No. 25-10808-DD

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NANCY TRAY, *et al.*

Plaintiffs-Appellants,

vs.

FLORIDA STATE BOARD OF EDUCATION, *et al.*

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Florida
No. 4:24-cv-238-AW-MAF - The Honorable Allen Winsor

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CERTIFICATE OF INTERESTED PERSONS

Plaintiffs-Appellants certify that the following is a complete list of interested persons as required by Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1:

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No publicly traded company or corporation has an interest in the outcome of this case or appeal.

This 4th day of June, 2025.

/s/ Jarred A. Klorfein
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STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs-Appellants request oral argument in this case. The case raises important constitutional questions of public concern and implicates the fundamental First Amendment rights of Florida parents. This case also involves evaluation of a novel statutory and regulatory scheme unlike others that this Court has considered in the First Amendment context. Moreover, the scheme at issue—and particularly the interplay between the relevant statute and regulations—is potentially complex. In light of these important and novel legal issues and the potential for factual complexity, the decisional process would be aided by oral argument.

TABLE OF CONTENTS

TABLE OF CITATIONS & AUTHORITIES

Cases

Statutes

Other Authorities

Rules

JURISDICTIONAL STATEMENT

This is a challenge under the First Amendment to the U.S. Constitution to a Florida law, regulation, and practice. The district court had jurisdiction under 28 U.S.C. §§ 1331, 2201, and 42 U.S.C. § 2983. The district court found the complaint failed to state a claim for relief, then entered a final judgment on all claims on February 13, 2025. Appellants timely filed their notice of appeal from that final judgment on March 12, 2025. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. "[B]arring only speech that endorses [certain] ideas . . . penalizes certain viewpoints—the greatest First Amendment sin." *Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1277 (11th Cir. 2024). Appellants are parents who wish to participate in a state-created process for reviewing local school board decisions about whether to remove or restrict access to certain materials in school libraries. Florida law prohibits them from doing so. The review process is only available to parents who wish to challenge decisions to retain books, not to parents who wish to challenge decisions to remove them. Does the process violate the First Amendment by discriminating against parents, including Appellants, based on their viewpoint?

2. Once the state has opened a forum for the expression of views, even if for a limited or designated purpose, it may only impose restrictions on speech that are "reasonable in light of the purpose served by the forum." *McDonough v. Garcia*, 116 F.4th 1319, 1329 (11th Cir. 2024) (citation omitted). The Florida Legislature created a process for parents who "disagree[] with [a] determination made by the district school board on [an] objection to the use of a specific material" to seek further review of that decision. Fla. Stat. § 1006.28(2)(a)6. The Florida Legislature's avowed purpose for creating this process was to give parents a greater say in their children's education. Doc. 1 ¶ 4. The district court ignored Appellants' allegations and the statutory text about purpose, created an incorrect

and unsubstantiated purpose, and found that the State could reasonably make the process accessible only to parents who object to keeping books on shelves. Did the district court err in its purpose and reasonableness findings?

INTRODUCTION

The State of Florida claims to value parents' rights and their role as the "foremost authority" on their children's education. Doc. 1 ¶¶ 1–2, 4. As part of its efforts to supposedly put parents in the "drivers' seat," Florida's leaders enacted HB1069. *Id.* ¶¶ 1–2. HB1069 creates a process—the State Review Process—for parents to challenge a local school board's decision on whether to retain or remove a book in schools after an objection.

But the process's avowed commitment to parental rights was severely lacking. As implemented, the State Review Process excludes those who disagree with their school boards and believe the objected-to materials should not be removed from their local schools. Only those with the opposite viewpoint may participate. State leaders were not shy about the motivation for this discrimination: They wanted to skew the odds in favor of removing books by silencing perceived "activist[s]." *Id.* ¶ 91; *see id.* ¶¶ 63–69.

Florida's implementation and application of the State Review Process flagrantly violate the First Amendment. This Court has repeatedly rejected governmental efforts to put a "thumb on the scale" to pick winners and losers in public debates. *Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1275 (11th Cir. 2024); *see HM Fla.-ORL, LLC v. Governor of Fla.*, No. 23-12160, 2025 WL 1375363, at *13 (11th Cir. May 13, 2025) ("[T]he fear of improper governmental

motives in regulating speech . . . lies at the heart of the First Amendment."). And rightly so, as the First Amendment has always embodied "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open[.]" *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). So if the government creates a process that allows participation from parents who believe a book should be removed or restricted, then it must allow the participation of parents who believe a book should *not* be removed too.

The district court reached the opposite conclusion by mischaracterizing the State Review Process as one that restricts access based on a parent's "status" as an objector, rather than the parent's viewpoint. This was in error: A parent's status as an objector is merely a proxy for their viewpoint, as it depends on the content of the parent's speech in the first place. Only a parent who advocates that material should be removed can lodge an "objection" and obtain the requisite "status." Parents espousing the opposite, anti-removal, view can never be an objector under the State's regulatory scheme and thus can never gain entry to the State Review Process. This Court and the Supreme Court have repeatedly rejected such attempts to hide content- and viewpoint-based restrictions by recharacterizing them as non-expressive restrictions. *Honeyfund.com*, 94 F.4th at 1280; *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 864 (11th Cir. 2020); *see Reed v. Town of Gilbert, Ariz.*,

576 U.S. 155, 169–71 (2015); *Carey v. Brown*, 447 U.S. 455, 457, 461 (1980); *Cohen v. California*, 403 U.S. 15, 16–19 (1971).

The First Amendment does not tolerate viewpoint-based discrimination. Accordingly, this Court should reverse the district court's judgment.

STATEMENT OF THE CASE

HB1069 was, according to the bill's sponsor, meant to "protect the rights of parents to have a say in their children's education." Doc. 1 ¶ 4. The law calls for the creation of a process—the State Review Process—to allow challenges to local decisions on objections to a book's availability in school libraries.

That stated commitment is empty for parents who, like Appellants, hold the State's disfavored view. The State Review Process, as implemented, permits challenges only to decisions by school boards to *retain* books, not to decisions to *remove* them. Parents who—like Appellants—oppose those book removals are categorically prevented from participating.

Each Appellant is a parent of children in Florida public schools (we refer to Appellants, collectively, as the "Parents"). Following objections by others, their local school districts restricted access to certain books and pulled other books from school library shelves entirely. The Parents disagree with those decisions and seek to express their disagreement through the State Review Process. But that State-

created process for doing so is categorically unavailable to them based on their views about the removals.

I. Statutory Scheme

HB1069—signed into law on May 17, 2023, and effective July 1, 2023—requires local school boards to "adopt a policy regarding an objection by a parent . . . to the use of a specific material." Fla. Stat. § 1006.28(2)(a)2.[1] Parents[2] who object to the use of material must do so based on certain statutorily defined objections ("Statutory Objections").[3] *Id.* § 1006.28(2)(a)2b(I)–(IV). If the local school board sustains a Statutory Objection, use of the challenged material must be discontinued or restricted. *Id.* § 1006.28(2)(a)2.

Under HB1069, a parent who "disagrees with the determination made by the district school board on the objection to the use of a specific material" may request that the Commissioner of Education appoint a special magistrate to review the

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[1] Although Florida law previously required schools to provide a "reasonable opportunity for public comment," Laws 2022, c. 2022-21, § 2, it did not require school districts to adhere to a particular process or form for parents to voice objections to material.

[2] As used herein, "parent" includes legal guardians unless otherwise noted. *Accord* Fla. Stat. § 1000.21(6).

[3] The Statutory Objections are that the school material: (I) "Is pornographic or prohibited under [§] 847.012"; (II) "Depicts or describes sexual conduct . . . "; (III) "Is not suited to student needs and their ability to comprehend the material presented"; or (IV) "Is inappropriate for the grade level and age group for which the material is used." *Id.* § 1006.28(2)(a)2b(I)–(IV).

school board's decision.[4] *Id.* § 1006.28(2)(a)6. Under this statutorily created State Review Process, the Commissioner *must* appoint a magistrate on a parent's request unless one of five regulatory exceptions applies. Fla. Admin. Code R. 6A-1.094126(7)(b). The statute requires the special magistrate to review the school district's determination and recommend to the Florida State Board of Education ("BOE") how to resolve the parent's complaint. Fla. Stat. § 1006.28(2)(a). Local school boards whose decisions are subject to review must cover the cost of the special magistrate, regardless of the outcome of the State Review Process. *Id.*

II. HB1069 Implementation and Enforcement

HB1069 directs the BOE to adopt necessary "rules, including forms," to implement the State Review Process. *Id.* The BOE thus adopted Rule 6A-7.0714 ("Objection Template Rule") and Rule 6A-1.094126 ("State Review Process Rule"). *See* Fla. Admin. Code R. 6A-7.0714; Fla. Admin. Code R. 6A-1.094126.

These rules implement—and limit—the State Review Process beyond the restrictions set forth in the statute. One significant limitation is relevant here. Only the parent who filed the original objection may access the State Review Process; despite the broad statutory language encompassing any parent who "disagrees with the determination made by the district school board," Fla. Stat. § 1006.28(2)(a)6,

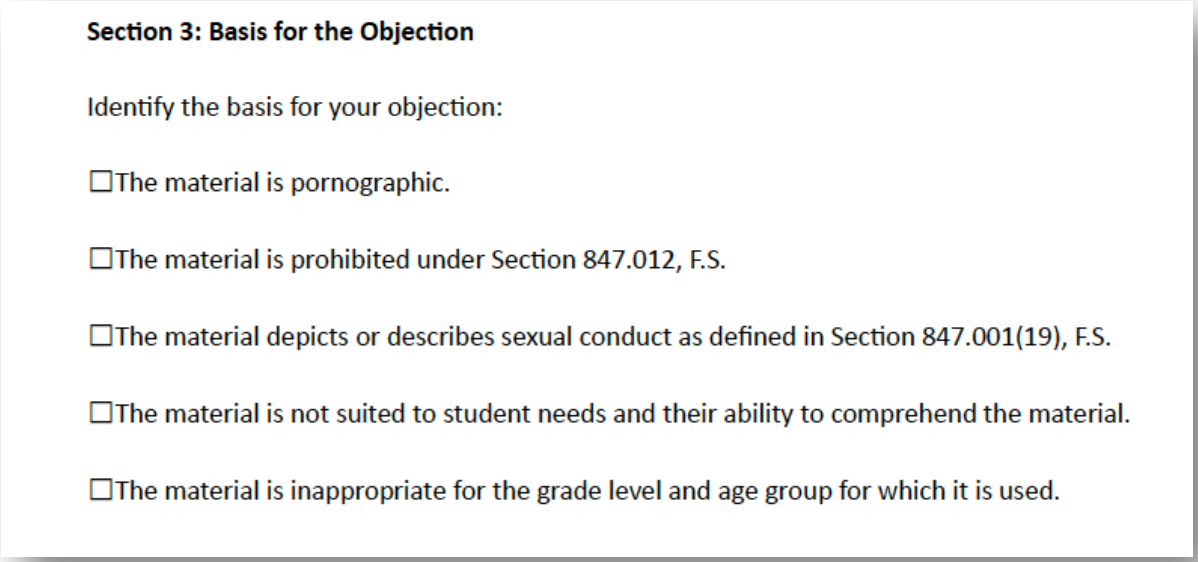
[4] The special magistrate must be "a member of The Florida Bar in good standing . . . who has at least 5 years' experience in administrative law." Fla. Stat. § 1006.28(a)6.

no *other* parent who disagrees with a decision may participate. And, because of this limitation, the State Review Process is only available to review local school board decisions which *overruled* objections (and retained material), not local school board decisions which *sustained* objections (and removed or restricted material).

A. Objection Template Rule

Under the Objection Template Rule, the BOE requires local school districts to use a specific template, the Specific Material Objection Template ("Template"), to collect and process parental objections at the district level. Fla. Admin. Code R. 6A-7.0714(3)(a). Local school districts may not modify the substance of the Template. *See generally* Fla. Admin. Code R. 6A-7.0714.

A parent may use the Template to object to the *use* of material in school libraries, but it provides no mechanism to object if a school removes or limits access to material. Notably, the only bases for objection available in the Template are the Statutory Objections:



Section 3: Basis for the Objection

Identify the basis for your objection:

☐The material is pornographic.

☐The material is prohibited under Section 847.012, F.S.

☐The material depicts or describes sexual conduct as defined in Section 847.001(19), F.S.

☐The material is not suited to student needs and their ability to comprehend the material.

☐The material is inappropriate for the grade level and age group for which it is used.

Specific Material Objection Template, FLA. DEP'T OF EDUC.;[5] Doc. 1 ¶¶ 45–48. A parent who believes that a school board has improperly removed or restricted a book has no objection available to her on the Template.

B. State Review Process Rule

The State Review Process Rule governs the process by which a parent may seek special magistrate review of the school board's decision. Fla. Admin. Code R. 6A-1.094126(1). Under this Rule, only a parent who *objects* to the availability of material (and supports its removal) has access to the State Review Process; a

[5] *Available at* https://flrules.org/Gateway/reference.asp?No=Ref-16950 (last visited June 3, 2025). The Objection Template Rule directs readers to this website to access the Template. *See* Fla. Admin. Code R. 6A-7.0714(4).

parent who *supports* the availability of material (and opposes its removal) cannot access the State Review Process.

Specifically, the Rule details the process for a parent to request that a special magistrate be appointed "to determine whether a school district properly considered a parental objection to the use of specific material in school" under § 1006.28(2)(a)2. Fla. Admin. Code R. 6A-1.094126(1).[6] To request the appointment of a special magistrate, a parent must (among other requirements) fill out a "Parental Request Form"[7] and "[d]emonstrate that before filing the Parental Request, the parent filed an objection with the school board and the school board has either ruled on the objection or has failed to timely process the objection." Fla. Admin. Code R. 6A-1.094126(5)(a), (b). In other words, only a "parent [who] filed an objection with the school board" can initiate the State Review Process by requesting the appointment of a special magistrate. *Id.* And again, under the

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[6] According to the Rule, the State Review Process is available "to determine whether a district considered a parental objection under procedures that meet the requirements of [§] 1006.28(2)(a)." Fla. Admin. Code R. 6A-1.094126(4).

[7] The Parental Request Form sets forth eligibility criteria for submitting a request to access the State Review Process. *Parental Request for Appointment of a Special Magistrate for Materials Used in Classroom or School Libraries*, FLA. DEP'T OF EDUC., (Sept. 2023), https://www.fldoe.org/core/fileparse.php/20670/urlt/11-3.pdf (last visited June 3, 2025); *see also* Fla. Admin. Code R. 6A-1.094126(10) (incorporating by reference the Parental Request Form).

Objection Template Rule, only a parent who seeks to challenge the use of materials in schools on specified bases can file an objection in the first instance.

The Objection Template Rule and State Review Process Rule therefore operate together to restrict access to the State Review Process to parents who object to the availability of materials in school libraries (and support their removal), while excluding parents who support the availability of those materials (and oppose their removal).

III. The Parents are denied access to the State Review Process

The Parents disagree with their local school boards' decisions about the availability of specific materials in the school districts where their children attend public schools. The Parents either have submitted requests for review of those decisions through the State Review Process or would submit requests but for their reasonable expectation that any such request will be denied.

A. Appellant Stephana Ferrell

In the spring of 2023, Appellant Stephana Ferrell, a parent of two children in Orange County Public Schools, learned that another parent had asked that the county school board remove *Shut Up!* by Marilyn Reynolds. Doc. 1 ¶¶ 71–72. The Orange County School Board removed the book first from a single school library and then district-wide. *Id.* ¶¶ 73–75.

In August 2023, Ms. Ferrell sought review of that decision, first from the school board and then through the State Review Process. *Id.* ¶ 77. The school board rejected her request, claiming that Ms. Ferrell lacked "standing" to challenge its decision because HB1069 did not authorize "parents to challenge a removal of a book." *Id.* ¶ 78. Ms. Ferrell then sought access to the State Review Process by submitting a Parental Request Form and requesting the appointment of a Special Magistrate. *See id.* ¶¶ 79, 81. Six months later, Florida's Department of Education dismissed Ms. Ferrell's request because "[a] special magistrate is not available to contest a district's decision to remove material." *Id.* ¶ 94.

B. Appellants Nancy Tray and Anne Watts Tressler

Appellant Nancy Tray is the parent of three children in St. Johns County School District, *id.* ¶ 97; appellant Anne Watts Tressler is the parent of two children in the same district, *id.* ¶ 106. In May 2024, the St. Johns County School District School Board held a meeting to consider objections[8] to four books: *Slaughterhouse Five* by Kurt Vonnegut; *Freedom Writers Diary* by Erin Grunwell and Freedom Writers; *l8r, g8r* by Lauren Myracle; and *A Stolen Life* by Jaycee Lee Dugard. *Id.* ¶¶ 98, 107. Ms. Tray and Ms. Tressler voiced disagreement with removing or restricting access to these books. *Id.* ¶¶ 101–02, 111. Over their

[8] The objections were raised by an individual who did not have children in the St. Johns County schools at the time of the meeting. *See* doc. 1 ¶ 99.

opposition, the school board voted to restrict access to *Slaughterhouse Five* and *A Stolen Life* to students in 11th and 12th grade and to require parental consent for seniors to read *Freedom Writers Diary* and *l8r, g8r*. *Id.* ¶ 110.

Ms. Tray opposes this decision and wishes to challenge it but knows that any request for access to the State Review Process would be futile. *Id.* ¶ 105. Ms. Tressler is in the same boat. The school board told Ms. Tressler that there is no process for her to object to its decision to restrict availability of books in schools. *Id.* ¶ 112. Attempting to access the State Review Process would be futile for either of them. *Id.* ¶¶ 105, 115.

IV. Procedural History

The Parents brought this case in federal court to challenge their inability to access the State Review Process. The Parents sued the persons and entities responsible for enforcing the State Review Process (together, the "State").[9] Pursuant to 42 U.S.C. § 1983, they raised three viewpoint discrimination claims for

[9] Specifically, under HB1069, Appellee BOE prescribes rules and regulations governing the State Review Process, *see* Fla. Stat. § 1006.28(2)(a)2, and promulgated the State Review Process Rule and Objection Template Rule under that statutory authority. Appellee Ben Gibson is the Chair of the BOE. Doc. 1 ¶ 15. Appellee Ryan Petty is the BOE's Vice Chair. *Id.* ¶ 16. Appellees Monesia Brown, Esther Byrd, Grazie P. Christie, Kelly Garcia, and MaryLynn Magar are all BOE members. *Id.* ¶ 17. Appellee Manny Diaz, Jr. is the Commissioner of Education of Florida, who is responsible for initiating the State Review Process by appointing special magistrates to conduct proceedings on school boards' decisions to discontinue use of materials. *See* Fla. Stat. § 1006.28(a)6. All individual appellees were sued in their official capacities.

violations of the First and Fourteenth Amendments: Count I, an as-applied challenge to HB1069; Count II, a facial challenge to the State Review Process Rule; and Count III, an as-applied challenge to the State Review Process Rule. The Parents sought a declaration that the State Review Process and the State Review Process Rule are unconstitutional as implemented, and that the State Review Process Rule is unconstitutional on its face; a permanent injunction; and an award of costs and fees under 42 U.S.C. § 1988(b).

The State moved to dismiss, arguing that the Parents lacked standing and failed to state a claim to relief. Doc. 11. The State argued that the Parents' First Amendment rights were not at issue; that even if such rights were implicated, HB1069 and the State Review Process Rule were viewpoint-neutral; and that the State Review Process, if a forum at all, is a nonpublic forum with reasonable regulations.

Over the Parents' opposition, the district court granted the motion. Doc. 15. The district court concluded that the Parents had standing. *Id.* at 3–8. But the court found that the limitations on access to the State Review Process were not based on viewpoint and thus dismissed the Parents' claims. *See id.* at 15, 17. This appeal followed.

STANDARD OF REVIEW

This Court reviews a district court's order granting a motion to dismiss for failure to state a claim de novo, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." *Murphy v. DCI Biologicals Orlando, LLC*, 797 F.3d 1302, 1305 (11th Cir. 2015). The question is whether the complaint alleges "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

SUMMARY OF ARGUMENT

The First Amendment does not allow the government to deny a speaker access to a forum "solely to suppress the point of view [s]he espouses." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985). Because the State Review Process does precisely that, it is unconstitutional.

First Amendment protections apply to the Parents' speech here. The State Review Process is a state-created forum which permits parents who disagree with local school board decisions to seek State review of those decisions. The BOE may not use that forum to skew the debate over what books belong in schools by excluding parents whose views the government disfavors. Whether the Process is a limited public forum or a nonpublic forum, it must be both "viewpoint neutral and

reasonable." *McDonough v. Garcia*, 116 F.4th 1319, 1322 (11th Cir. 2024). The process is neither.

The State Review Process is textbook viewpoint discrimination. The price of entry is espousing the State's favored view—that books should be removed from schools. The process is open only to parents who hold that view and who disagree with a district's decision to retain such books. Because the Parents here hold the opposite view—that certain books should be available in schools—the State barred them from the State Review Process. That is unconstitutional. The State cannot prevent the Parents here from speaking through the State Review Process because of their viewpoint while letting others use the Process to espouse a different viewpoint. The Process must be available equally or not at all.

The district court's analysis to the contrary was incorrect. Primarily, it erroneously treated the State Review Process as discriminating on the basis of "status"—not viewpoint—because only a parent who lodged an objection that a school district denied may have that decision reviewed. As part of that central error, the district court ignored the Complaint's well-pleaded allegations, ignored binding precedents that rejected similar artificial distinctions, and gave undue weight to inapposite case law. The requisite "status" to access the State Review Process is only obtainable because of the content of the objector's speech—i.e.,

that a book should be removed. The Parents have a different view and, as a result, can never obtain the "status" required to access the State Review Process.

Even if the process were viewpoint neutral, which it is not, it is still unreasonable and thus unconstitutional. Reasonableness considers the forum's purposes. HB1069 was enacted to allow parents an avenue for second-level review of a school board's decision on the availability of material in school libraries. Doc. 1 ¶¶ 23, 31, 50–51, 67. But as implemented, the State Review Process unreasonably excludes a whole category of parents—those who disagree with the removal of books. It is inconsistent with HB1069's purpose and not reasonable to *prohibit* parents from voicing that message through the State Review Process.

The district court constructed a different "purpose" to justify dismissing the Parents' claims. According to the district court, the State Review Process "exists to uphold Florida law," which requires removing certain types of books the State deems too controversial for school, so it makes sense, in the district court's view, to raise the odds of removal by excluding parents who disagree with them. Doc. 15 at 14–15. But that supposed purpose—to sus out controversial books—is nowhere to be found in HB1069 or the State Review Process Rule. The BOE, in implementing HB1069, impermissibly skewed the debate by silencing certain parents. The district court erred by discounting the legal texts and the Parents' allegations.

The Parents and the district court agree on one thing, though: the Parents have standing to bring their challenge. The Parents were barred—and continue to be barred—from voicing their objections in the State Review Process because they oppose, rather than support, the removal of books. Closing that discriminatory forum would redress this ongoing constitutional harm.

ARGUMENT

I. The State Review Process violates the Parents' First Amendment rights.

A. Barring parents from the State Review Process because they disagree with a local decision to remove certain books is viewpoint discrimination.

Parents are barred from participating in the State Review Process based solely on their disagreement with the decision to remove a book. The district court erred in finding that this differential treatment is not impermissible viewpoint discrimination. Doc. 15 at 16–17.

"It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). Thus, "[c]ontent-based regulations are presumptively invalid." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). And restrictions based on viewpoint are especially invidious; viewpoint discrimination is "poison." *Iancu v. Brunetti*, 588 U.S. 388, 399 (2019) (Alito, J., concurring); *see also Rosenberger*, 515 U.S. at 829; *Reed*, 576 U.S. at 168. Indeed, it is antithetical to a free society for the government to give "one side of a debatable public

question an advantage in expressing its views to the people." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 785 (1978).

If a law's application requires "examin[ing] the content of the message" and viewpoint expressed, then it is viewpoint discriminatory. *Honeyfund.com*, 94 F.4th at 1278 (citation omitted). And discrimination against speech because of its message is almost always unconstitutional. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641–42 (1994); *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2607 (2020). In fact, the Supreme Court has said that the presence of viewpoint discrimination is "all but dispositive" in a First Amendment challenge. *Sorrell v. IMS Health Inc*., 564 U.S. 552, 571 (2011). This Court has therefore suggested that such laws may even be "unconstitutional per se," *Otto*, 981 F.3d at 864; *Moms for Liberty - Brevard Cnty., FL. v. Brevard Pub. Schs.*, 118 F.4th 1324, 1332 (11th Cir. 2024) ("[T]hough the Supreme Court has never categorically prohibited restrictions based on viewpoint, it has come close[.]"); *Honeyfund.com*, 94 F.4th at 1277 (viewpoint discrimination is "the greatest First Amendment sin").

As implemented, the State Review Process is viewpoint discriminatory. A parent's ability to access the process depends on the content of her views—not merely, as the district court incorrectly held, her "status" as an objector, because that status is necessarily a product of the parent's views. The process is therefore

presumptively—if not *per se*—unconstitutional. The district court erred by concluding otherwise.

1. As implemented, parents' access to the State Review Process turns on the content of parents' views.

The State Review Process regulates speech based on the speaker's view and therefore constitutes impermissible viewpoint discrimination prohibited under the First Amendment. "Viewpoint discrimination" occurs when the government "has singled out a subset of messages for disfavor based on the views expressed." *Matal v. Tam*, 582 U.S. 218, 248 (2017) (Kennedy, J., concurring in part); *Rosenberger*, 515 U.S. at 829; *Brunetti*, 588 U.S. at 393 ("The government may not discriminate against speech based on the ideas or opinions it conveys."); *Cornelius*, 473 U.S. at 806 ("[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.").

The relevant question, as this Court has explained, "is whether a speaker's viewpoint determines [her] license to speak." *Otto*, 981 F.3d at 864; *see also Reed*, 576 U.S. at 170. Here, access to the State Review Process hinges on whether an individual's viewpoint favors (a) keeping a book available in school or (b) removing or restricting that material. On the one hand, parents who wish to remove material, and thus disagree with a school board's decision to keep it available, can petition for review of that decision through the State Review Process. On the other

hand, parents who wish to retain material, and thus disagree with a school board's decision to remove it, have no access to that same process.

A parent's access to the State Review Process depends on the content of the message the parent wishes to convey. If the intended message is that material should *not* have been removed from schools, then the individual is barred from the process. If, instead, the message is that material *should* have been removed, that individual would have access. The State Review Process therefore "only benefits those parents who hold the State's favored viewpoint: agreement with removing books and other material from schools, and disagreement with . . . decisions to retain" such materials. Doc. 1 ¶ 4.

The experience of one Parent—Stephana Ferrell—is illustrative. Another parent asked the local school district to remove *Shut Up!* by Marilyn Reynolds. *Id.* ¶¶ 71–72. In response, the district removed the book. *Id.* ¶¶ 73–74. Ms. Ferrell tried to voice her disagreement with that decision through the State Review Process but was prevented from doing so. *Id.* ¶¶ 79–89, 94. The State rejected her petition, insisting that a special magistrate was "not available" for Ms. Ferrell's objection because she opposed removal of material. *Id.* ¶ 94. Had the school district come out the other way, however, and retained *Shut Up!*, the objecting parent could have accessed the State Review Process. In that scenario—by the

State's own admission—the process would be open as a forum for the parent to express why the school board was wrong to keep *Shut Up!*.[10]

The Parents' allegations pass the "most basic . . . test for viewpoint discrimination." *Tam*, 582 U.S. at 248 (Kennedy, J., concurring in part). That is "whether—within the relevant subject category—the government has singled out a subset of messages for disfavor based on the views expressed." *Id*. The Parents have alleged that they are "prevented from speaking" through the State Review Process "while someone espousing another viewpoint" is "permitted to do so." *McCullen v. Coakley*, 573 U.S. 464, 485 n.4 (2014). Such allegations are more than adequate to withstand a motion to dismiss.

Yet the Complaint goes further, detailing the impermissible motivation behind the State Review Process to "target" certain "speakers and their messages for disfavored treatment." *Sorrell*, 564 U.S. at 565; *see HM Fla.-ORL*, 2025 WL 1375363, at *1, *22 (relying on comment from bill sponsors in discerning intended—unconstitutional—scope). The Complaint confirms that the BOE

[10] It is entirely plausible that two parents, with children in different school districts, could each challenge the availability of *Shut Up!* (or any other book) in school libraries in their districts. The two districts could easily reach opposite conclusions, with District 1 opting to remove the book, over the objection of parent A, and District 2 opting to overrule parent B's objection and retain the book. In that scenario, both parent A and parent B would disagree with the decision of their local school board, but only parent B, who favors removal of the book, could access the State Review Process.

intended to target—by way of exclusion—parents who seek to retain school materials and succeeded in doing so by limiting access to the State Review Process. Doc. 1 ¶¶ 4–8, 96, 105, 115.

The BOE and Department of Education leadership alike repeatedly and officially acknowledged that implementation of HB1069 would treat parents differently depending on whether they objected to, or supported, the availability of books in schools. *Id.* ¶¶ 67–69. Even before the BOE adopted the State Review Process Rule, a commenter told the BOE that it would be "skewing" the playing field, not just by giving an exclusive platform to "book banners," but by saddling local school boards with their appeal costs. *Id.* ¶ 66.[11] Such preferencing is strictly forbidden under the First Amendment. And the State further emphasized that it has

[11] By statute, the State Review Process requires local school boards to foot the bill for any review of a decision on a parental objection. *See* Fla. Stat. § 1006.28(2)(a)6. ("The costs of the special magistrate shall be borne by the school district."). This requirement incentivizes local school districts to sustain—rather than overrule or even meaningfully evaluate—objections, because school districts otherwise face the cost of an appeal. By passing these costs on to the local school boards, the BOE exerts financial pressure to coerce an intermediary to "suppress disfavored speech on [its] behalf"—a practice the United States Supreme Court has condemned. *NRA v. Vullo*, 602 U.S. 175, 190 (2024) ("[A] government official cannot do indirectly what she is barred from doing directly."); *see also Nat'l Educ. Ass'n v. United States Dep't of Educ.*, No. 25-CV-091-LM, 2025 WL 1188160, at *26 (D.N.H. Apr. 24, 2025) (United States Department of Education and Department officials were "attempting to coerce third parties"—schools—"to punish or suppress disfavored speech on [their] behalf" by threatening termination of federal funding (quotation marks and citation omitted)). This kind of "intermediary strategy" too raises "constitutional concerns." *Nat'l Educ. Ass'n*, 2025 WL 1188160, at *26 (quoting *Vullo*, 602 U.S. at 197).

a preferred viewpoint by labeling the side of the debate excluded from the process as, in Commissioner Diaz's words, reflecting an "activist" view. *Id.* ¶ 91. *See Buckley v. Valeo*, 424 U.S. 1, 48–49 (1976); *Messer v. City of Douglasville, Ga.*, 975 F.2d 1505, 1509 (11th Cir. 1992) (government cannot engage in "bias, censorship or preference regarding [another] speaker's point of view").

The district court acknowledged the discriminatory nature of the regime but failed to recognize its relevance. In the district court's words, "the State Review Process does not offer parents wanting books retained an opportunity to appeal or otherwise access the process." Doc. 15 at 15. But by the district court's logic, such ostracism is permissible because removing books is consistent with the purpose the district court erroneously ascribed to the State Review Process.

That is irrelevant to the question of whether the Process is viewpoint discriminatory, and the approach does not withstand scrutiny. "To permit one side . . . to have a monopoly in expressing its views . . . is the antithesis of constitutional guarantees." *City of Madison, Joint Sch. Dist. No. 8 v. Wis. Emp. Rels. Comm'n*, 429 U.S. 167, 175–76 (1976). As this Court has made clear, "the First Amendment keeps the government from putting its thumb on the scale" in this way. *Honeyfund.com*, 94 F.4th at 1275; *see also, e.g.*, *Sorrell*, 564 U.S. at 578–79 ("The State may not burden the speech of others in order to tilt public debate in a preferred direction."); *Otto*, 981 F.3d at 864 ("[T]he First Amendment forbids the

government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." (emphasis and citation omitted)).

The district court did not even acknowledge—much less grapple with—this Court's decision in *Honeyfund.com*. But the Court's precedent there is directly relevant and should not be ignored. In *Honeyfund.com*, an undivided panel struck down a Florida statute that barred employers from holding mandatory meetings that endorsed certain ideas related to race, color, sex, or national origin, but did not prohibit meetings that denounced those concepts. 94 F.4th at 1283. This Court held the law to be viewpoint-discriminatory because it applied only to meetings that "convey[ed] a particular message and viewpoint" that the state disfavored. *Id.* at 1278 (emphasis omitted). The Court reasoned that the content of the meeting was determinative: "[t]o know whether the law bans a meeting, enforcement authorities must examine the content of the message that is conveyed." *Id.* (citation omitted).

By way of analogy, a state could not create a zoning review process in which complaints in favor of preserving park space are heard, while complaints opposed to preserving park space (and instead in favor of property development) are turned away. This differential treatment would afford the right to speak and to petition the government only to the group with the government's preferred viewpoint. So too with the State Review Process. While the face of its statute evokes a procedure for

parents who "disagree" with a local school board's decision on an objection to obtain further review, doc. 1 ¶ 30; Fla. Stat. § 1006.28(2)(a)6, the State generally and the BOE specifically, in practice, created a procedure only for individuals who disagree with a local school board's decision *to retain a book* to obtain further review of the decision. But if "the only ideas that can be communicated" with respect to book removal are of a piece with the view that the State already agrees with, "why have th[at] [process] in the first place?" *Moms for Liberty*, 118 F.4th at 1334.

As in *Honeyfund.com*, here one must know "the content of the message" that a parent seeks to convey to know whether they can access the State Review Process. That's impermissible. The government cannot shut out speech that discusses the same topic from a different perspective. *See Cornelius*, 473 U.S. at 806. If the State Review Process permits individuals to challenge the decision to *retain* a book, then it must permit challenges to the decision to *remove* a book too. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 108–09 (2001).

2. Access to the State Review Process is not based on a parent's "status" as an objector.

The district court erroneously focused on a status-versus-viewpoint examination. This is a strawman, as status here is merely a proxy for viewpoint.

"Speech restrictions based on the identity of the speaker are all too often simply a means to control content" with which the government disagrees. *Citizens*

United v. FEC, 558 U.S. 310, 340 (2010); *NIFLA v. Becerra*, 585 U.S. 755, 758 (2018) ("[S]peaker-based laws run the risk that the State has left unburdened those speakers whose messages are in accord with its own views." (internal quotation marks and citation omitted)). The State Review Process is limited to objectors. *See* doc. 15 at 17. But a person can only obtain status as an objector if they *first* espouse the government-favored view supporting removal or restriction of a book. The Parents here *cannot* become objectors, specifically because they disagree with that view. They are wholesale, and permanently, barred from the State Review Process because of their viewpoint that a book should remain in schools.[12]

The Supreme Court rejected a similar argument in *Reed*, 576 U.S. at 169. The *Reed* Court assessed different restrictions on different types of signs (political, ideological, or for temporary events), and unanimously concluded that they were content-based. The Court found that the "distinctions are not speaker based" but that, even if they were, it would "not . . . automatically render the distinction content neutral." *Id.* at 170 ("[A] content-based law that restricted the political speech of all corporations would not become content neutral just because it singled

[12] It is true that a parent who favors removal of material but was not the initial objector could not use the State Review Process to circumvent the district process and seek review of a decision to retain an objected-to book in the first instance. Doc. 1 ¶¶ 54–55. But that individual *could* file a new objection at the district level and petition for magistrate review if the local school board, once again, retained the objected-to material.

out corporations as a class of speakers."). Indeed, "[c]haracterizing a distinction as speaker based is only the beginning—not the end—of the inquiry." *Id*. So too here, the distinctions cannot reasonably be considered status-based where only messages supporting access to books are excluded, no matter the source of the message, while objections to the availability of a book must be given an exclusive forum. *Reed* also emphasized that "laws favoring some speakers over others" are content-based where they "reflect[ ] a content preference," *id* at 170 (citation omitted), which is precisely what the State Review Process does.

Honeyfund.com is instructive too. In that case, this Court rebuffed a similar theory to the one adopted by the district court here. Florida argued that a law barring mandatory workplace trainings endorsing a laundry list of state-rejected ideals did not impermissibly target speech but instead regulated "conduct" alone. *Honeyfund.com*, 94 F.4th at 1277. The Court explained that "clever framing" could not withstand constitutional scrutiny. *Id.* at 1278. While the law targeted meetings as a whole—not any speech within the meetings—"only . . . meetings *that convey a particular message and viewpoint* [were] prohibited." *Id.* (emphasis in original). Because the "disfavored 'conduct' cannot be identified apart from the disfavored speech," this Court held that the law was a viewpoint-based regulation. *See id.* at 1278–79, 1280–81; *see also Otto*, 981 F.3d at 862 (regulations restricting

therapists from communicating a particular message to patients during sessions were not content neutral).

The State Review Process is the same. It necessarily regulates disfavored speech because only those who seek to remove material can obtain the requisite status needed to access the State Review Process. The door is closed to those who do not hold the view that the material should be removed. And so the supposed "status"—being an objector—is indistinguishable from the message the speaker wishes to convey. *Honeyfund.com*, 94 F.4th at 1278.

If labeling the Parents' views as "status" sufficed to deprive those views of First Amendment protection, the *Reed*, *Honeyfund.com*, and *Otto* courts (among others) would have reached opposite conclusions. And under that theory, governments could justify a myriad of laws censoring speech simply by adding a step that qualifies access to the relevant forum on the basis of a "status" that is only available to individuals holding the preferred viewpoint (just like requiring parents to be "objectors" here). By the district court's logic, the State could create a process to audit school budgets triggered by submitting a State-made form that only permits complaints about underfunding. Such a "status-based" form could be used to exclude any criticisms on overfunding.

The district court ignored substantial precedent to create a "status" problem (where none exists) from a single case: *Perry Educators' Association v. Perry*

Local Educators' Association, 460 U.S. 37 (1983). But far from compelling dismissal, doc. 15 at 16–17, *Perry* undermines the district court's holding.

The Supreme Court in *Perry* upheld a local school district's policy allowing the district's exclusive teachers' union to use an interschool mail system, while excluding a rival teachers' union from the system. But the *Perry* union had access to the forum because it was duly elected by, and required under statute to represent, *all* teachers in the district, whereas the rival union did not have "any official responsibility in connection with the school district." *Perry,* 460 U.S. at 50–51 (contrasting the "differential access" that resulted from one union's "exclusive" role). By contrast, those who can access the State Review Process—parents seeking to remove books over the decision of their local school boards—indisputably do *not* speak for all parents in the district. They want a book removed. And parents who oppose removal and want a book retained have no voice through the State Review Process at all—even though they share the same position as other parents in their school district. Moreover, while the rival union in *Perry* could have accessed the mail system had it won the union election, *id.* at 51, there are no circumstances under which the Parents—and others who oppose book removals—can participate in the State Review Process. Nor are any alternative channels, let alone "substantial alternative channels" like those in *Perry*, available to the Parents. *See infra* Part I.A.3.

The State is discriminating "to advance its own side of [the] debate" by giving another bite at the apple to individuals who agree with the State's view. *Sorrell*, 564 U.S. at 580; *Perry*, 460 U.S. at 46 (government cannot wield its control over forums "to suppress expression merely because public officials oppose the speaker's view"). Even if that discrimination masquerades as being based on "status," it is unconstitutional.

3. The Parents have no alternative channel to express their views that is comparable to the State Review Process.

The "constitutional problem" with excluding from the State Review Process those who hold the State's disfavored view "is not mitigated when closely related forms of expression are considered acceptable." *Otto*, 981 F.3d at 863. The State's contentions below, doc. 11 at 17–18, that the Parents remain free to espouse their disfavored viewpoints in their cars to themselves, at their keyboards, or to others in different circumstances, are irrelevant. The Supreme Court has held that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Reno v. ACLU*, 521 U.S. 844, 880 (1997) (citing *Schneider v. State of N.J., Town of Irvington*, 308 U.S. 147, 163 (1939)); *see also Crowder v. Hous. Auth. of City of Atlanta*, 990 F.2d 586, 593 (11th Cir. 1993) (collecting cases).

Even if a closely related or comparable forum would be a constitutionally adequate alternative for the Parents to express their views, no such alternative

exists here. The State Review Process is the only method to challenge a local school board's decision on a book objection at the State level. And parents have no alternative means of petitioning the government for redress.

B. The First Amendment protects the Parents' right to express their views via the State Review Process.

Where, as here, the State has developed a viewpoint-discriminatory procedure for individuals to express certain views, the First Amendment is implicated. That is especially true for speech about matters of "political, social, or other concern to the community[.]" *Connick v. Myers*, 461 U.S. 138, 146 (1983). "[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (citation omitted). This protection extends to a parent's right to express their viewpoint concerning their child's education. *See Moms for Liberty*, 118 F.4th at 1331–32 (addressing the right of "parents and community members to express themselves on school matters of community interest" (quotation marks and citation omitted)). Likewise, it includes the right to petition any department of the government to redress grievances. *See DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1288 (11th Cir. 2019) (right to petition the government to redress grievances is "precious"); *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 525 (2002); *see also Lozman v. Riviera Beach*, 585 U.S. 87, 101 (2018) (right to petition is "one of the most precious of the liberties safeguarded by

the Bill of Rights")(citation omitted); *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 388 (2011) ("The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives, whereas the right to speak fosters the public exchange of ideas that is integral to deliberative democracy as well as to the whole realm of ideas and human affairs.").

Because access to the State Review Process has been awarded in a viewpoint discriminatory fashion, the inquiry can end there. *See supra* Part I.A. A forum analysis only reaffirms this conclusion. Any restrictions on access to a state-created forum must be "reasonable in light of [its] purpose" *and* "viewpoint neutral." *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 392–93 (1993) (citation omitted). But, as described above, access here is *not* viewpoint neutral. The State Review Process is accessible only in a wholly viewpoint-discriminatory way. And viewpoint discrimination is impermissible in any forum. *Minn. Voters All. v. Mansky*, 585 U.S. 1, 11 (2018); *Tam*, 582 U.S. at 243 (plurality); *Rosenberger*, 515 U.S. at 829; *McDonough*, 116 F.4th at 1322. Thus, no matter what sort of forum it is, the State Review Process necessarily violates the First Amendment.

C. The State Review Process is not reasonable in light of its purpose.

Even if the district court were right that the State Review Process is not viewpoint-discriminatory and instead discriminates based on status, the process

would still violate the First Amendment because it is not reasonable in light of HB1069's purpose. *Perry*, 460 U.S. at 48–49 ("The touchstone for evaluating these [status-based] distinctions is whether they are reasonable in light of the purpose which the forum at issue serves.").

The State bears the burden of showing that the State Review Process is reasonable. *NAACP v. City of Philadelphia*, 834 F.3d 435, 443 (3d Cir. 2016). Reasonableness is evaluated in light of the forum's purposes and "all the surrounding circumstances." *Cornelius*, 473 U.S. at 809. A "reasonable" speech restriction may only prohibit speech that is "naturally incompatible with the purposes of the forum." *Moms for Liberty*, 118 F.4th at 1332 (quotation marks and citation omitted); *see also id.* (the "reasonableness" standard is "not a blank check").

The purpose of HB1069 was to "establish a process for parents to request the appointment of a special magistrate if they disagree with [a] local decision about an objection to" a book's availability. Doc. 1 ¶¶ 50–51. It is not incompatible with that purpose to allow access to parents who disagree with a decision on an objection that results in removing a book. As implemented, then, the State Review Process is unreasonable.

1. The State Review Process is a limited public forum created for the purpose of allowing parents to disagree with school district decisions on objections.

The State created a limited public forum by establishing the State Review Process. The government creates a limited public forum by opening it for "use by certain groups" or for the "discussion of certain subjects." *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 470 (2009). And the State here "opened" the State Review Process to some members of "the public"—parents seeking book removals—"as a place for expressive activity," even though it "was not required to create the [process] in the first place." *Perry*, 460 U.S. at 45.[13]

The Complaint explains that HB1069's purpose was to give parents a say in their children's education. Doc. 1 ¶¶ 30, 50–51, 68. The face of the statute affords *any* parent a right to seek review of a school board's decision on an objection to educational materials—no matter if the decision was to keep or remove the material. *See generally* doc. 1 ¶ 30 (quoting § 1006.28(2)(a)(6), which provides

[13] The district court rightly rejected the State's argument that "the First Amendment does not require the government to provide the Parents with an official channel to level grievances about book removals." Doc. 11 at 17. It was the State, not the Parents, that created the State Review Process. In doing so, the State assumed the constitutional obligation of allowing access to it in a viewpoint-neutral and reasonable manner. *See, e.g.*, *Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209, 1225 (11th Cir. 2017) (holding that when a school board created a public-comment portion of its meetings, it was obligated to administer them in a way that was "viewpoint neutral and reasonable in light of the forum's purpose"). The State failed that obligation.

that "[i]f a parent disagrees with the determination made by the district school board on the objection to the use of a specific material, a parent may request [access to the State Review Process]"). That purpose is also evident from the comments of Florida's chief executive, educational leaders, and lawmakers (including HB1069's sponsor). Doc. 1 ¶¶ 1–2, 4, 50–51, 64, 66–69; *see Cambridge Christian Sch., Inc. v. Fla. High Sch. Athletic Ass'n, Inc.*, 942 F.3d 1215, 1244–45 (11th Cir. 2019); *Moms for Liberty*, 118 F.4th at 1333 (explaining that, in addition to the written policy itself, a court may look at "the Board's explanation of its policies, as well as its record of enforcement" to "fill in the blanks" in a First Amendment inquiry); *see also HM Fla.-ORL*, 2025 WL 1375363, at *1, *22 (citing statements by legislative sponsors).

Nothing in the text of HB1069 requires discriminate access to the State Review Process. Yet the State claims—without evidence—that the process's "purpose" is "to raise concerns" over potentially "pornographic, obscene, or other[wise] inappropriate" materials "currently available" to children in a school library. Doc. 11 at 22. That claim finds no support in the statutory text, the evidence in this case, or the Complaint. *Cambridge Christian Sch.*, 942 F.3d at 1244 (rejecting proclaimed purpose "not evident from the complaint itself" and finding challenged practice unreasonable).

The district court, like the State, ignored the Complaint's well-pleaded allegations about the statute's purpose. *See* doc. 15 at 14 ("The[Parents] say the forum's purpose is to allow parents to voice disagreement 'with actions of their local school boards.' . . . But there is no indication this is so."). In doing so, the district court never once cited the State Review Process Rule. Nor did the court try to reconcile the Rule's one-sided scheme with HB1069's clear text or the Florida officials' acknowledgements that HB1069 was enacted to promote the rights of all parents. Doc. 1 ¶¶ 50–51, 67. The district court thus erred under *Twombly* and its progeny.

And the district court similarly erred in divining its own purpose for HB1069. After failing to address the Parent's allegations, the district court concluded that the State Review Process "exists to uphold Florida law," which "requires" removal of books that fall into any of the categories the State has deemed too controversial. Doc. 15 at 14–15; Fla. Stat. § 1006.28(2)(a)2b(I)–(IV). The district court inferred this supposed purpose "from the statute's text" (without ever quoting it). Doc. 15 at 14–15. But in reality, the statutory text contradicts the district court's reading of "purpose."

To start, the statute does *not* categorically "prohibit[]" books (except those already prohibited elsewhere in the Code), nor does it make it "unlawful" for any individual book or category of book to be available in schools. *Id.* at 15. Rather,

the statute identifies four categories that parents may cite as the bases for objections to specific materials. Fla. Stat. § 1006.28(2)(a)2b(I)–(IV). The local school board then must evaluate any objections. If it "finds" the objected-to material contains content under b(I)–(IV), the board takes appropriate action. Parents who "disagree[]" with that finding are then supposed to have a right to magistrate review. Fla. Stat. § 1006.28(2)(a)2b & 6. Absent an objection and action by a school district, such material can lawfully remain in schools.

2. The BOE's exclusion of certain parents from the State Review Process is not reasonable.

The State admits (as it must) that the State Review Process as implemented by the BOE excludes a whole category of parents solely because they disagree with the removal of books. *See generally* doc. 11 at 18. Barring those parents' speech is not "wholly consistent," *Cambridge Christian Sch.*, 942 F.3d at 1244 (citation omitted), with establishing a process for *all* parents to seek State review "if they disagree with the local decision about an objection . . . ." Doc. 1 ¶¶ 50–51. The Parents are "member[s] of the class of speakers for whose especial benefit the [State Review Process] was created," so the State cannot reasonably exclude them from it. *Cornelius*, 473 U.S. at 806; *see also Good News Club*, 533 U.S. at 106. Nor does the State have any legitimate interest in keeping certain parents silent so that other messages are amplified. *E.g.*, *Roth v. United States*, 354 U.S. 476, 484 (1957) (observing that the First Amendment "was fashioned to assure unfettered

interchange of ideas for the bringing about of political and social changes desired by the people").

The BOE's implementing measures do not "uphold Florida law," doc. 15 at 15, as codified in the substantive provisions of the authorizing legislation. To the contrary, they erode HB1069's purpose and violate the First Amendment. *Supra* Part I(A)–(B). But the district court did not even cite those measures—let alone the myriad allegations demonstrating their inconsistency with the statute's reasonably inferred purpose (a process for parents to have more say over what materials their children can access at school). *E.g.*, doc. 1 ¶ 67 (purpose to "protect" and "further" parental rights by "providing parents with a route for them to resolve [] disputes [related to removal of books] that is more expedient and accessible than a civil suit" and "place . . . parents in the driver's seat to ensure that their concerns are being addressed" (citation omitted)). The Parents "plausibly alleged that the 'real rationale' for the [] restriction is [the State's] disagreement with the underlying . . . perspective' that . . . [the P]arents plan to express." *See, e.g.*, *Pollack v. Reg'l Sch. Unit 75*, 12 F. Supp. 3d 173, 201 (D. Me. 2014) (denying motion to dismiss in context where school district restricted child's use of recording devices in a viewpoint discriminatory fashion allegedly because of the views of the child and his parents).

At any rate, the State Review Process is far from reasonable in at least two ways. First, the State Review Process Rule does not permit all parents to voice their views. *See generally* Part I; *see also, e.g.*, doc. 1 ¶ 137. Participation of parents who oppose a removal decision is not "naturally incompatible" with the Process. *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 690–91 (1992) (O'Connor, J., concurring); *Cambridge Christian Sch.*, 942 F.3d at 1245 (applying Justice O'Connor's *Lee* analysis). Yet the State Review Process excludes both the argument and those making it.

Second, the BOE's implementation of HB1069 undermines its ability to correctly determine whether school materials should be removed or restricted under Florida law. The BOE, because of the implementation of the State Review Process, can only hear from parents who believe certain books qualify as "inappropriate" or otherwise prohibited. The BOE at once (a) purports to make an objective decision, while (b) only hearing from parents with a particular perspective, thus putting a thumb on the scale in favor of the suppression of expressive materials. This skewed regime is not reasonable in light of the purpose of assessing parents' disagreement with school board decisions because it favors determinations only in one direction. Nor would the State Review Process be reasonable even if the district court were right that its purpose is "limited to determining whether the school board complied with the [statutory] requirements."

Doc. 15 at 14. To be reasonable for that purpose, the State Review Process would permit both viewpoints—those who believe a specific book should be removed and those who believe it should be retained—to protect against one-sided application of the law. A second layer of review strictly in favor of removing materials stymies the intended use of the process, as alleged in the Complaint.

II. The Parents have standing to assert their claims.

The district court correctly determined that the Parents have standing to challenge the State Review Process. Doc. 15 at 3–8. To have Article III standing, plaintiffs must assert "(1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). This determination is made under the assumption that the plaintiffs "w[ill] be successful in their claims." *Culverhouse v. Paulson & Co. Inc.*, 813 F.3d 991, 994 (11th Cir. 2016) (citation omitted). And "[i]f at least one plaintiff has standing, the suit may proceed." *Biden v. Nebraska*, 600 U.S. 477, 489 (2023). The Parents easily satisfy this standard.

A. The Parents have suffered a cognizable injury in fact.

An "injury in fact" is one that is "concrete, particularized, and actual or imminent." *Glynn Env't Coal., Inc. v. Sea Island Acquisition, LLC*, 26 F.4th 1235,

1240 (11th Cir. 2022) (citation omitted). This is a "low bar" that a plaintiff satisfies by "pointing to some arguable or colorable federal or constitutional interest." *Polelle v. Fla. Sec'y of State*, 131 F.4th 1201, 1212 (11th Cir. 2025). The injury-in-fact requirement is also applied "most loosely where First Amendment rights are involved[.]" *Harrell v. The Fla. Bar*, 608 F.3d 1241, 1254 (11th Cir. 2010). At the motion-to-dismiss stage, "general factual allegations of injury can suffice, so long as the complaint plausibly and clearly allege[s] a concrete injury[.]" *Glynn Env't Coal.*, 26 F.4th at 1240 (internal quotation marks and citations omitted). There is no question the Parents suffered a concrete injury here.

Start with concreteness. An injury is concrete when it is "real, and not abstract[,]" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016) (internal quotation marks and citations omitted), such that "the plaintiff has a real stake in the litigation[.]" *Polelle*, 131 F.4th at 1209 (citation omitted). An alleged substantive violation of a plaintiff's First Amendment free-speech rights is "no doubt" a concrete injury. *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1119 (11th Cir. 2022); *Moms for Liberty*, 118 F.4th at 1330 ("So long as plaintiffs are chilled from engaging in constitutional activity, they have suffered a discrete harm that meets Article III's injury requirement.") (internal quotation marks and citation omitted); *Polelle*, 131 F.4th at 1209 ("Constitutional injuries are prototypical concrete injuries.").

Here, the Parents' injury—being deprived access, because of their viewpoint, to a state-created process that can redress their complaints on book removals—is a "prototypical concrete injur[y]," *Polelle*, 131 F.4th at 1209, for standing purposes. *See CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1275 (11th Cir. 2006) (noting that constitutional standing "in no way depends on the merits" of the plaintiff's claim (citation omitted)).

The district court rightly found the Parents' "alleged injuries are not merely procedural." Doc. 15 at 5 (internal quotation marks omitted). That the State Review Process has procedural components does not reduce the Parents' injury to a "procedural" harm. Denial of a procedural right supports standing when the government's action "injured [the plaintiff] in some palpable way," *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng'rs*, 781 F.3d 1271, 1280 (11th Cir. 2015); *see Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009) ("[D]eprivation of a procedural right *without some concrete interest* that is affected by the deprivation . . . is insufficient to create Article III standing.") (emphasis added). Ultimately, the Parents have been denied the ability to speak through the State Review Process solely based on their viewpoint. This is a substantive violation of their constitutional rights and a concrete Article III injury. They have a very "real stake in the litigation[.]" *Polelle*, 131 F.4th 1209 (citation omitted).

The Parents' injury is also particularized because it is "individual and personal in nature," as opposed to a "generalized grievance[] that anybody could pursue." *Id.* at 1208 (citations omitted). That an injury is shared by many people does not alone make it generalized. *Glynn Env't Coal.*, 26 F.4th at 1242 ("Federal courts enjoy the power to protect an interest that is shared by the many rather than the few.") (internal quotation marks and citation omitted). Each Parent has children in public school, disagrees with her school districts' removal or restriction of certain books, and has been barred from objecting to those decisions through the State Review Process.[14] The State has denied the Parents the opportunity to exercise a constitutional right through the State Review Process—such injury is particularized to each Parent. *See Polelle*, 131 F.4th at 1209 (plaintiff suffered a particularized injury when he alleged that a law violated his constitutional right to vote and created "disadvantages to himself as an individual" (cleaned up) (citation omitted)).

Finally, the Parents' injury is "imminent, not conjectural or hypothetical[.]" *Speech First*, 32 F.4th at 1119. There is "a sufficient likelihood that [the Parents]

[14] Doc. 1 ¶¶ 72–82, 94–96 (alleging that Ms. Ferrell sought access to the State Review Process, but her request was denied because the process was purportedly "not available to contest a district's decision to remove material."); *id.* ¶¶ 105, 113–15 (alleging that Ms. Tressler and Ms. Tray were barred from the State Review Process simply because they oppose, rather than support, the removal of school materials).

will be affected by the allegedly unlawful conduct in the future." *Sierra v. City of Hallandale Beach, Fla.*, 996 F.3d 1110, 1113 (11th Cir. 2021) (citation omitted).

It is not as if there is "at most a 'perhaps' or 'maybe' chance" that the Parent's alleged harm will occur. *Banks v. Sec'y, Dep't of Health & Hum. Servs.*, 38 F.4th 86, 95 (11th Cir. 2022) (citation omitted). Each Parent has already been denied access to the State Review Process or has stated her intent to file additional requests for access to the State Review Process but for the State making clear that such requests would be rebuffed. Doc. 1 ¶¶ 96, 105, 115. These definite statements engaging in and reflecting a future intent to continue engaging in, proscribed conduct satisfy the imminence requirement. *See, e.g., Dream Defs. v. Governor of the State of Fla.*, 57 F.4th 879, 887 (11th Cir. 2023) (would-be protestors had a "sufficiently imminent" injury when they wished to exercise the right to protest but believed that a state law prevented them from doing so).

B. The Parents' injuries are traceable to the State Review Process and redressable by a favorable decision.

Article III's traceability and redressability requirements "often travel together[.]" *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021). A plaintiff's injury must be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560 (cleaned up) (citation omitted). And an injury is redressable by a favorable judicial decision when "the practical

consequence" of such a decision "would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered." *Utah v. Evans*, 536 U.S. 452, 464 (2002).

The Parents meet these standards. The Parents' injuries are traceable to the State—the entities and persons responsible for creating and enforcing the State Review Process and the State Review Process Rule. Doc. 1 ¶¶ 14–18; *see, e.g., Schultz v. Alabama*, 42 F.4th 1298, 1316 (11th Cir. 2022) (arrestee plaintiff's alleged injuries were fairly traceable to defendant sheriff who had authority to enforce a challenged bail policy). And the Parents' requested relief—enjoining enforcement of the State Review Process altogether—would redress their injuries because it would end the State's viewpoint discrimination by closing the discriminatory forum. *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 632 (2020) (plurality op.) ("When the constitutional violation is unequal treatment, as it is here, a court theoretically can cure that unequal treatment either by extending the benefits or burdens to the exempted class, or by nullifying the benefits or burdens for all."); *see also Barrett*, 872 F.3d at 1230 (rejecting the argument that an injunction against an unconstitutional public-comment policy "disserved the public interest," and stating that "the district court's injunction did not create a new constitutional wrong, as Defendants suggest—it instead remedied a wrong of Defendants' creation.").

The district court properly found that the Parents have Article III standing to assert their claims.

CONCLUSION

This Court should reverse the district court's dismissal of the Parents' Complaint.

Respectfully submitted this 4th day of June, 2025.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)

I certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). This brief contains 11,039 words.

This 4th day of June, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the foregoing document to be filed with the clerk's office by this Court's CM/ECF system, which will serve a true and correct copy of the same upon all counsel of record.

This 4th day of June, 2025.

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