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Teacher, ACLU file challenge to new K-3 ban on 'human sexuality' education

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A new Indiana law that critics say will effectively ban discussions about LGBTQ+ people in schools under the guise of blocking conversations around “human sexuality” now faces a legal challenge.

The American Civil Liberties Union (ACLU) of Indiana filed a lawsuit in the U.S. District Court for the Southern District of Indiana Friday on behalf of a public school teacher in Indianapolis who says the law infringes her constitutional rights.

Indiana Gov. Eric Holcomb last month signed into law House Bill 1608, which requires Indiana schools to notify parents when a student asks for name or pronoun changes and prohibits human sexuality instruction to the youngest Hoosier students.

Kayla Smiley, an elementary school teacher in the Indianapolis Public School system, claims in the court challenge that the law poses First Amendment violations for teachers by taking away her “ability to speak as a citizen on matters of public interest and to speak away from work on matters unrelated to her employment and addressed to a public audience.”

The complaint additionally argues that the law is overly broad, given that neither “instruction” nor “human sexuality” is defined.

Smiley emphasized that “instruction” and interactions with students happen both inside and outside the classroom — making it hard to know when a line has been crossed.

“The key terms of ‘instruction’ and ‘human sexuality’ are impossibly vague and lack any ascertainable standards for determining whether or not the law has been violated,” the lawsuit reads.

Teacher says law is ‘impossibly vague’

Smiley said in the lawsuit that she is unable to determine how to conform her behavior to the law so she does not risk losing her license.

According to the complaint, the teacher has a classroom library in her classroom that contains “age-appropriate books across a diverse spectrum of subjects and concerns, including LGBTQ+ issues, such as biographies of Harvey Milk, and Elton John.” She also has in her student classroom library the book “And Tango Make Three,” which is based on the true story of two male penguins who raise a chick together.

The lawsuit alleges that teachers have “no idea” about whether or not such books qualify as “instruction . . . on human sexuality” or whether or not they can discuss any topics regarding same-sex relationships.

Smiley also carries a water bottle in class, in hallways, and before and after school, which has on it stickers and pins supporting LGBTQ+ rights, including one that reads “Trans rights are human rights.” The bottle displays rainbow flags that are widely recognized as the symbol of LGBTQ+ pride, too.

“She is unsure if she is still allowed to engage in this display outside of her class or what to do if the display prompts a discussion in her class,” the lawsuit said about the water bottle.

Smiley is seeking an injunction to prevent the law from taking effect July 1.

“HEA 1608 is written so broadly that it would be next to impossible for teachers to determine what they can and cannot say to students,” said Ken Falk, ACLU of Indiana legal director, in a written statement on Friday. “In addition, teachers have a First Amendment right to express themselves as private citizens outside of the classroom, including in the school’s hallways, playground, or before and after school, but the vagueness of this law would certainly have a chilling effect on those rights.”

How the controversial law came to be

The law, authored by Rep. Michelle Davis, R-Whiteland, is reminiscent of Florida’s “Don’t Say Gay” law that has been described by some as one of the most “hateful” pieces of legislation in the country.

Davis and other GOP lawmakers have maintained the measure intends to “empower Hoosier parents by reinforcing that they’re in the driver’s seat when it comes to introducing sensitive topics to their children.” She said previously that the bill was a response to “numerous concerns of parents in her district.

Supporters further say parents have the “right” and “responsibility” to control what their children learn — and are called — when at school.

But critics of the law have argued that it's part of a nationwide wave of legislation "singling out LGBTQ+ people and their families." More specifically, they say that the new law could put transgender children at risk of harm if they're outed to unsupportive or abusive parents.

"This session, legislators were determined to target LGBTQ community members and to censor conversation about the LGBTQ community in schools, HEA 1608 was no exception," said Katie Blair, ACLU of Indiana advocacy director. "This bill, like others across the country, was modeled after Florida's infamous 'Don't Say Gay' law. LGBTQ students exist at all ages and in all grade levels and their stories belong in Indiana schools."

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