

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GSA NETWORK, STUDENTS	§	
ENGAGED IN ADVANDING	§	
TEXAS, REBECCA ROE , by and	§	
through her next friend, RUTH ROE ,	§	
and POLLY POE ,	§	
<i>Plaintiffs</i> ,	§	
	§	
	§	Civil Action No. 4:25-cv-04090
v.	§	
	§	
HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT, KATY	§	
INDEPENDENT SCHOOL	§	
DISTRICT, and PLANO	§	
INDEPENDENT SCHOOL	§	
DISTRICT ,	§	
<i>Defendants</i> .	§	

**DEFENDANT/INTERVENOR THE STATE OF TEXAS’S REPLY IN SUPPORT
OF ITS MOTION TO DISMISS THE STATE OF TEXAS’S MOTION TO
DISMISS**

Defendant/Intervenor, The State of Texas (“Defendant”), respectfully files this Reply in Support of the State’s Motion to Dismiss Plaintiffs’ First Amended Complaint, Dkt. 128. As most of the issues before the Court have been extensively briefed, the State files this Reply to primarily address the Eleventh Circuit’s opinion in *Pernell v. Fla. Bd. of Gov’s of the State Univ.*, No. 22-13992, 2026 WL 1955783 (11th Cir. July 7, 2026) pursuant to the Court’s instruction, Dkt. 125, as well as other points raised in Plaintiffs’ Response, Dkt. 128.

ARGUMENT IN REPLY

As the State’s Motion to Dismiss details, Plaintiffs’ facial challenge to four provisions of SB 12, the Parental Bill of Rights fails. Tex. S.B. 12, 89th Leg., R. S. (2025). The State of Texas intervened to defend the constitutionality of SB 12 after the school district defendants declined to do so, and the State’s Motion to Dismiss should be granted.

First, Plaintiffs allege the Court’s prior ruling settled standing and that the State cannot reopen it; however, standing is a component of subject-matter jurisdiction the Court has a continuing duty to confirm. *Second*, the challenged provisions define what Texas public and charter schools teach and direct on-the-job speech of employees who deliver that instruction. That is government speech, which the First Amendment does not reach. *Third*, should the Court determine the text of SB 12 reaches beyond the public-school setting, the Court should apply a limiting construction to SB 12. *Finally*, should the Court nonetheless find any provision invalid, it should sever that provision and preserve the remainder of SB 12.

I. Plaintiffs Do Not Have Standing.

Notwithstanding Plaintiffs’ devotion of fourteen pages of their response to standing, Plaintiffs’ central argument is that the Court’s prior ruling settled the question of standing. However, Plaintiffs’ argument misapprehends the nature of standing. Standing is an essential element of the Article III case-or-controversy requirement, and the requirement that jurisdiction be established as a threshold matter. *Steel Co. v. Citizens for a Better Env’t*,

523 U.S. 83, 94 (1998). Indeed, a federal court must satisfy itself of jurisdiction even when the parties are prepared to concede it. *Id.* at 95.

The law-of-the-case doctrine does not displace that duty as the Court’s obligation to assure itself of jurisdiction persists throughout the litigation. *Id.* Moreover, the Court’s prior ruling arose in a much different posture—the Court dismissed the Commissioner for lack of standing, the school districts declined to defend SB 12, and the Court has yet to reach the merits of Plaintiffs’ claims. *GSA Network v. Morath*, 821 F.Supp.3d 753, 775 (S.D. Tex. Feb. 20, 2026).

A facial, pre-enforcement standing inquiry requires an intention to engage in conduct arguably affected with a constitutional interest. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014). As shown in Part III, *infra*, the challenged provisions regulate the State’s own curriculum and the curricular speech of its employees, and that such activity lacks the constitutional character the first element demands. This defect is independent of the law-of-the-case doctrine and coextensive with the merits. Because the first element requires conduct arguably affected with a constitutional interest, *Turtle Island Foods, S.P.C. v. Strain*, 65 F.4th 211, 216 (5th Cir. 2023), the Court’s conclusion that SB 12 reaches only government speech simultaneously negates that element and defeats standing.

II. The Challenged Provisions are Government Speech.

The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467 (2009). When the government speaks, its expression is exempt from First Amendment

scrutiny. *Id.* The Fifth Circuit applied the principle in *Chiras v. Miller*, concluding “the selection of textbooks by the state for use in public school classrooms is government speech, and is not subject to the forum analysis of *Hazelwood* or the viewpoint neutrality requirement.” *Chiras v. Miller*, 432 F.3d 606, 620 (5th Cir. 2005). When the State devises the curriculum and selects the materials with which the teachers will teach, “it is the state speaking, and not the textbook author.” *Id.* at 614. That remains true even if the State enlists private speakers to convey its message. *Id.* at 613. *Chiras* controls here. SB 12 defines the instruction that public schools may provide about sexual orientation and gender identity—a curricular choice at the core of the State’s authority.

And, *Shurtleff* does not control. In *Shurtleff*, the Court reviewed the history, public perception, and the extent of government control as framing a holistic inquiry into whether the government has adopted private expression as its own when private parties seek access to a government platform when the City of Boston had opened to private groups the raising of flags of their choosing. *See Shurtleff v. City of Boston, Mass.*, 596 U.S. 243, 244 (2022). Such forum-access analysis remains inapplicable when the State is prescribing its own curriculum rather than opening a platform to outside speakers. *Chiras*, 432 F.3d at 620.

III. Curricular Speech is Unprotected Under *Garcetti*.

When public employees make statements pursuant to their official duties, “they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). And the Supreme Court confirmed that speech made pursuant to official duties

is, for constitutional purposes, the government’s own speech, and only speech “as a citizen addressing a matter of public concern” proceeds to a balancing inquiry. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 527 (2022). While *Garcetti* reserved whether its analysis applied to speech related to scholarship or teaching, 547 U.S. at 425, the Fifth Circuit has resolved that questions with respect to the K-12 classroom.

“[T]he first amendment has never required school districts to abdicate control over public school curricula to the unfettered discretion of individual teachers,” and teachers “are not free, under the first amendment, to arrogate control of curricula.” *Kirkland v. Northside Indep. Sch. Dist.*, 890 F.2d 794, 795, 802 (5th Cir. 1989). Schools have “a legitimate pedagogical interest in shaping their own secondary school curricula.” *Id.* at 795. The Supreme Court’s school-speech cases accord: Schools “need not tolerate student speech that is inconsistent with its ‘basic educational mission,’ even though the government could not censor similar speech outside the school.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988).

More recently, in *Pernell*, the Court considered a provision of Florida’s Individual Freedom Act, Fla. Stat. § 1000.05(4)(a), which prohibited training and instruction relating to eight concepts relating to race and sex. *Pernell v. Fla. Bd. of Gov’s*, 181 F.4th 1135, 1145 (11th Cir. 2026). However, despite the statute’s applicability to all public schools, “the plaintiffs challenge[d] only its application to postsecondary schools.” *Id.*, at 1181, n.1. And that is because “[t]he constitutional rules applicable in higher education do not necessarily apply in primary and secondary schools, where students generally do not choose whether

or where they will attend school.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 724-25 (2007).

Pernell further recognized that “‘States historically have been sovereign’ in the field of education, the ‘traditional role in the formulation and execution of educational policy’ belongs to them—not us.” 181 F.4th at 1158 (quoting *United States v. Lopez*, 514 U.S. 549, 564 (1995); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 208 n.30 (1982)). “That leaves federal courts ‘reluctan[t] to trench on the prerogatives of state and local educational institutions.’” *Id.* (citing *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 226 (1985)). Such deference, especially concerning primary and secondary schools, certainly makes sense when considering the “relative independence” of universities and “the State’s near plenary authority over primary and secondary education.” *Id.*

IV. Other Circuits further Support the State’s Government Speech Analysis.

“A variety of factors are at play when considering whether the government is speaking, reflecting the Supreme Court’s guidance that the inquiry is a ‘holistic’ one, neither ‘mechanical’ nor a ‘rote application of rigid factors, but ‘driven by a case’s context.’” *Id.* at 1156 (citing *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022)). Relevant considerations include “whether the government maintains control over the speech,” “whether the type of speech has traditionally communicated government messages,” and “whether the public would reasonably believe that the government has endorsed the speech.” *Id.* The Court, again recognizing the differences between public primary and secondary education to postsecondary education, provided examples of the State

controlling speech at public non-secondary schools. *Id.* (referencing *Cambridge Chr. Sch., Inc. v. Fla. High Sch. Athletic Ass’n*, 155 F.4th 1266, 1293-94 (11th Cir. 2024) and *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 561 (2005)).

Additional circuit courts further support the State’s position that SB 12 concerns only government speech. The Seventh Circuit determined teachers “hire out” their speech as a commodity and must provide “the service for which employers are willing to pay.” *Mayer v. Monroe Cty. Cmty. Sch. Corp.*, 474 F.3d 477 (7th Cir. 2007). Relying on *Mayer*, the Sixth Circuit held that, “[e]ven to the extent academic freedom, as a constitutional rule, could *somehow* apply to primary and secondary schools, that does not insulate a teacher’s curricular and pedagogical choices from the school board’s oversight, as opposed to the teacher’s right to speak and write publicly about academic issues outside the classroom.” *Evans-Marshall v. Bd. of Educ. of the Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332 (6th Cir. 2010). The Ninth Circuit then went even further explaining “teachers do not cease acting as teachers each time . . . the conversation moves beyond the narrow topic of curricular instruction” and concluding, “because of the position of trust and authority they hold and the impressionable young minds with which they interact, teachers *necessarily* act as teachers for purposes of a *Pickering* inquiry when at school or a school function, in the general presence of students, in a capacity one might reasonably view as official.” *Johnson v. Poway Uni. Sch. Dist.*, 658 F.3d 954, 967-68 (9th Cir. 2011).

It is well-established that States have the right to control the curriculum of its public schools, which is the precise subject-matter of SB 12.

V. The Club Restriction is Content Neutral.

The club restriction presents a narrower question than Plaintiffs suggest. It does not prohibit students from associating, meeting or speaking; it defines the basis on which the State will lend its sponsorship and resources to a student club and applies to all on the same basis.

The principal inquiry into content neutrality is whether the government regulated speech because it disagreed with the message conveyed, and the government's purpose is the controlling consideration. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). A regulation is content-neutral when its justification does not depend on the content of the regulated speech. *Id.* Plaintiffs contend the club restriction is “obvious content discrimination” under *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015); Resp. at 34. Yet, *Reed* is distinguishable.

Reed concerned a municipal sign code that regulated private outdoor speech and held that a law regulating private expression is content-based when it targets speech because of its topic or message. *Reed*, 576 U.S. at 155, 159. The club restriction does not regulate private expression at all as it only defines the basis on which the State extends its own sponsorship and does not turn on approval or disapproval of any viewpoint a club might express.

Plaintiffs also argue that *Healy v. James* precludes the State's arguments regarding the club restriction and the clubs' ability to meet off-campus cannot cure a viewpoint-based exclusion. 408 U.S. 169, 183 (1972); Resp. at 55. Yet, the Supreme Court itself distinguished *Healy* on this exact point: *Healy* involved a school that “singled out organizations for

disfavored treatment because of their points of view,” whereas an even-handed condition “draws no distinction between groups based on their message or perspective.” *Christian Legal Soc. Ch. of the Univ. of Ca. v. Martinez*, 561 U.S. 661, 694 (2010). An “all-comers condition on access . . . is textbook viewpoint neutral.” *Id.* at 694-95. So too here.

VI. No Heightened Scrutiny is Triggered.

Plaintiffs’ recurring challenge is that each provision is viewpoint-discriminatory and subject to strict scrutiny the State never attempted to justify. However, Plaintiffs’ argument assumes the answer to the antecedent question. Where the State engages in government speech, forum analysis and the viewpoint-neutrality requirement are in apposite, and no scrutiny is triggered at all. *Chiras*, 432 F.3d at 615. *Even if* a limited-public forum analysis was applicable, the governing standard is reasonableness and viewpoint neutrality—not strict scrutiny. *Martinez*, 561 U.S. at 679.

VII. SB 12 is Solely Directed at Public Schools.

SB 12’s legitimate sweep predominates as it principally governs the curriculum and conduct of employees and third parties at or on behalf of schools which have historically been determined to be constitutional. However, should the Court accept Plaintiffs’ allegations that the text of SB 12 “extends far beyond school employees’ official duties,” Resp. at 30, the Court should impose a limiting construction confining the statute to the public-school setting. A court may impose a limiting construction where a statute is readily susceptible to one. *United States v. Stevens*, 559 U.S. 460, 481 (2010). From its text and

structure, SB 12 is undoubtedly constitutional in the public-school setting, and it is readily susceptible to such limiting construction.

* * * *

Plaintiffs must show that SB 12's unconstitutional applications substantially outweigh its legitimate ones under *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024), which they cannot do given the State's predominant and constitutional application to curriculum and school-employee conduct.

PRAYER

The State of Texas respectfully requests the Court grant its Motion to Dismiss Plaintiffs' First Amended Complaint. Alternatively, should the Court find any challenged provision of SB 12 to be facially unconstitutional, the State requests the Court sever that provision and preserve all remaining provisions of the statute.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via Court's CM/ECF system on this August 31, 2026, on all counsel of record.

/s/ William H. Farrell

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CERTIFICATE OF WORD COUNT

The undersigned counsel hereby certifies that the total number of words in The State of Texas's Reply in Support of the State's Motion to Dismiss, exclusive of areas not considered within the word count, is 2,192 words as counted by Microsoft Word.

/s/ William H. Farrell

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