that Plaintiffs have not alleged any action *by the School Board* whatsoever that may have affected Plaintiffs' rights. Further, as illustrated above, the School Board is incapable of causing any of the harms that M.A. believes may result from the School Board's enforcement of H.B. 1557. Therefore, Plaintiffs fail to meet their burden with respect to this second element.

3. A favorable decision would not redress the alleged injuries.

For analogous reasons, a decision by this Court against the School Board would not redress Plaintiffs' alleged injuries. For example, if the alleged injury is the inability of M.A. to participate in the GSA due to no willing teacher-advisor, then redress of this injury would require a change to MSA's policy, perhaps to permit

[7] For example, the only time that the School Board has immediately terminated a charter contract was due to: (1) the charter school's extreme financial mismanagement resulting in a $1 million deficit of, which led to the charter school being unable to pay utility bills, failing to properly pay its employees, failing to timely pay the Internal Revenue Service, the termination of contracts with the charter school's food and dairy supplier due to failure to pay invoices, and being unable to meet the financial obligations required to run the school, among other issues, and (2) the charter school permitting its Chief Executive Officer and Principal to remain on campus and interact with students despite an Order by the Education Practices Commission indicating that he was not to be employed or working in a position that required direct contact with students. *See Manatee Cty. Sch. Bd. v. Lincoln Memorial Academy, Inc.*, No. 19-4155, 2019 WL 4894993, at *2 (DOAH 2019).

student-led noncurricular activities without a teacher-advisor, and/or reversal of a decision by the MSA's governing board and/or faculty (even though M.A. has not alleged either that teachers are required for club participation, or that any MSA teacher has been restricted from serving as an advisor for the GSA, only that teachers fear doing so). Assuming *arguendo*, M.A. was somehow injured by a sixth-grade clothing and dance policy, redress of this injury would also require a change in MSA's policy and/or reversal of a decision by the MSA's governing board and/or faculty with regard to implementation of that policy. However, and as previously discussed, the School Board cannot unilaterally impose its policies upon a charter school. *See* FLA. STAT. § 1002.33(b)(1)(d). MSA's employees are not employees of the School Board. *See* FLA. STAT. § 1002.33(12). The School Board is simply not the correct party to redress M.A.'s alleged injuries.

In addition, it is important to note that the School Board's duties to monitor MSA "**shall not constitute the basis for a private cause of action**." FLA. STAT. s. 1002.33(b)(1)(j) (emphasis added). Thus, to the extent that M.A., any other MSA student, or any other charter school student seeks to hold the School Board liable pursuant to its duty to monitor a charter school within its district, Florida law forbids it. *See id.*; *see also* FLA. STAT. s. 1002.33(g)-(h) (stating that the sponsor shall not be liable for civil damages under state law because of acts or omissions by an office, employee, agent, or governing body of the charter school); *P.J. v. Gordon*, 359 F.

Supp. 2d 1347, 1351 (S.D. Fla. 2005), *vacated and remanded on other grounds,* 174 F. App'x 504 (11th Cir. 2006).[8] For these reasons, Plaintiffs also fail to meet their burden with respect to this third and final element.

B. Plaintiffs' Claims are Note Ripe for Adjudication.

With respect to the doctrine of ripeness, the general rule is that a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all. *Texas v. United States*, 523 U.S. 296, 300 (1998). M.A. has not alleged that any MSA teacher has been restricted from serving as an advisor for the GSA, only that teachers fear doing so. M.A.'s alleged injuries are therefore the result of a speculative fear of future events that may not occur as anticipated or may not occur at all. Further, as discussed above, the School Board

[8] As explained in further detail by the Court in this case:

> In the context of this case, Fla. Stat. s. 1002.33 delegated to the School Board the responsibility for approving the [charter school's] charter and then monitoring its progress in meeting its educational goals, its revenues and expenditures, and ensuring its participation in the state's accountability system. Consistent with the statute, **the charter is silent with respect to any involvement by the School Board in the day-to-day management of the [charter school].** Further, to the extent the charter touches on such topics as student safety and the hiring or supervision of staff, those responsibilities are placed on the [charter school] …**what [plaintiff] has done is to conflate the School Board's monitoring responsibilities with day-to-day control over personal actions and in-school safety. There is simply nothing in the charter that supports that interpretation.**

P.J., 359 F. Supp. 2d at 1351-52 (emphasis added).

fails to see how M.A. or any other named Plaintiff could be affected by the rumored policies addressing sixth grade dress code and dance partners, which policies are not even confirmed to exist. (Dkt. No. 123, ¶¶ 78-79). As previously discussed, H.B. 1557's express prohibitions are limited to classroom instruction in kindergarten through third grade. M.A. is a junior. (*Id.* at ¶ 9). Thus, not only do M.A.'s claims rest upon speculative future events that may not occur as anticipated, but it is also unlikely that these alleged injuries will occur at all. M.A.'s claims are simply not ripe for review.

C. The SAC Fails to Meet Minimum Pleading Requirements.

Pursuant to the Federal Rules of Civil Procedure, pleadings must contain a "short and plain statement" of the claim showing that the pleader is entitled to relief, *see* Fed. R. Civ. P. 8(a)(2), and be stated in numbered paragraphs "each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b). Consistent with the courts' inherent authority to control its docket and ensure the prompt resolution of lawsuits, courts may dismiss a complaint for failure to comply with Rules 8(a)(2) and 10(b). *See Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). Dismissal of a complaint for failure to comply with Rule 8(a)(2) is also appropriate if the plaintiffs are unable to prove any facts that would entitle them to relief, *Osahar v. U.S. Postal Serv.*, 297 F. App'x 863, 864 (11th

Cir. 2008), or where amendment is futile. *Prawl v. City of Clearwater*, No. 8:18-CV-431-T-AEP, 2018 WL 11229894, at *5 (M.D. Fla. June 19, 2018).

Complaints that violate Rule 8(a)(2) and/or Rule 10(b) are commonly referred to as "shotgun pleadings." *Weiland*, 792 F.3d at 1320. The most common types of shotgun pleadings are: (1) a complaint containing multiple counts where each count adopts the allegations of all preceding counts; (2) a complaint replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action; (3) a complaint that fails to separate into different count each cause of action or claim for relief; and (4) a complaint asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions or which of the defendants the claim is brought against. *Id.* at 1323. The unifying characteristic of shotgun pleadings is that they fail to adequately notify defendants of the claims against them. *Id.*

The SAC is a shotgun pleading due to its failure to comply with basic pleading requirements. As currently drafted, the SAC suggests that every single one of the Plaintiffs are suing the School Board even though the SAC contains no allegation that these Plaintiffs are students (except for M.A.) in, parents of students in, and/or teachers in, the school district operated by the School Board. Absent clarification, the School Board does not have sufficient notice of which Plaintiffs are attempting to seek relief against it, and the SAC is therefore a shotgun pleading.

Further, the SAC is replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action. *Id.* For example, in Count III, Plaintiffs allege "selective enforcement" in violation of the Fourteenth Amendment and that Defendants have "deliberately and unlawfully…[and] selectively applied HB 1557" against Plaintiffs. (Dkt. No. 123, ¶¶ 111-118). But the SAC is devoid of facts that plausibly show the School Board has taken steps to selectively enforce the law against M.A. Even looking at the allegations that the GSA is unable to operate due to no teacher-advisor—Plaintiffs do not allege this is the result of School Board enforcement, rather, it is the speculative fear of teachers who have chosen not to serve as advisor to the club that allegedly caused its inoperativeness (*Id.* at ¶ 78) (even though Plaintiffs allege in the present tense that M.A. is the current president of his school's GSA, that it enjoys membership, and actively "creates a welcoming space for other LGBTQ students and their allies"). (*Id.* at ¶ 77). This results in a shotgun pleading.

Because the SAC constitutes a shotgun pleading, and because amendment would be futile for the previously stated reasons (*see* Parts II.A and II.B. *supra*), dismissal with prejudice is warranted.

WHEREFORE, Defendant School Board of Manatee County, Florida respectfully moves this Court to dismiss Plaintiffs' Second Amended Complaint or

alternatively moves for a more definite statement, and for the Court to provide all other relief it deems just and proper.

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(F)

Pursuant to Local Rule 7.1(F), the Defendant School Board hereby certifies that the number of words in the Memorandum of Law section, including headings, footnotes, and quotations totals approximately 4,870 words.

/s/ Erin G. Jackson
Attorney

Dated this 30th day of November 2022.

Respectfully submitted,

/s/ Erin G. Jackson
Erin G. Jackson, Esquire
Florida Bar No.: 413097
Ashley T. Gallagher, Esquire
Florida Bar No.: 125141
Eliza N. Horne, Esquire
Florida Bar No.: 1018588
Johnson Jackson PLLC
100 N. Tampa Street, Suite 2310
Tampa, FL 33602
Telephone: (813) 580 - 8400
Facsimile: (813) 580 - 8407
E-mail: ejackson@johnsonjackson.com
agallagher@johnsonjackson.com
ehorne@johnsonjackson.com
Secondary E-mail:
lstillwell@johnsonjackson.com
Attorneys for Defendant The School Board of Manatee County, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Erin G. Jackson
Attorney