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REPLY TO FLORIDA

February 13, 2024

This letter contains references to profanity and sexual content found in books available in DCPS schools which are in violation of Florida law. Care should be taken that minors are not able to view this letter.

Via Email Only

willied@duvalschools.org

The Honorable Darryl Willie
Duval County School Board
1701 Prudential Drive
6th Floor | Room 642
Jacksonville, FL 32207

Re: Lori Crunden/Public Comment - Denial of Protected Speech November 7, 2023

Dear Chairman Willie:

Our firm represents Lori Crunden in connection with her attempt to participate in school board meetings led by the Duval County Public Schools. Mrs. Crunden attended the November 7, 2023, school board meeting and attempted to make public comments by reading from *Identical* by Ellen Hopkins, a book available to minor students within the Duval County Public Schools. Mrs. Crunden intended to demonstrate the inappropriate material contained in the book along with a request that the book be removed from student access at each of your schools. The Board interrupted Mrs. Crunden's public comments when she began reading a section of the book describing sexually explicit acts between a father and his minor daughter. The Board silenced Mrs. Crunden's objections to specific pornographic and profane excerpts in this book despite the fact that it is made available to minor children by DCPS and despite Constitutional and state laws authorizing Mrs. Crunden's speech and conduct.

By way of background, Liberty Counsel is a non-profit law firm which has had significant success in litigation, particularly in 2020 and 2021, helping free houses of worship in numerous

states, including Kentucky, Illinois, Maine, Virginia, California, and Colorado from discriminatory COVID-19 restrictions. Several of these cases reached the United States Supreme Court and resulted in injunctions prohibiting discriminatory COVID-19 restrictions on religious worship. For example, our case against California and Gavin Newsom resulted in a permanent injunction (*see Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 889 (2021)), and a subsequent final judgment requiring them to pay Liberty Counsel \$1,350,000 in attorney's fees and costs. *See Harvest Rock Church, Inc. v. Newsom*, No. 2:20-cv-06414, C.D. Cal. (May 14, 2021).

Because we are a legal nonprofit focused on religious freedom, we take cases for clients whose rights have been infringed on a *pro bono* basis. You may have heard about our 9-0 unanimous Supreme Court victory against the City of Boston in 2022, in connection with its religious discrimination against Christians. *See Shurtleff v. City of Boston*, 596 U.S. 243 (2022). (*See, e.g.*, Liptak, Liptak, *Supreme Court Rules Against Boston in Case on Christian Flag*, NEW YORK TIMES (May 2, 2022) <https://www.nytimes.com/2022/05/02/us/supreme-court-boston-flag-free-speech.html>). The litigation in *Shurtleff* spanned five years before we obtained the ultimate victory before the United States Supreme Court. Ultimately, the City of Boston paid Liberty Counsel more than \$2,100,000 in attorney's fees. At the outset of that controversy in 2017, we sent the City of Boston a pre-suit letter like the instant letter. Had Boston considered the opportunity to resolve the matter in 2017, it could have avoided paying such a significant fee award to Liberty Counsel.

Liberty Counsel maintains affiliations with not for profits across the country for the purpose of maximizing religious freedom. Here, we are particularly thankful to the Duval Chapter of Citizens Defending Freedom for bringing this injustice to our attention.

Mrs. Crunden's activism on behalf of children did not begin at this meeting. She has been advocating for DCPS to fulfill its obligation to provide appropriate material to school-aged children for some time. She began her testimony by noting that district teachers were posting criticisms on social media about attempts to remove books in schools. Mrs. Crunden then wondered aloud as to whether any of the teachers or the Board had read from *Identical* as she began quoting from page 150 (before she was cut off by the Board Chair with over 30 seconds remaining within her 2 minute allotted time) (*See* November 7, 2023, DCPS board meeting @ 1:24:14, <https://vimeo.com/user189120931>):

I love you so much, my little flower. Daddy needs something from my girl, my sweet rose. Will you give it to me? I wanted to be his little flower, would have given my Daddy anything. What did he want from Kaeleigh? She laid her head on his chest. "What?" I want you to see something, something that proves how much I love you. This is only for you, Kaeleigh girl. He lifted her gently, sat her down on the bed beside him. Then he opened the snaps on the fly of his flannel pajamas. It stood up, stiff as a stalagmite. See how much Daddy loves you? Show me you love me, too. Touch it. He closed her hand around it. I know it sounds bad, but I wanted to touch it too.

According to *The Washington Post*, most parents object at school board meetings about sexual content in books. Natanson, Hannah, *Objection to Sexual, LGBTQ Content Propels Spike in Book Challenges*, WASHINGTON POST (June 9, 2023)

<https://www.washingtonpost.com/education/2023/05/23/lgbtq-book-ban-challengers/> (last accessed on Dec. 6, 2023). Many claim that the purported "book bans" are directed against individuals who identify as LGBT. Yet, as evidenced in *The Washington Post* article, the data demonstrates the parents challenging the material are focused on inappropriate sexual material rather than singling out LGBT content alone.

There are an alarming number of progressives and advocacy groups *purporting* to champion the First Amendment under the guise of shutting down book bans. These groups oppose rational legislation limiting minor children's access to pornographic, sexually explicit, and/or obscene material.

Thursday, six Democrats from the Sunshine State led by Reps. Sheila Cherfilus-McCormick and Debbie Wasserman Schultz delivered a pearl-clutching screed built upon the readily debunked claims about materials deemed inappropriate for children in schools.

Haggerty, Kevin, *Florida Dems' letter to DeSantis Demanding End to Hoax Book Ban Draws Mockery*, BPR BUSINESS & POLITICS (Dec. 9, 2023), <https://www.bizpacreview.com/2023/12/09/florida-dems-letter-to-desantis-demanding-end-to-hoax-book-ban-draws-mockery-1418673/> (last accessed December 19, 2023). The politicians stressed, "***we strongly urge you to end this campaign of censorship in schools and substantively engage with educators, librarians, and parents to protect our students' rights to an inclusive, comprehensive education.***" (Emphasis in original). *Id.*¹

'We write to share our grave concern regarding the sharp uptick of banned and challenged books across the state of Florida, and the alarming hostility of your administration toward schools, libraries and the professionals who operate them for our constituents,' they breathlessly began. 'These combined actions, if left unchecked, will foment a noxious climate of repression and marginalization that degrades learning, understanding and undermines all Floridians' basic freedoms.'

Id.

Recently, a Moms For Liberty representative had the opportunity to correct Joy Reid about the "book banning" misnomer. Donaldson, Chris, "*Moms For Liberty co-founder dismantles Joy Reid on her own show*" (Jan. 21, 2024), <https://www.bizpacreview.com/2024/01/21/moms-for-liberty-co-founder-dismantles-joy-reid-on-her-own-show-1429706/> (last accessed Jan. 24, 2024).

No one is banning books," Justice said in one of the many heated exchanges during the interview. "Write the book, print the book, publish the book put the book in the public library, sell the book, right? We're talking about a public school library.

¹ "Joining Cherfilus-McCormick and Wasserman Schultz in signing the letter [to continue offering minor children pornography in schools] were Reps. Kathy Castor, Lois Frankel, Maxwell Frost and Darren Soto." *Id.*

I'm so sorry, excuse me, excuse me, excuse me! the defensive host shouted. I have seen tapes of what Moms For Liberty does, and you all go into school board meetings and you read graphic stuff.

Joy, this is a disingenuous conversation," Justice shot back. America used to understand that there's a thing called age-appropriate content.

Bear in mind, these staunch protectors of "freedom" are fighting for continued access to pornography and sexually explicit material for minor children who, apart from the school's or politicians' involvement, could not obtain this material legally. One need only check the comments the article engendered to conclude that the politicians' ruse fooled no one:

1. "Man Florida can't even do book bans right I can't believe you can still buy these books in stores or get them at a Pink concert," commented Helena Handbasket. *Id.*
2. "There are no book bans. Any book that has been deemed inappropriate for certain age groups, may be purchased by anybody that desires to read said book with their own money and not the taxpayers'," opined Robert K Craig. *Id.*
3. "This is not true. Florida has banned no books. Schools have made decisions of whether books are appropriate at certain ages. That is not a ban. It's responsible education," noted Steph Patterson. *Id.*
4. "Florida Democrats come out for showing porn to school children," offered Allen Haggerty *Id.*
5. "There are no banned books. School libraries aren't required to carry every book ever written. If you can still buy the book at a bookstore or online, it's not banned," explained John Danknich. *Id.*
6. Finally, "Cicero66" delivered the best editorial:

Funny thing happened when I was in elementary and junior high schools: the city public library had designated a section for elementary kids, another for 'young adults,' a third for adults, and the boundaries were firmly enforced. The community didn't picket the library; the parents didn't have hysterics; the youth were thrilled when they became old enough to be allowed in the next higher level. While I was still in school, my mother chose mysteries, biographies, and Zane Grey's books for us from the adult section. She checked them out and made certain that we returned them. Without television in our home, we were voracious readers, and Mama "fed" us well with those many books. Our reading comprehension grew sky high, and we were still innocent school children. I would wish such experiences for today's children; it was a wonderful childhood. *Id.*

The pearl-clutchers' lamentation over the alleged erosion of free speech has been used by certain mainstream media outlets to foist a charade on the American public which, fortunately, has emboldened parents to protect their children. It is clear which groups aim to harm children with pornography. Five years ago, there would have been near unanimous agreement on banning pornography from public schools educating minor children. And, to set the record straight, Gov. Ron DeSantis did not create the movement to protect minor children from pornography in public schools; he merely provided a framework for parents to express concerns about access to sexually explicit material in schools. It is also fair to demand that the schools fulfill their *in loco parentis* legal duty to restore common sense boundaries to protect children from harm.

I. DCPS Violated Mrs. Crunden's First Amendment Rights By Not Providing Her With The Same Allotted Amount of Time As Other Speakers.

DCPS violated Lori Crunden's rights when the Board interrupted her on November 7, 2023, before her time had expired. DCPS may not silence public debate. The text of *Identical* was a proper subject of public comment because it is a book available in certain schools within the DCPS which is in violation of Florida law.

A. A School Board Meeting Is A Limited Public Forum During Which Time, Place, and Manner Restrictions Must Be Narrowly-Drawn To Serve An Important Government Interest.

A school board meeting is a limited public forum, akin to a public hearing at a city commission meeting. *See Jones v. Heyman*, 888 F.2d 1328, 1331 (11th Cir. 1989). "Content-neutral time, place, and manner restrictions are permissible if they are narrowly drawn to achieve a significant governmental interest and if they allow communication through other channels." *Id.* at 1331. From a constitutional standpoint, "the public comment sessions of [school board] meetings and planning sessions are limited public fora." *Barrett v. Walker Cty. School Dist.*, 872 F.3d 1209, 1224 (11th Cir. 2017). "A limited public forum [] 'exists where a government has reserved a forum for certain groups or for the discussion of certain topics.'" *Id.* at 1225 (citation omitted). Protecting the right of individuals to express opinions about matters of great public concern lies at the heart of the First Amendment and is inviolate.

While the national media and porn-for-minor children advocates suggest that the effort to remove pornography from schools is a not-so-subtle attempt to discriminate against LGBT individuals, such a suggestion was undermined by a prominent LGBT advocacy group:

The overwhelming majority of gay people are against what the community has transformed into, and we do not accept the political movement pushing their agenda in our name. Gays Against Groomers directly opposes the sexualization and indoctrination of children. This includes drag queen story hours, drag shows involving children, the transitioning and medicalization of minors and gender theory being taught in the classroom.

The activists, backed by school boards, government, woke media, and corporations, have been speaking on our behalf for too long. When fighting for equality, our goal was to successfully integrate ourselves into society, but now these radicals aim to restructure it entirely in order to accommodate a fringe minority, as well as seek to indoctrinate children into their ideology. **We're saying NO.**

There are millions of gays within the community that want nothing to do with this Alphabet religion and join the fight with parents and concerned people everywhere to protect children. We also aim to return sanity and reclaim the community we once called our own.

See <https://www.gaysagainstgroomers.com/about> (last accessed on December 7, 2023)(emphasis in original).

Stacy Langton, the daughter of a lesbian mother, raised similar concerns at a school board meeting about pornographic material made available to students in Fairfax County, Virginia:

This isn't about the LGBTQ community and it's not about the gender of the people depicted in the books having sex, it's not about the orientation of the people in the book having sex. It's about pornography and pedophilia, ... You can have books that are supportive to the LGBTQ community, as I said my mom was a member of that community, I was raised in that community, but they don't have to be pornographic and there should never be an instance where there's pedophilia depicted that should never happen.

Fitzgerald, Madyson, School Districts Struggle to Implement New Laws on Sexually Explicit Books, STATELINE (June 14, 2023) <https://stateline.org/2023/06/14/school-districts-struggle-to-implement-new-laws-on-sexually-explicit-books/> (last accessed on Dec. 7, 2023).

Thus, Mrs. Crunden stands alongside concerned citizens nationwide in her effort to protect children from sexually explicit material. Certainly, this is an effort DCPS should and must support.

B. Parents Have Been Successful In First Amendment Litigation Against School Boards Throughout The Country.

Across the country, parents are successfully challenging minor children's access to porn in public schools. For example, in *Mama Bears of Forsyth County v. McCall, et al*, 642 F.Supp.3d 1338 (N.D. Ga. 2022), in a meeting in February 2022, certain parents' objections to pornography in library books was silenced by the school board pursuant to the public participation policy under the guise of "obscene" or "profane" remarks. *Id.* at 1345-6.² The same policy also required "respectfulness" and prohibited speakers from addressing board members individually. After

² Oddly, the school board considered a mom's reading of the pornographic material at a board meeting to be profane and obscene but did not exhibit such concern for minor children who could access such material at school, leaving no doubt that the school board failed in its basic duty to provide a safe environment in which the children could learn. *Id.*

being interrupted at a school board meeting, the plaintiffs filed a lawsuit seeking injunctive relief. The federal court *ruled in favor of the parents on their motion for preliminary injunction*, highlighting the following deficiencies in the school board's public participation policy:

1. The policy did *not* define respect *and requiring respect* was facially unconstitutional.
2. The *prohibition against personally addressing board members* was *not* reasonable.
3. The *request to keep remarks civil* was likely unconstitutional "as-applied," because the policy did *not* define "civility." Further, it restricted *criticism of the board*, creating the possibility that it may be selectively applied.
4. The prohibition on abusive remarks was unconstitutional. The court noted that a sub-group of comments can be banned, such as racists remarks.
5. *The prohibition on profanity/obscenity was enforceable only if the profanity took the speaker off topic.* A total ban on profanity/obscenity would be generally unconstitutional.³

Mama Bears of Forsyth County, 642 F.Supp.3d, at 1351-57 (emphasis added).

In sum, the court concluded that Forsyth County's public participation policy was unconstitutional for numerous reasons. Under the reasoning in *Mama Bears*, DCPS violated Mrs. Crunden's First Amendment rights by: (1) prohibiting her quotation from the text (whether premised on the public participation policy regarding obscene language or otherwise); (2) suppressing her public comments about graphic sex in books available at DCPS, and (3) reducing her public comment time.

In 2022, another parent who read pornographic material to the school board succeeded in his First Amendment litigation in *McBreairty v. School Board of RSU 22 et al.*, 616 F.Supp.3d 79 (D. Maine 2022). Specifically, the resident had attended several school board meetings in 2021 and objected to a "reading list and the availability of certain books in RSU 22 school libraries, and he read a passage from one book –*The Bluest Eye* by Toni Morrison," among other things. *Id.* at 85. In the December 2021 meeting, he "urged parents to unenroll their children." *Id.* at 85. He began reading from one of the books he felt was inappropriate and the board chair objected, advising that "reading" was an activity, not a public comment. *Id.* at 86. McBreairty continued to attend monthly school board meetings in 2022, and regularly complained about the "school reading list." *Id.* at 86. Eventually, the school board issued a warning letter to McBreairty, advising he must comply with the public participation policy. *Id.* At a meeting in April 2022, he "play[ed] a recording of a phone conversation with the chair about the complained-of books" containing a conversation between the chair and McBreairty "about the 'hardcore anal sex' books on the book

³ In *Mama Bears*, the court noted that speakers attempting to discuss profanity in books available in public schools (as Mrs. Crunden did) could not be precluded from quoting the profanity or generally referencing it, as such a prohibition would act to silence debate.

list.” *Id.* at 87. The chair advised him that “playing a recording was not permitted under the Policy,” labeled the recording content as “vulgarity,” and told him to cease playing the tape and sit down. *Id.* McBreairty refused and was asked to leave the meeting. *Id.* Thereafter, the school board sent McBreairty a letter banning him from future meetings for 8 months. *Id.* He sued and the court ruled in his *favor on his motion for temporary relief*. In so doing, the court highlighted that the school board public participation policy did *not* prohibit reading from books or playing a recording of a book from the reading list. *Id.* at 94-95. In sum, McBreairty’s reading from the book available at the school about “hardcore anal sex” and playing a recording of a conversation with an administrator about the same was *not* obscene. Rather, McBreairty’s reading pornographic content from the books and playing the recording were protected speech. *McBreairty*, 616 F.Supp.3d, at 95. Thus, *McBreairty* supports First Amendment protection for Mrs. Crunden’s similar conduct at the November 7, 2023, meeting when she was cut short in violation of federal law. Accordingly, *McBreairty* supports the conclusion that DCPS violated the First Amendment by preventing her from completing her public comment during the remainder of her two minutes.

D. The First Amendment Precedent In The Eleventh Circuit Supports Mrs. Crunden’s First Amendment Protections.

DCPS will no doubt attempt to use *Jones v. Heyman*, 888 F.2d 1328, 1331 (11th Cir. 1989), to justify its conduct at the November 7 meeting; however, the facts of that case are sufficiently distinguishable to render it inapposite and, therefore, they cannot assist DCPS’s efforts to curtail Mrs. Crunden’s First Amendment rights. Therein, the plaintiff submitted a request to speak about senior citizen discounts for garbage removal at a commission meeting. *Id.* at 1329. Not long after he commenced speaking, however, he strayed from the topic and “began by criticizing the commission’s general spending habits.” *Id.* The mayor sought to redirect him but he reacted negatively with, “[l]et me tell you something Mister, I am on the subject. If you can’t stay germane in your mind, that’s your problem, not mine.” *Id.* The mayor warned him further outbursts would result in expulsion; Jones remained undeterred: “I don’t think you are big enough.” *Id.* Jones was removed from the meeting. Although the lower court ruled “that Jones had complied with the time, place, and manner restrictions imposed on the meeting,” the Eleventh Circuit disagreed, concluding that “the mayor’s actions resulted not from disapproval of Jones’ message but from Jones’ disruptive conduct and failure to adhere to the agenda item under discussion.” *Id.* at 1329, 1332. Noting that the commission’s general fiscal spending habits were *not* the topic of debate,” the Eleventh Circuit stressed that: “[t]he substance of Jones’ views on the agenda items was thus never expressed.” *Id.* at 1332. Because Jones’s comments involved items beyond the agenda topics, the court “decline[d] to rule that his expulsion was based on disapproval of the content of his opinion.” *Id.* Thus, *Jones* stands for the proposition that a speaker who registers to speak on an agenda item cannot speak on *other* topics in a verbally aggressive manner without running the risk of expulsion. Consequently, *Jones* does not justify DCPS’s suppression of Mrs. Crunden’s First Amendment rights in the manner which occurred on November 7, 2023.

Any effort by DCPS to use *Dyer v. Atl. Ind. School Sys.*, 852 F.Appx 397 (11th Cir. 2021), *cert. den.*, 142 S.Ct. 484 (2021), to justify denial of Mrs. Crunden’s free speech rights can be dispensed with in short shrift. In *Dyer*, an individual’s Section 1983 and First Amendment claims were dismissed by the district court because he had been expelled from “community meetings” after he “direct[ed] racially-charged, derogatory epithets toward the board, including the ‘N-word’,

'coons,' and 'buffoons.'" *Id.* at 398. The Eleventh Circuit affirmed the entry of summary judgment in favor of the school district, stressing that the plaintiff's speech had been curtailed because it was disruptive. DCPS's conduct in silencing Mrs. Crunden and preventing her from using allotted time, is not supported by *Dyer*, in which the board acted *solely* to curtail a racially offensive outburst directed at the board. *Id.* at 402. In sum, *Dyer* does not support DCPS's instructions to the police on November 7, 2023, to block Mrs. Crunden's quoting of the actual text from *Identical* cannot be likened to the plaintiff's racial rants in *Jones*. Accordingly, neither *Jones* nor *Dyer* can be used to justify DCPS's treatment of Mrs. Crunden at the meeting.

Finally, to the extent that DCPS attempts to use *Moms For Liberty Brevard Cty., FL v. Brevard Public Schools*, 582 F.Supp.3d 1214 (M.D. Fla. 2022), as justification for DCPS's conduct at the November 7 meeting, the case is so factually distinguishable it is of no use to DCPS. First, no plaintiff in *M4L* was prevented from discussing the content of inappropriate books. In fact, in ruling against the parents in *M4L*, the court stressed that Moms for Liberty members spoke *over 100 times* at the meeting. *Id.* at 1220. One of the plaintiffs "never attempted to speak." *Id.* at n.9. Another "spoke many times and was never interrupted, [another] spoke often and was interrupted once, and only [Mr.] Cholewa was interrupted more than once and ejected once." *Id.* at n.9. The pivotal fact in *M4L* is that Mr. Cholewa (the one plaintiff who was ejected) was removed *only after* he made the following political commentary:

Democratic party accepts 'the murder of full-term babies with abortion' [and believes] 'white babies are born racist and oppressive.'

Id. at 1220. So, Mr. Cholewa was not removed from the meeting for complaining about the pornographic content of books; rather, he characterized Democrats as: (1) murderers due to the party's position on abortion and (2) racists because of the party's acceptance of CRT, DEI and generally sowing racial division. *Id.* Unlike Mrs. Crunden, Mr. Cholewa's political speech at the school board meeting did not advance a debate about pornographic content in books available to minors at public school. Finally, there was no evidence that the M4L members were treated worse than non-M4L members at the meeting. *Id.* at 1220.

The common thread and the reason for the litigation losses by the speakers in *Jones*, *Dyer*, and *M4L* is that they were disruptive and, as such, they were not entitled to First Amendment protections, whereas Mrs. Crunden was entitled to such protection for the use of quoted material from the book. Further, she was entitled to the same amount of time as other speakers. Thus, Mrs. Crunden behaved in a manner affording her speech and conduct protection under the First Amendment, whereas the plaintiffs at issue in *Jones*, *Dyer*, and *M4L* did not.

II. Florida Law Protected Mrs. Crunden's Speech At The November 7, 2023 Meeting.

Florida law protects citizens from unaccountable government control in a number of ways. *Pinellas Cty. Sch. Bd. v. Suncam, Inc.*, 829 So.2d 989, 991 (Fla. 2d DCA 2002) (the public has a "right to silently record public meetings") (internal citations omitted). Florida has led the nation in advancing significant parents' rights legislation summarized below:

- (1) limiting access to books covering "sexual conduct" by the age of the students,
- (2) prohibiting the use of pronouns not corresponding to sex assigned at birth,
- (3) prohibiting classroom instruction on sexual orientation or gender identity from prekindergarten through grade eight, and
- (4) mandating that reproductive health materials be approved by the Department of Education.

The effective date of House Bill 1069 was July 23, 2023. DCPS was required to comply with HB 1069 in connection with complaints raised by parents about sexual content or pornography in books made available by a school district. Three weeks *before* the November 7, 2023, school board meeting, the Florida Department of Education issued a memorandum to "School District Superintendents" summarizing the "school district responsibilities" stemming from HB 1069. *See Florida Department of Education Letter to Florida Schools*, Oct. 13, 2023 (hereinafter "FDOE Memorandum") (*see copy attached*).

The FDOE noted that books "made available to students through a classroom library is the responsibility of each district school board." *Id.* Each district is required to use "an objection form prescribed by the State Board of Education (SBE rule) ... [which] is accessible on the homepage of the school district's website." *Id.*

Pornographic material is prohibited not only in library books, but the restriction applies to "any materials used in a classroom, made available in a school or classroom library, or included on a reading list." *Id.* Generally, material "depict[ing] or describ[ing] sexual conduct," is impermissible if it is not age appropriate. *Id.* The memorandum to the school superintendents advised that:

A school district must remove any material subject to an objection on the basis of pornography or depiction or description of sexual conduct within five school days following the objection and such material must remain unavailable to students of that school until the objection is resolved. (Emphasis in original.)

Id.

Mrs. Crunden has no information suggesting that *Identical* was part of a curriculum or otherwise considered "instructional material," as that term is defined in §1006.28(2), *Fla. Stat.* If *Identical* is considered instructional material by DCPS, we would appreciate being advised of that immediately.

The FDOE Memorandum emphasizes that "[p]arents have a right to read passages from any material that is subject to an objection and if the school board denies a parent the right to read passages due to the material being pornographic the school district shall discontinue use of the material." *Id.* at p. 2. Mrs. Crunden was entitled to read from *Identical* at the meeting. DCPS wrongfully prevented her from doing so, in violation of the FDOE Memorandum and HB 1069.

Because Mrs. Crunden was prevented from reading objectionable material from *Identical*, the book should have been removed from DCPS ("the school district shall discontinue use of the material"). *Id.* By its terms, the FDOE Letter envisions the school board must determine whether the challenged material comports with Florida law (does it "contain[] prohibited content"). *Id.* The objection process is set forth in the FDOE's Memorandum. Mrs. Crunden has no information indicating that DCPS followed the requisite process.

It appears that the school district failed to publish the requisite lists on its district website. In addition, the website was to provide a "process for a parent to limit his or her student's access to materials in the school or classroom library." *Id.* Mrs. Crunden looked for this process on the website in advance of the meeting but could not find it.⁴

The FDOE Memorandum contains a *June 30, 2023, start date* whereby the school district had to begin reporting on materials to which an objection had been made. Accordingly, Mrs. Crunden's objection to *Identical* from the November 7, 2023, meeting should be in such a report as well as the outcome of her objection. We look forward to receiving copies of such reports.

Conclusion

DCPS cannot prevent a parent from lodging an objection to profane or sexually explicit content or quoting from a book available at one of its schools. Further, DCPS cannot prevent a parent from lodging an objection consistent with HB 1069.

We request that you confirm in writing **no later than February 27, 2024**, that:

- 1) DCPS will not limit Lori Crunden's efforts in the future to make public comments with the use of textual material from DCPS library books as DCPS did at the November 7, 2023, meeting;
- 2) DCPS will demonstrate that the book entitled *Identical*, authored by Ellen Hopkins, has been removed from student access throughout all DCPS campuses consistent with Florida law;
- 3) DCPS will demonstrate that any other book containing sexually explicit material in violation of Florida law has been removed from student access throughout all DCPS campuses consistent with Florida law;
- 4) DCPS will post the challenge process on the district's website consistent with Florida law.

⁴ There appears to be an objection form with a date of *11/28/23* available on the website presently; clearly that version was not available for use by Mrs. Crunden at the November 7, 2023, meeting. In connection with DCPS's response to this letter, we would appreciate copies of *all versions* of the objection form on the district website prior to the November 7, 2023, meeting, including the date(s) on which each version was posted/available, along with the specific location of each version on the website.

If we do not receive the requested written confirmation of the foregoing in the timeframe described above, Lori Crunden will take appropriate legal action to secure her rights and prevent further irreparable harm.

Sincerely,

Deborah A. Catalano

James H. K. Bruner

Deborah A. Catalano[†]
Liberty Counsel

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Preservation Notification

Given that Mrs. Crunden's legal rights were violated in connection with her attempt to make public comments about profane and/or sexually explicit material maintained in DCPS schools in violation of Florida law, please consider this letter notification of a preservation of evidence demand requiring that you preserve all documents and/or electronic information about the November 7, 2023, school board meeting and any and all efforts by DCPS to comply with Florida law concerning HB 1069.

Attachment: (1) Florida DOE Memorandum

[†]Licensed in Florida