UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

GENDER AND SEXUALITY ALLIANCE; CAMPAIGN FOR SOUTHERN EQUALITY; and SOUTH CAROLINA EQUALITY COALITION, INC., Plaintiffs, v. MOLLY SPEARMAN, in her official capacity as South Carolina State Superintendent of Education, Defendant.	No.2:20-cv-00847-DCN **CONSENT DECREE AND JUDGMENT**

CONSENT DECREE AND JUDGMENT

WHEREAS, on February 26, 2020, Plaintiffs Gender and Sexuality Alliance, Campaign for Southern Equality, and South Carolina Equality Coalition filed a Complaint seeking to enjoin enforcement of S.C. Code § 59-32-30(A)(5) (the "Challenged Provision"), a provision of South Carolina's Comprehensive Health Education Act (the "Act");

WHEREAS, the Challenged Provision states that local public school districts may not include in a program of instruction under the Act any "discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases," S.C. Code § 59-32-30(A)(5);

WHEREAS, the Complaint alleges that the Challenged Provision violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution by subjecting students who are not heterosexual to negative treatment in the classroom, and the Complaint seeks an order declaring that the Challenged Provision is unconstitutional and enjoining its enforcement;

WHEREAS, this action was filed against Defendant Molly Spearman ("Defendant" or

"Superintendent") in her official capacity as the South Carolina State Superintendent of Education, whose responsibilities include exercising supervision over the public school system as the "chief administrative officer of the public education system of the State," S.C. Const. art. XI, § 2, and exercising authority over the State Department of Education, which is required to "assure district compliance" with the statutory requirements for comprehensive health education, as passed by the South Carolina General Assembly, S.C. Code § 59-32-60, including the Challenged Provision;

WHEREAS, the Act provides that comprehensive health education "is planned and carried out with the purpose of maintaining, reinforcing, or enhancing the health, health-related skills, and health attitudes and practices of children and youth that are conductive to their good health and that promote wellness, health maintenance, and disease prevention," S.C. Code § 59-32-10(1);

WHEREAS, the Challenged Provision restricts the discussion of "homosexual relationships" in a program of instruction under the Act, but does not contain any comparable restriction on discussion of heterosexual relationships, S.C. Code § 59-32-30(A)(5);

WHEREAS, the Act provides that "[a]ny teacher violating the provisions of this chapter or who refuses to comply with the curriculum prescribed by the school board as provided by this chapter is subject to dismissal," S.C. Code § 59-32-80;

WHEREAS, the South Carolina Attorney General's Office issued an opinion on February 18, 2020 stating that "a court likely would conclude that § 59-32-30(A)(5) violates the Equal Protection Clause," and concluding that "a court is likely to adopt the analysis that Section 59-32-30(A)(5) overtly discriminates on the basis of sexual orientation" and "would likely determine that such discrimination does not serve a legitimate state interest";

WHEREAS, the parties agree that § 59-32-30(A)(5) is a classification based on sexual orientation that is not rationally related to any legitimate state interest, and thus cannot satisfy any level of judicial review under the Equal Protection Clause;

WHEREAS, the parties have conferred and negotiated in good faith, and to avoid the burden, delays, and costs of litigation, and to efficiently and expeditiously promote the parties' shared goal of ensuring that all public school students in South Carolina are afforded the rights guaranteed by the Equal Protection Clause, the parties consent to the terms of this Consent Decree and Judgment;

WHEREAS, the parties wish to record the interpretation of § 59-32-30(A)(5) set forth in this Consent Decree and Judgment and effect a binding and enforceable resolution of the claims by Plaintiffs against Defendant with respect to § 59-32-30(A)(5);

WHEREAS, the parties freely consent to entry of the Consent Decree and Judgment and acknowledge that it is a final and binding judgment dispositive of all claims raised by Plaintiffs against Defendant with respect to S.C. Code § 59-32-30(A)(5);

WHEREAS, the undersigned representatives of the parties certify that they are authorized to enter into and consent to the terms and conditions of the Consent Decree and Judgment and to execute and legally bind the parties to it;

WHEREAS, after reviewing the terms of this Consent Decree and Judgment, the Court finds them to be fair, adequate, and reasonable, and not illegal, a product of collusion, or against the public interest;

ACCORDINGLY, THE COURT ORDERS, ADJUDGES, and DECREES:

1. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

2. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant resides in the District of South Carolina and the events or omissions giving rise to Plaintiffs' claims took place in the District of South Carolina.

3. The Equal Protection Clause of the Fourteenth Amendment to the U. S. Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Challenged Provision, S.C. Code § 59-32-30(A)(5), is a classification based on sexual orientation that is not rationally related to any legitimate state interest, and thus cannot satisfy any level of judicial review under the Equal Protection Clause.

4. The Superintendent and the Superintendent's officers, assigns, successors, agents, employees, attorneys, and other persons who are acting in concert or in participation with each or any of them, are permanently enjoined from enforcing, applying, or relying on S.C. Code. § 59-32-30(A)(5).

5. The duties and obligations of this Consent Decree and Judgment are placed on the South Carolina Superintendent of Public Education in her official capacity and not in her individual capacity. The Consent Decree and Judgment names Superintendent Molly Spearman, the Superintendent of Schools when this action was commenced. If and when Ms. Spearman is no longer Superintendent of Schools, the duties and obligations of this Consent Decree and Judgment shall apply to any successor to the position of the South Carolina Superintendent of Public Education as long as the current version of S.C. Code § 59-32-30(A)(5) remains in the South Carolina Code.

6. Defendant Superintendent shall ensure, to the fullest extent of her authority under applicable law that instruction under the Comprehensive Health Education Act be designed and implemented without regard to S.C. Code § 59-32-30(A)(5). This includes, at a minimum, that

all future policies (including but not limited to regulations, practices, guidelines, curriculum standards, accreditation materials, and training materials) of Defendant, her agents and employees, and the South Carolina Department of Education, shall be consistent with this Consent Decree and Judgment.

7. Within 60 days of entry of this Consent Decree and Judgment, the Superintendent shall issue a Superintendent Memorandum (Memorandum) to all members of the State Board of Education and the superintendents of every public school district in South Carolina. The Memorandum will, at the minimum: (1) include a copy of this Consent Decree; (2) state that S.C. Code § 59-32-30(A)(5) may no longer be enforced, applied, or relied on by any person or entity, including but not limited to local school districts, local school district boards, and public school administrators and teachers; and (3) direct that instruction under the Comprehensive Health Education Act be designed and implemented without regard to S.C. Code § 59-32-30(A)(5).

8. Within 60 days of the entry of this Consent Decree and Judgment, the Superintendent shall also provide notice to the public on the websites of the State Board of Education and State Department of Education that will, at a minimum: (1) provide that S.C. Code § 59-32-30(A)(5) may no longer be enforced, applied, or relied on by any person or entity, including but not limited to local school districts, local school district boards, and public school administrators and teachers; (2) provide that instruction under the Comprehensive Health Education Act must be designed and implemented without regard to S.C. Code § 59-32-30(A)(5); and (3) link to a copy of this Consent Decree and Judgment. This notice will remain on the State Board of Education's and State Department of Education's website so long as the current version of S.C. Code § 59-32-30(A)(5) remains in the South Carolina Code.

9. The parties shall each bear their own attorneys' fees, expenses, and costs with

respect to this action.

10. The Consent Decree and Judgment shall become final for all purposes on entry of judgment, and the parties waive any right to appeal or to seek review of this judgment by a higher court. The parties agree to defend the Consent Decree and Judgment against any future challenge to it.

11. If any provision of this Consent Decree is later determined by any court to be unenforceable, the other terms of this Consent Decree shall nonetheless remain in full force and effect.

12. The Court enters final judgment in this action. The Court retains jurisdiction over the parties to enforce, construe, and apply the terms of this Consent Decree and Judgment and decide any dispute that may arise under it.

IT IS SO ORDERED.

David C. Norton
United States District Judge

March 11, 2020
Charleston, South Carolina

APPROVED AS TO FORM AND CONTENT:

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