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Don't Say Gay...At Least, Not in Front of Your Teachers

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The Florida Senate passed [The Parental Rights in Education bill](#), also known as the “Don’t Say Gay” bill by the media on [March 28, 2022](#). This Bill proposes that a school district may not “discourage or prohibit parental notification of and involvement in *critical decisions* affecting a student’s mental, emotional, or physical health or well-being,” nor “encourage *classroom discussion* about sexual orientation or gender identity in primary grade levels *or* in a manner that is not *age-appropriate* or *developmentally appropriate* for students.” The bill would allow parents to “bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates this paragraph and seek injunctive relief.” Withholding information from parents is permissible only if “a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect.” The bill originally included language that would require school principals to disclose a student’s sexual orientation to parents within six weeks except if the student is straight. This part of the bill was [withdrawn](#) an hour before the House meeting.

Legislation’s Goals and Broader Effects

Republican Florida State Rep. Joe Harding [introduced](#) the bill as one that would not prohibit people from spontaneously discussing gender identity and sexual orientation in classrooms, but would only ban official curriculum and lessons on these topics. Republican Sen. Danny Burgess [defended](#) the bill as simply saying that there should be an age limit to certain discussions, namely kindergarten through third grade, or about [ages 5-9](#). However, the vague language of the bill creates concerns about its scope.



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Terms such as “critical decisions,” “classroom discussion,” “age-appropriate,” and “developmentally appropriate” need further clarification in order to prevent [comical results](#) such as teachers feeling the need to inform parents of a student who requests vegetarian meals which could be considered a “critical decision” affecting a student’s health. The terms, when interpreted broadly, will prompt teachers to avoid any mention of gender identity or sexual orientation in any grade level to prevent lawsuits from conservative parents, thereby creating an unhealthy atmosphere for LGBTQ+ children.

The issue of vague and overbroad language in laws affecting educational settings has been litigated before. In [Keyishian v. Board of Regents](#), for a similar concern where “advising the doctrine” could be interpreted either as “advising of the existence of the doctrine” or as “advising another to support the doctrine,” the Supreme Court found the wording “lacking in ‘terms susceptible of objective measurement’” to the point where “men of common intelligence must necessarily guess at its meaning and differ as to its application.” The Court ordered a narrow reading that would allow room for the First Amendment freedoms in schools. Other Florida education [statutes](#) come with [toolkits](#) to help narrow down terms to specific meanings. For example, legislation on [physical education requirements](#) is supplemented with the [K-12 Physical Education Resource Toolkit](#).

Parental Rights in Education bill. Mere mention of someone being gay in the classroom may be considered “classroom instruction.” Also, whether a concept is “age-appropriate” or “developmentally appropriate” may change depending on the individual circumstances of a student or depend on the views of the teacher and parents.

The “reasonably prudent person” standard is also hard to meet if no prior conversations on gender identity and sexual orientation were held with the parents. There is no litmus test for teachers and school administrators to know how a parent will react until the issue is brought up. Without knowing each parent’s stance on the issues, an educator may lack reason to believe that disclosure would result in abuse, abandonment, or neglect, and consequently, endanger the child.

Day-to-Day Problems and Consequences for School-Aged Children and Their Families

The impact of the legislation extends beyond its effect on classroom discussions. Florida’s K-3 curriculum [currently](#) does not include sexual orientation or gender identity discussions, however, the legislation would prevent a math problem with details such as “Johnny has two dads.” The broad interpretation would also [prevent](#) children of same-sex parents from talking about their families. For example, if a teacher asked students to draw and describe their families, a student with same-sex parents would not be able to draw both of their parents. Lack of representation in the day-to-day instruction would impact LGBTQ+ children or children with LGBTQ+ family members negatively.

For fear of violating the vague terms in the legislation, educators will likely [overcensor](#) any conversation around the topics of sexual orientation and gender identity until they understand how to comply with the new law, because, “when one must [guess](#) what conduct or utterance may lose him his position, one necessarily will ‘steer far wider of the unlawful zone.’” Teachers will

thus [silence children](#) questioning their own sexual orientation and harm their well-being at their [most vulnerable](#) time.



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School-aged children need room to be able to speak freely about their gender to explore their reality. This [chilling effect](#) is particularly harmful, considering the role of [talking](#) to classmates and supportive school administrators on the well-being of LGBTQ+ children, especially those who are not ready to come out to or feel unsupported by their parents.

Further, making speech on gender identity and sexual orientation a taboo gives the impression that anything outside the heteronormative is [wrong and shameful](#). Frank C. Worrell, PhD, president of the American Psychological Association [cautions](#) legislators that “[p]rohibiting classroom discussion on these topics sends the message that identifying as LGBTQ+ is inherently wrong, stigmatizing and marginalizing children who may realize their difference at a young age. Psychological research has shown that increased social isolation and stigma can lead to depression, anxiety, self-harm and even suicide.” Democrat Rep. Carlos G. Smith also [criticized](#) the bill, stating it “sends a terrible message to our youth that there is something wrong with LGBTQ people, that there is something so dangerous or inappropriate about us that we have to be prohibited and censored from the classroom.” The concerns about the mental health of LGBTQ+ children are substantial because the bill would potentially prohibit teaching about civil rights heroes who can serve as [role models](#). The Trevor Project [reports](#) a reduction in suicide attempts among LGBTQ+ children who learn about these histories, as well as higher acceptance from their heteronormative peers.

Expected Lawsuits in the Aftermath of the Bill

The chilling effect of this bill is heightened by the provision that enables parents to bring [private lawsuits](#) against school districts that violate the ban. There is a [belief](#) among conservative groups that children are being indoctrinated, even though teaching about a topic is not the same thing as asking them to take a stance. In gender theorist Judith Butler's words, "[p]arents and communities want to exercise forms of censorship to stop their children from knowing about how the world is being organized and how different people are living their lives." A Tallahassee couple has already brought a [lawsuit](#) against Leon County Schools for violating familial privacy, alleging that the district spoke to their child about gender identity without their consent. The ruling in *Whole Woman's Health v. Jackson* "leaves all manner of constitutional rights more [vulnerable](#) than ever before" by allowing private lawsuits to attack those rights. Ordinarily, one who believes a state law to be unconstitutional must sue the state official tasked with enforcing that law. However, where the law is enforced [not by state officials](#), but by private citizens, such as individuals bringing lawsuits against abortion service providers pursuant to SB 8 or conservative parents bringing lawsuits against school districts pursuant to SB 1834, there is no pathway for those whose constitutional rights have been violated to reach the Supreme Court to declare the law unconstitutional directly.



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As such, since this law may [prevent](#) children from exercising their freedom of speech at school, parents of students may take legal action for this First Amendment violation. [Tinker v. Des Moines Independent School District](#) reaffirmed that

students are entitled to learn about more of the world than the State chooses to include in the curriculum, and are free to hold and express sentiments outside those approved by the authorities. Students are entitled to know that there are more gender identities and sexual orientations outside the heteronormative, and are free to identify as other than straight. As students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” it is a First Amendment [issue](#) when a teacher shuts down a student who wants to talk about LGBTQ+ matters as it relates to a lesson or just to mention their sexual orientation or identity. In *Tinker*, the Supreme Court held that parents could sue schools if they could prove that student’s speech did not “substantially interfere with the work of the school or impinge upon the rights of other students,” which is the route LGBTQ+ parents and allies may need to take to protect the violation of students’ freedom of speech triggered by Florida’s law.

A classroom setting where heteronormative children or children from heteronormative families can freely talk about themselves and their families, but LGBTQ+ children or children with LGBTQ+ family members lack the same freedom also violates Title IX’s [protections](#) against discrimination based on sexual orientation and gender identity. Such discrimination opens the floor for [civil rights](#) claims from concerned parents.

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Esra Coskun-Crabtree is in the Class of 2024 at Golden Gate University School of Law evening program. Prior to starting law school, she obtained her PhD in Philosophy and Literature from Purdue University, West Lafayette, IN, followed by choreographing dance works in her artistic residency at SAFEhouse Arts, San Francisco, CA. Esra is currently the President of Pilipino American Law Society, Academic Co-Chair of Latin American Law Students Association, Treasurer of OUTlaw, and Secretary of Phi Alpha Delta International Law Fraternity, Dirksen Chapter. Esra will complete the Summer Trial and Evidence Program at GGU in Summer 2022 to gain litigation skills and will serve as Executive Research Editor of GGU Law Review Journal in 2022-2023 academic year.