SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT
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Florida House Passes House Bill 1 on Social Media Use for Minors

On January 24, 2024, the Florida House passed House Bill (HB) 1, titled "Social Media Use for Minors." Among other things, the bill would require social media platforms to prohibit minors under the age of 16 from creating accounts. It would also require social media platforms to delete any accounts which are "reasonably known" to be held by a minor under the age of 16. The bill would require social media platforms to allow parents or guardians of minors under the age of 16 to request that the minors' accounts be terminated. The bill also puts regulations on the platforms' data retention and use of certain information. The bill would require social media platforms to disclose and conspicuously display the platform's policies and other information, such as addictive design use, manipulated images, and the platform's use of data and information.

The bill tasks the Department of Legal Affairs as the enforcing authority. The Department would be permitted to bring an action against a platform for unfair or deceptive acts or practice and collect civil penalties.

Other states have passed similar legislation but have faced legal challenges, primarily First Amendment challenges. Others cite concerns for parental decision-making rights.

The bill would need to be passed by the Senate before making its way to the Governor's desk.

You can find the bill here.

Supreme Court Denies Writ of Certiorari to Resolve Circuit Split Over Counselor's First Amendment Rights

On December 11, 2023, the United States Supreme Court denied a petition for a writ of certiorari in a case pertaining to the State of Washington's ability to censor counselors working with minors dealing with gender dysmorphia/gender transitioning. Justice Thomas filed a dissenting opinion, noting that the question has divided the Courts of Appeals and strikes at the heart of the First Amendment.

In 2018, the State of Washington enacted Senate Bill (SB) 5722, which prohibits licensed healthcare providers from performing conversion therapy on a patient under the age of eighteen. After Washington enacted SB 5722, the petitioner, a licensed marriage and family counselor, filed suit arguing that SB 5722 violates the First Amendment by restricting his speech based on its viewpoint and content. The Ninth Circuit found that SB 5722 does not regulate speech at all because speech-based therapy is unprotected by the First Amendment and traditionally regulated

by a governance of those who practice within state borders. The Ninth Circuit's opinion created a circuit split.

Two years earlier, the Eleventh Circuit concluded that similar Florida municipal ordinances *did* regulate speech. *Otto v. Boca Raton*, 981 F. 3d 854, 859, 865 (2020). In *Otto*, licensed marriage and family therapists brought suit challenging city and county ordinances which prohibited therapy to minors with the goal of changing their gender identity. The Eleventh Circuit held that the challenged ordinances violated the First Amendment because they were content-based and viewpoint-based regulations of speech that could not survive strict scrutiny.

The denial, with Judge Thomas' dissenting opinion, can be read here.

Florida's Third District Court of Appeal Rules on Applicability of Sovereign Immunity to Public University Employee

The Third District Court of Appeal (DCA) for the State of Florida issued an opinion discussing sovereign immunity of a public university employee. The case involved contracts between the Florida Department of Transportation (FDOT) and Florida International University (FIU). Under the contract, FIU agreed to evaluate the performance of traffic devices using an engineering testing facility on FIU's campus. After the FIU testing team reported unfavorable results to the FDOT, Signal Safe, the manufacturer of the traffic devices, filed suit against FIU and co-principal investigator Dr. Irwin.

Signal Safe claimed that Dr. Irwin committed defamatory torts by publishing the findings in a public presentation to the FDOT. Further, Signal Safe alleged Dr. Irwin exceeded the scope of his employment by "opining as to the efficacy of the traffic devices and engaging in unlicensed engineering that extended beyond the bounds of the teaching exception codified in section 471.0035, Florida Statutes (2022)."

Dr. Irwin moved to dismiss on sovereign immunity grounds. The trial court denied Dr. Irwin's motion and the instant appeal ensued.

In coming to its decision, the Court emphasized that the effect of Florida's limited waiver of sovereign immunity, section 768.28, *Florida Statutes*, is to insulate state employees from personal liability for torts committed within the scope of employment, absent the required scienter findings, while simultaneously allowing recourse against the State. Under the express terms of the contract, Dr. Irwin was selected to serve as a co-principal investigator. In that capacity, he was obligated to perform testing and report his results to the FDOT. Moreover, the Court found that Dr. Irwin's actions were both contemplated by and purposed to serve the employer. The court concluded that as an employee of a public university, Dr. Irwin enjoyed broad protection for statements made in reports, papers, and presentations and that the rationale extend equally to defamatory torts. Thus, the Court found the claims against Dr. Irwin were barred by sovereign immunity.

Find the opinion here.

Northern District of Florida Evaluates Constitutional Claims Based on School Library Book Removals and Restrictions

Parents, authors, a publisher, and a literary organization brought an action against a county school board, alleging violations of First and Fourteenth Amendments, arising from the board's decision to remove or restrict certain books from its school libraries. The case was brought before the United States District Court for the Northern District of Florida on a motion to dismiss. The claims include: (1) a viewpoint discrimination claim under the First Amendment, (2) a right to receive information claim under the First Amendment, and (3) an equal protection claim under the Fourteenth Amendment.

The court found that the parent Plaintiffs had adequately pled standing as they had alleged their children intended to check out specific removed and restricted books and are unable to do so. The court also noted the author Plaintiffs, publisher, and literary organization had adequately pled standing or associational standing because the removal or restriction of the specific books deprived them of their target audience and a previously available forum.

The court also found the claims were not unripe or moot under section 1006.28(2)(a)(6), Florida Statutes, noting that the special magistrate process created by the statute is only available to parents when a local school board denies an objection to a book being "made available" in a school library—not for challenging the board's decision granting an objection and removing a book from the library.

Addressing the argument that the decisions regarding the content of school libraries is governmental speech, and thus, not subject to constitutional restraints, the court failed to find that any reasonable person would view the contents of the school library as the government's endorsement of the views expressed in the books on the shelves, particularly where the traditional purpose of a library is to provide information on a broad range of subjects and viewpoints.

The court noted that the applicable legal standard for evaluating First Amendment claims in the school library context is not entirely clear, however, it is clear that: (1) school officials cannot remove books solely because they disagree with the views expressed in the books, and (2) school officials can make content-based removal decisions based on "legitimate pedagogical concerns including things like pornographic or sexual content, vulgar or offensive language, gross factual inaccuracies, and educational unsuitability for certain grade levels." Based on the allegations, the court found the Plaintiffs stated a claim under the First Amendment.

The Plaintiffs' equal protection claim failed to survive the motion to dismiss, with the court reasoning that the Plaintiffs did not and could not allege that the policies pursuant to which the board made its removal and restriction decisions were discriminatory, as those policies were facially neutral and based on legitimate pedagogical concerns. To the extent the claim was based on a disparate impact, the complaint improperly combines two distinct protected classes (non-whites and LGBTQ individuals) and did not identify the protected classes of the Plaintiffs.

The order can be found here.

University of Florida and University of Central Florida Recognized for Top Online Bachelor's Programs

The U.S. News and World Report released its list of the 2024 Best Online Bachelor's Programs in the nation. The list notes that the highly ranked programs have "strong traditional academic foundations based on student-instructor access, graduation rates and instructor credentials" and "excel at educating distance learners while offering robust career and financial support." The University of Florida ranked #2 on the list, while also being recognized as the #1 best online program for veterans. The University of Central Florida tied for #7 and has now ranked in the top 20 Best Online Programs for the past 7 years.

The rankings can be found here.

Firm News

Terry Harmon and Rob Sniffen co-presented "Transgender Youth and School Facilities" in Pheonix, Arizona at the 2024 Civil Rights and Governmental Liability Seminar sponsored by Defense Research Institute. The Seminar included speakers and attendees from around the country from the legal, educational and insurance industries.

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