

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON DIVISION

Eastern District of Kentucky  
FILED

MAY 31 2024

AT COVINGTON  
Robert R. Carr  
CLERK U.S. DISTRICT COURT

STATE OF TENNESSEE, COMMONWEALTH  
OF KENTUCKY, STATE OF OHIO, STATE OF  
INDIANA, COMMONWEALTH OF VIRGINIA,  
and STATE OF WEST VIRGINIA,

*Plaintiffs,*

v.

MIGUEL CARDONA, in his official capacity as  
Secretary of Education, and UNITED STATES  
DEPARTMENT OF EDUCATION,

*Defendants.*

Case No. 2:24-cv-00072-DCR-CJS

District Judge Danny C. Reeves

Magistrate Judge Candace J. Smith

**BRIEF OF AMICI CURIAE NEW JERSEY, CALIFORNIA, PENNSYLVANIA,  
COLORADO, DELAWARE, DISTRICT OF COLUMBIA, HAWAII, ILLINOIS,  
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEW YORK, OREGON, RHODE  
ISLAND, VERMONT, AND WASHINGTON IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS' MOTION FOR A § 705 STAY AND PRELIMINARY  
INJUNCTION**

**TABLE OF CONTENTS**

INTRODUCTION AND INTERESTS OF AMICI..... 1

ARGUMENT..... 2

    I.    THE FINAL RULE’S DEFINITION OF SEX IS CONSISTENT WITH TITLE IX..... 2

        A.    The Final Rule’s Definitions of Sex and Sex Discrimination Align with the Text and  
            Numerous Judicial Interpretations of Title IX. .... 2

        B.    The Final Rule Defines “Sex-Based Harassment” in a Manner  
            That Effectuates Title IX..... 5

    II.   THE FINAL RULE DOES NOT VIOLATE THE SPENDING CLAUSE OR OTHER  
          CONSTITUTIONAL PROVISIONS..... 7

    III.  AMICI STATES’ EXPERIENCE CONFIRMS THAT THE FINAL RULE WILL YIELD  
          BROAD BENEFITS WITHOUT COMPROMISING PRIVACY OR SAFETY, OR  
          IMPOSING SIGNIFICANT COSTS. .... 8

        A.    The Final Rule’s Benefits Will Not Compromise Privacy or Safety..... 8

        B.    The Final Rule Will Not Impose Significant Compliance Costs. .... 11

CONCLUSION..... 13

**TABLE OF AUTHORITIES**

**Cases**

*A.W. v. Evansville Vanderburgh Sch. Corp.*, 396 F. Supp. 3d 833 (S.D. In. 2019) ..... 7

*Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644 (2020) ..... 3

*Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)..... 9

*Chisholm v. St. Mary’s City Sch. Dist. Bd. of Educ.*, 947 F.3d 342 (6th Cir. 2020)..... 2

*Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999)..... 5

*Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217 (6th Cir. 2016)..... 3

*Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018)..... 4

*Doe v. Miami Univ.*, 882 F.3d 579 (6th Cir. 2018)..... 6

*Feminist Majority Found. v. Hurley*, 911 F.3d 674 (4th Cir. 2018)..... 5

*Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398 (5th Cir. 2015)..... 5

*Flack v. Wis. Dep’t of Health Servs.*, 395 F. Supp. 3d 1001 (W.D. Wis. 2019)..... 8

*Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998) ..... 6

*Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011) ..... 3

*Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020)..... 4, 7

*Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005) ..... 2

*L.W. v. Skrmetti*, 83 F.4th 460 (6th Cir. 2023), *petition for cert. filed*, No. 23-466 (U.S. Nov. 1, 2023)..... 3

*Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm’n*, 584 U.S. 617 (2018)..... 7

*Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986)..... 6

*Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021) ..... 4

*Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)..... 8

*Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999)..... 2

*Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75 (1998)..... 7

*Pelcha v. MW Bancorp, Inc.*, 988 F.3d 318 (6th Cir. 2021)..... 3, 4

*Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)..... 7

*Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (plurality opinion) ..... 5

*Runyon v. McCrary*, 427 U.S. 160 (1976)..... 7

*Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004)..... 3

*Soule v. Conn. Ass’n of Schs., Inc.*, 57 F.4th 43 (2d Cir. 2022), *rev’d on other grounds by* 90 F.4th 34 (2d Cir. 2023) (en banc)..... 3

*Tennessee v. U.S. Dep’t of Agric.*, 665 F. Supp. 3d 880 (E.D. Tenn. 2023)..... 7

*Tovar v. Essentia Health*, 342 F. Supp. 3d 947 (D. Minn. 2018)..... 8

*Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017)..... 4

**Federal Statutes and Regulatory Materials**

20 U.S.C. § 1681..... 1, 2, 5

20 U.S.C. § 1682..... 6

42 U.S.C. § 18116..... 7

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474 (Apr. 29, 2024)..... 1, 2, 4, 5

Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11,448 (Mar. 10, 1994)..... 6

Russlyn Ali, Assistant Sec’y for Civ. Rts., Off. for Civ. Rts., Dear Colleague Letter (Apr. 4, 2011, withdrawn Sept. 22, 2017) ..... 6

Sexual Harassment Guidance: Harassment of Students by Sch. Emps., Other Students, or Third Parties, 62 Fed. Reg. 12,034 (Mar. 13, 1997)..... 6

U.S. Dep’t of Educ., *Q&A on Campus Sexual Misconduct* (Sept. 2017, rescinded Aug. 2020)..... 6

U.S. Dep’t of Educ., *Q&A on Title IX and Sexual Violence* (Apr. 24, 2014, withdrawn Sept. 22, 2017)..... 6

U.S. Dep’t of Educ., Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 2001)..... 5, 6

**Constitutional Provisions**

U.S. Const. art. I, § 8, cl. 1..... 7

**State Statutes and Regulatory Materials**

11 R.I. Gen. Laws § 11-24-2..... 12

28 R.I. Gen. Laws §§ 28-5-6(11)..... 12

34 R.I. Gen. Laws §§ 34-37-3(9), 34-37-4..... 12

775 Ill. Comp. Stat. 5/1-102(A)..... 12

775 Ill. Comp. Stat. 5/1-103(O-1)..... 12

Affirming & Inclusive Schs. Task Force, *Strengthening Inclusion in Illinois Schools* 19-21 (2020)  
..... 10

Assemb. B. 1266, 2013-2014 Sess. (Cal. 2013) ..... 9

Cal. Civ. Code § 51(b), (e)(5)..... 12

Cal. Educ. Code § 220 ..... 12

Cal. Educ. Code § 221.5(f) ..... 12

Cal. Gov’t Code § 12940(a) ..... 12

Cal. Gov’t Code § 12949..... 12

Cal. Gov’t Code § 12955 ..... 12

Cal. Gov’t Code §§ 12926(o), (r)(2) ..... 12

Cal. Penal Code §§ 422.55, 422.56(c)..... 12

Cal. Sch. Bds. Ass’n, Final Guidance: AB 1266, Transgender and Gender Nonconforming  
Students, Privacy, Programs, Activities & Facilities 2 (2014)..... 10

Colo. Ass’n of Sch. Bds. et al., Guidance for Educators Working with Transgender and Gender  
Nonconforming Students 4-5 (n.d.)..... 10

Colo. Rev. Stat. § 24-34-301(7)..... 12

Colo. Rev. Stat. § 24-34-402 ..... 12

Colo. Rev. Stat. § 24-34-502 ..... 12

Colo. Rev. Stat. § 24-34-601 ..... 12

Conn. Gen. Stat. § 10-15c..... 12

Conn. Gen. Stat. § 46a-51(21)..... 12

Conn. Gen. Stat. § 46a-60..... 12

Conn. Gen. Stat. § 46a-64..... 12

Conn. Gen. Stat. § 46a-64c..... 12

Conn. Safe Sch. Coal., Guidelines for Connecticut Schools to Comply with Gender Identity and  
Expression Non-Discrimination Laws 9-10 (2012)..... 10

D.C. Code § 2-1401.02(12A-i)..... 13

D.C. Code § 2-1402.11..... 13

D.C. Code § 2-1402.21..... 13

D.C. Code § 2-1402.31..... 13

D.C. Pub. Schs., Transgender and Gender-Nonconforming Policy Guidance (2015)..... 11

Del. Code Ann. tit. 19, § 711..... 12

Del. Code Ann. tit. 6, § 4501..... 12

Del. Code Ann. tit. 6, § 4603(b)..... 12

Haw. Rev. Stat. § 302A-461..... 12

Haw. Rev. Stat. § 368D-1..... 12

Haw. Rev. Stat. § 489-2..... 12

Haw. Rev. Stat. § 515-2..... 12

Haw. Rev. Stat. § 515-3..... 12

Ill. Dep’t of Hum. Rts., Non-Regulatory Guidance: Relating to Protection of Transgender,  
Nonbinary, and Gender Nonconforming Students Under the Illinois Human Rights Act 6-7  
(2021)..... 10

Ill. State Bd. of Educ., Non-Regulatory Guidance: Supporting Transgender, Nonbinary and Gender  
Nonconforming Students 10-11 (2020)..... 10

Iowa Code § 216.2(10)..... 12

Iowa Code § 216.6..... 12

Iowa Code § 216.7..... 12

Iowa Code § 216.8..... 12

Iowa Code § 216.9 ..... 12

Mass Gen. Laws ch. 151B, § 4 ..... 12

Mass Gen. Laws ch. 76, § 5 ..... 12

Mass. Dep’t of Elementary & Secondary Educ., Guidance for Massachusetts Public Schools: Creating a Safe and Supportive School Environment (Oct. 28, 2021)..... 10

Mass. Gen. Laws ch. 272, §§ 92A, 98 ..... 12

Mass. Gen. Laws ch. 4, § 7 ..... 12

Md. Code Ann., Educ. § 26-704 ..... 12

Md. Code Ann., State Gov’t § 20-304 ..... 12

Md. Code Ann., State Gov’t § 20-606 ..... 12

Md. Code Ann., State Gov’t § 20-705 ..... 12

Md. State Dep’t of Educ., Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination 13-14 (2015). ..... 10

Me. Rev. Stat. Ann. tit. 5, § 4591 ..... 12

Me. Rev. Stat. Ann. tit. 5, § 4601 ..... 12

Me. Rev. Stat. Ann. tit. 5, § 4553(9-C)..... 12

Me. Rev. Stat. Ann. tit. 5, § 4581 ..... 12

Me. Rev. Stat. Ann. tit. 5, 4571 ..... 12

Mich. Dep’t of Educ., State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students 5-6 (2016). ..... 10

Minn. Dep’t of Educ., A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students 10 (2017). ..... 10

Minn. Stat. § 363A.03(44)..... 12

Minn. Stat. § 363A.08 ..... 12

Minn. Stat. § 363A.09..... 12

Minn. Stat. § 363A.11..... 12

Minn. Stat. § 363A.13..... 12

N.H. Rev. Stat. Ann. § 354-A:16..... 12

N.H. Rev. Stat. Ann. § 354-A:2(XIV-e)..... 12

N.H. Rev. Stat. Ann. § 354-A:27..... 12

N.H. Rev. Stat. Ann. § 354-A:6..... 12

N.H. Rev. Stat. Ann. § 354-A:8..... 12

N.J. Stat. Ann. § 10:5-5(rr)..... 12

N.J. Stat. Ann. § 18A:36-41..... 12

N.J. State Dep’t of Educ., Transgender Student Guidance for School Districts (2018)..... 11

N.M. Stat. Ann. § 28-1-2(Q)..... 12

N.M. Stat. Ann. § 28-1-7(A)..... 12

N.M. Stat. Ann. § 28-1-7(F)..... 12

N.M. Stat. Ann. § 28-1-7(G)..... 12

N.Y. Exec. Law §§ 291, 296..... 12

N.Y. State Educ. Dep’t, Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices 22-24 (June 2023)..... 11

Nev. Rev. Stat. § 118.075..... 12

Nev. Rev. Stat. § 118.100..... 12

Nev. Rev. Stat. §§ 613.310(4), 613.330..... 12

Nev. Rev. Stat. §§ 651.050(2), 651.070..... 12

Or. Dep’t of Educ., Supporting Gender Expansive Students: Guidance for Schools 24-26 (2023). 11

Or. Rev. Stat. § 174.100(4)..... 12

Or. Rev. Stat. § 659.850..... 12

Or. Rev. Stat. § 659A.006..... 12

R.I. Dep’t of Educ., Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students (2016)..... 11

Utah Code Ann. § 34A-5-106..... 12



Utah Code Ann. § 57-21-5..... 12

Vt. Agency of Educ., *Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students* (2017)..... 11

Vt. Stat. Ann. tit. 1, § 144 ..... 12

Vt. Stat. Ann. tit. 21, § 495 ..... 12

Vt. Stat. Ann. tit. 9, § 4503 ..... 12

Wash. Rev. Code Ann. § 28A.642.010..... 12

Wash. Rev. Code Ann. § 49.60.030(1)(a)-(e)..... 12

Wash. Rev. Code Ann. § 49.60.040(27) ..... 13

Wash. Rev. Code Ann. § 49.60.180..... 13

Wash. Rev. Code Ann. § 49.60.215..... 13

Wash. Rev. Code Ann. § 49.60.222..... 13

**Other Authorities**

Alberto Arenas et al., *7 Reasons for Accommodating Transgender Students at School*, Phi Delta Kappa (Sept. 1, 2016)..... 9

Alexa Ura, *For Transgender Boy, Bathroom Fight Just Silly*, Tex. Trib. (June 14, 2016)..... 9

Beatriz Pagliarini Bagagli et al., *Trans Women and Public Restrooms: The Legal Discourse and Its Violence*, 6 *Frontiers Socio.* 1 (Mar. 31, 2021)..... 9

Kan. Hum. Rts. Comm’n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court’s Bostock Decision* (Aug. 21, 2020)..... 12

Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* e20153223 (Mar. 2016)..... 9

Movement Advancement Project, *Local Nondiscrimination Ordinances*, <https://tinyurl.com/59p55bap> (current as of January 1, 2023)..... 13

Susanne Beauchaine et al., *Prohibiting Discrimination in Washington Public Schools* (Wash. Off. of Superintendent of Pub. Instruction 2012)..... 10

The Trevor Project, *2023 U.S. National Survey on the Mental Health of LGBTQ Young People* (2023)..... 9

Toomey et al., *Gender-Affirming Policies Support Transgender and Gender Diverse Youth’s Health*, *Soc’y for Rsch. in Child Dev.* (Jan. 27, 2022) ..... 8

## INTRODUCTION AND INTERESTS OF AMICI

Amici Curiae States (“Amici States”) have compelling governmental interests in the robust enforcement of Title IX of the Education Amendments Act of 1972 (“Title IX”), 20 U.S.C. § 1681, to ensure that our schools operate in a manner that is free from sex discrimination. Sex discrimination and harassment based on gender identity, and sex stereotypes imposed on transgender individuals, cause direct economic, physical, and emotional harms to students. To prevent these tangible injuries, Amici States have adopted laws and policies that combat sex discrimination against transgender students on the basis that they appear, act, and identify as a sex different from their sex assigned at birth, and ensure that students in our jurisdictions have the ability to learn in safe and supportive environments. As Amici States’ experience demonstrates, preventing sex-based discrimination, protecting against sexual harassment, and ensuring equal access to educational opportunities for all students confer wide societal benefits without imposing substantial costs on schools or compromising student privacy or safety.

Charged with enforcing state antidiscrimination laws and shaping school policies that foster a safe and supportive environment for all students, Amici States take the implementation of Title IX regulations seriously. The U.S. Department of Education’s (“ED”) new final rule, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474 (Apr. 29, 2024)(“Final Rule”), includes explicit protections for transgender students and rectifies the harm caused to our schools and communities through ED’s prior rule (“2020 Rule”), which undermined Title IX’s nondiscrimination mandate by arbitrarily narrowing the scope of Title IX’s sexual harassment protections. Amici States submit this brief to show that Plaintiffs’ narrow interpretation of Title IX is not supported by law or ED’s prior longstanding policy and practice, and that the balance of equities and public interest cut heavily against the extraordinary relief they seek. Amici States strongly encourage the Final Rule’s full and prompt implementation nationwide.

## ARGUMENT

### **I. THE FINAL RULE'S DEFINITION OF SEX IS CONSISTENT WITH TITLE IX.**

#### **A. The Final Rule's Definitions of Sex and Sex Discrimination Align with the Text and Numerous Judicial Interpretations of Title IX.**

Because the Final Rule defines sex discrimination to include “gender identity” discrimination, 89 Fed. Reg. at 33,886, Plaintiffs claim that the Final Rule exceeds ED’s authority, *see generally* ECF No. 19-1 (“Br.”). But the Final Rule is consistent with Title IX’s plain text, Supreme Court precedent, decisions in at least eight circuits (including the Sixth Circuit), and congressional intent.

Title IX prohibits discrimination “on the basis of sex,” 20 U.S.C. § 1681(a), which Congress intended to “be broadly interpreted to provide effective remedies against discrimination,” S. Rep. No. 100-64 (1987). The Supreme Court has consistently reaffirmed the “broad reach” of Title IX. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005); *see also id.* at 174 (emphasizing “repeated holdings construing ‘discrimination’ under Title IX broadly”). The Final Rule’s prohibition on gender identity discrimination effectuates the intended reach of Title IX’s plain text.

To examine the reach of Title IX, the Supreme Court “look[s] to its Title VII interpretations of discrimination.” *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 616 n.1 (1999) (Thomas, J., dissenting) (citing *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75 (1992)). The Sixth Circuit and many other circuits also interpret Title IX in light of Title VII, given the “parallels between sex discrimination in the educational setting . . . and sex discrimination in the workplace.” *E.g.*, *Chisholm v. St. Mary’s City Sch. Dist. Bd. of Educ.*, 947 F.3d 342, 349-50 (6th Cir. 2020). In *Bostock v. Clayton County, Ga.*, through “the straightforward application of legal terms with plain and settled meanings,” the Supreme Court held that Title VII’s protections against sex discrimination apply to transgender individuals because an employer who discriminates based on gender identity necessarily “intentionally discriminate[s] against individual men and women in part because of sex.” 590 U.S.

644, 662 (2020); *see also id.* at 660 (concluding “it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex”). The Supreme Court’s textual analysis is clear: protections “on the basis of sex” or “because of sex” include protections based on gender identity.<sup>1</sup>

Numerous circuit cases have also held that Title IX’s prohibition on sex discrimination covers gender identity discrimination. The Sixth Circuit has observed that discrimination based on gender nonconformity, which includes transgender identity, is barred by “settled” precedent and “the language of federal civil rights statutes.” *Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016); *Smith v. City of Salem*, 378 F.3d 566, 572-74 (6th Cir. 2004). The First, Second, Third, Fourth, Seventh, Ninth, and Eleventh Circuits have similarly concluded that federal law generally prohibits “discrimination based on transgender status.” *E.g., Soule v. Conn. Ass’n of Schs., Inc.*, 57 F.4th 43, 55-56 (2d Cir. 2022) (collecting cases), *rev’d on other grounds by* 90 F.4th 34 (2d Cir. 2023) (en banc); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) (same).

Plaintiffs’ reliance on *L.W. v. Skrmetti*, 83 F.4th 460 (6th Cir. 2023), *petition for cert. filed*, No. 23-466 (U.S. Nov. 1, 2023), and *Pelcha v. MW Bancorp, Inc.*, 988 F.3d 318 (6th Cir. 2021), is unavailing. *L.W.* merely observed in dicta that *Bostock* “declin[ed] to prejudge other discrimination laws” and did not extend *Bostock* to the equal protection context because of “the differences in language between [Title VII] and the Constitution.” *L.W.*, 83 F.4th at 484, 485 (citation omitted). In *Pelcha*, the Sixth Circuit did not apply *Bostock* to an Age Discrimination in Employment Act claim because that statute requires age to be the “determinative reason” for a plaintiff’s firing. 988 F.3d at

---

<sup>1</sup> Indeed, *Bostock* uses both Title VII’s phrase “because of sex” and Title IX’s “on the basis of sex” interchangeably. *See, e.g.*, 590 U.S. at 650 (“Congress outlawed discrimination in the workplace *on the basis of* . . . sex . . . .” (emphasis added)); *id.* at 680 (“[E]mployers are prohibited from firing employees *on the basis of* . . . transgender status . . . .” (emphasis added)).

324. But Title IX, like Title VII, textually requires a showing of discrimination “on the basis of sex.”<sup>2</sup> Thus, following the plain text of Title IX and numerous decisions interpreting Title VII and Title IX, the Final Rule correctly includes gender identity in its definitions of sex and sex-based discrimination.

References to “one sex,” “the other sex,” and “both sexes” in Title IX, *see* Br. 13, do not exclude transgender students from Title IX’s protections. The Final Rule simply provides that transgender students may access the sex-separate bathrooms, activities, and organizations that match their gender identity, if denying access would cause more than “de minimis” harm (and when no other exception applies). 89 Fed. Reg. at 33,814, 33,816; *accord Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 617-19 (4th Cir. 2020) (holding exclusion “from the sex-separated restroom matching [the student’s] gender identity” violated Title IX); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1045, 1049-50 (7th Cir. 2017) (same); *see Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 529-530 (3d Cir. 2018) (“When transgender students face discrimination in schools, the risk to their wellbeing . . . can be life threatening.”). Plaintiffs may not substitute their “own discriminatory notions of what ‘sex’ means” for the plain meaning of Title IX to exclude transgender students from its protections.<sup>3</sup> *See Grimm*, 972 F.3d at 618. Moreover, the 2020 Rule

---

<sup>2</sup> Plaintiffs also cite *Meriwether v. Hartop*, 992 F.3d 492, 510 n.4 (6th Cir. 2021), to argue that *Bostock* cannot guide the interpretation of Title IX. Br. at 15. But the footnote in *Meriwether* did not hold that *Bostock* could not be extended to Title IX; instead, it noted two differences between Titles VII and IX: the allowance in Title IX for consideration of sex in “athletic scholarships” and “living facilities.” *Id.* But these differences do not reflect that “discrimination” in the Title IX context can never apply to discrimination based on gender identity; indeed, the Final Rule expressly provides that it does not change existing statutory and regulatory provisions allowing for sex-separate housing and athletics. 89 Fed. Reg. at 33,816 (citing, *inter alia*, 20 U.S.C. § 1686; 34 C.F.R. §§ 106.32(b)(1), 106.41(b)). These arguments are distractions.

<sup>3</sup> The Final Rule rightly prohibits discrimination against such individuals on the basis of “sex characteristics,” which include intersex traits. 89 Fed. Reg. at 33,803, 33,886; *see also Bostock*, 590 U.S. at 659-60. And as a factual matter, a conservative estimate is that there are tens of thousands of Americans whose anatomy is neither typically “male” nor “female.” Stephanie Dutchen, *The Body*,

already prohibits gender-based harassment. 85 Fed. Reg. at 30,146. So have decades of ED’s policy and practice. *E.g.*, U.S. Dep’t of Educ., Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 2001), at v; *see also Price Waterhouse v. Hopkins*, 490 U.S. 228, 239 (1989) (plurality opinion) (Title VII forbids gender-based discrimination).

**B. The Final Rule Defines “Sex-Based Harassment” in a Manner That Effectuates Title IX.**

The Final Rule’s definition of sex-based harassment as conduct that “is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity,” 89 Fed. Reg. at 33,884, comports with the text and intent of Title IX. Sex-based harassment need not be severe *and* pervasive to run afoul of Title IX. For example, a teacher’s repeated inappropriate sexual comments and intrusions of personal space may not be “severe,” but could be so pervasive that a student feels unsafe and avoids classes, and is effectively excluded from education. *See, e.g., Feminist Majority Found. v. Hurley*, 911 F.3d 674, 680-82, 687-89, 693 (4th Cir. 2018) (finding that series of harassing social media posts sent over campus wireless network could support Title IX harassment claim); *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 409 (5th Cir. 2015) (noting “offensive remarks made every few months over three years” raised genuine dispute regarding Title VII hostile environment).

By covering severe *or* pervasive forms of harassment, the Final Rule better effectuates the breadth of 20 U.S.C. § 1681(a) and advances Congress’ objectives, because “the scope of the behavior that Title IX proscribes” is not limited to “severe, pervasive, and objectively offensive” conduct. *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 639, 652 (1999). Congress

---

*the Self*, Harvard Medicine (2022), <https://tinyurl.com/24c2j92u> (estimating “between 66,000 and 3.3 million [intersex] people in the United States”).

established an administrative scheme authorizing ED “to give effect to” the goals of Title IX. *Davis*, 526 U.S. at 638-39; *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 280-81 (1998); 20 U.S.C. § 1682.<sup>4</sup> The Final Rule correctly protects students from both severe incidents of harassment, and a series of lesser unwelcome incidents that become pervasive.

For more than 30 years, ED defined harassment as conduct that was “sufficiently severe, pervasive or persistent” to “interfere with or limit” a student’s education. *See, e.g.*, Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994). ED consistently applied this definition to address harassment under Title IX and Title VI, and held for decades that harassment need only *limit* or *adversely affect*, rather than *deny*, a student’s ability to participate in or benefit from an education program or activity.<sup>5</sup> The Final Rule correctly returns to ED’s longstanding definition and is consistent with past case law. *See, e.g.*, *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986) (applying “severe or pervasive” standard); *Franklin*, 503 U.S. at 75 (concluding that sexual harassment constitutes discrimination under Title IX); *Doe v. Miami Univ.*, 882 F.3d 579, 590 (6th Cir. 2018) (applying “severe or

---

<sup>4</sup> Plaintiffs mistakenly rely on *Davis* to argue that harassment must be “severe, pervasive, and objectively offensive.” Br. at 16-17. But *Davis* makes clear that its rule applies only to private damages claims, 526 U.S. at 652; *see also Gebser*, 524 U.S. at 283-84, 287, and does not otherwise limit ED’s regulatory authority, *see Gebser*, 524 U.S. at 292.

<sup>5</sup> *E.g.*, Sexual Harassment Guidance: Harassment of Students by Sch. Emps., Other Students, or Third Parties, 62 Fed. Reg. 12,034, 12,038 (Mar. 13, 1997) (“[S]exual harassment must be sufficiently severe, persistent, or pervasive that it adversely affects a student’s education . . . .”); U.S. Dep’t of Educ., Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 2001), at v, 6 (noting that harassment must “deny or limit” student’s education, and single “sufficiently severe” incident of sexual harassment can create hostile environment); Russlyn Ali, Assistant Sec’y for Civ. Rts., Off. for Civ. Rts., Dear Colleague Letter (Apr. 4, 2011, withdrawn Sept. 22, 2017) (“The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment . . . .”); U.S. Dep’t of Educ., *Q&A on Title IX and Sexual Violence* (Apr. 24, 2014, withdrawn Sept. 22, 2017) (same); U.S. Dep’t of Educ., *Q&A on Campus Sexual Misconduct* (Sept. 2017, rescinded Aug. 2020) (applying “severe, persistent, or pervasive” and “deny or limit” standards).

pervasive” standard to Title IX harassment).

## II. THE FINAL RULE DOES NOT VIOLATE THE SPENDING CLAUSE OR OTHER CONSTITUTIONAL PROVISIONS.

Although the Final Rule is consistent with Title IX’s mandate, Plaintiffs insist that it violates the Spending Clause, U.S. Const. art. I, § 8, cl. 1, arguing it violates the “clear-statement rule,” is unduly coercive, and could infringe on First Amendment rights, Br. 17-19.<sup>6</sup> This argument is baseless. Where federal funding is subject to conditions, the clear-statement rule requires that States have clear notice of the conditions so they may “voluntarily and knowingly” accept them. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). It does not require perfect clarity on the applicability of a condition in every conceivable circumstance. *See Bennett v. Ky. Dep’t of Ed.*, 470 U.S. 656, 665-66 (1985); *Jackson*, 544 U.S. at 181-84; *Cutter v. Wilkinson*, 423 F.3d 579, 586 (6th Cir. 2005).

Most courts have held that gender identity discrimination is sufficiently ascertainable from Title IX’s prohibition against sex discrimination such that the clear-statement rule is satisfied. *See Grimm*, 972 F.3d at 619 n.18; *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 396 F. Supp. 3d 833, 842 (S.D. In. 2019) (finding adequate notice to support suit for damages under Title IX).<sup>7</sup> Courts considering similar challenges to § 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116, have also held the same. *Tovar v. Essentia Health*, 342 F. Supp. 3d 947, 953 (D. Minn.

---

<sup>6</sup> The Final Rule is consistent with the U.S. Constitution. Supreme Court precedent forecloses Plaintiffs’ free speech and substantive due process challenges. *See, e.g., Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 82 (1998) (Title VII can prohibit verbal harassment); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm’n*, 584 U.S. 617, 631 (2018) (Free Exercise Clause does not allow discrimination in violation of “neutral and generally applicable . . . law”); *Runyon v. McCrary*, 427 U.S. 160, 177 (1976) (narrowly limiting parental rights in school context).

<sup>7</sup> *See also Tennessee v. U.S. Dep’t of Agric.*, 665 F. Supp. 3d 880, 916 (E.D. Tenn. 2023) (concluding statute prohibiting sex discrimination for SNAP and SNAP-Ed funding recipients “unambiguous[ly]” prohibited gender identity discrimination, “and always has”).



2018); *see also Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001, 1007, 1014-15 (W.D. Wis. 2019).

Plaintiffs' argument that the Final Rule constitutes undue coercion under *National Federation of Independent Businesses v. Sebelius* is misplaced. There, the Court found that conditioning Medicaid funding on a dramatic expansion of Medicaid availability—effectively requiring entirely new programs—was unduly coercive. 567 U.S. 519, 581-85 (2012). By contrast, the Final Rule does not require States to establish any new programs; it just clarifies that established programs must protect transgender students from discrimination on the basis of sex (including gender identity), using the Title IX framework that funding recipients already have in place. Many of the Amici States have already implemented these protections, and have incurred *de minimis* costs in doing so, while conferring significant benefits to students.<sup>8</sup>

The Final Rule does not transgress the constitutional limitations on conditions imposed on federal spending. It requires funding recipients to do only what it has always required: refrain from discriminating against students on the basis of sex, and remedy any discrimination they may find.

### **III. AMICI STATES' EXPERIENCE CONFIRMS THAT THE FINAL RULE WILL YIELD BROAD BENEFITS WITHOUT COMPROMISING PRIVACY OR SAFETY, OR IMPOSING SIGNIFICANT COSTS.**

#### **A. The Final Rule's Benefits Will Not Compromise Privacy or Safety.**

Amici States' experience demonstrates that policies allowing transgender students to use bathrooms and locker rooms consistent with their gender identity significantly benefit those students

---

<sup>8</sup> School-based gender-affirming policies are linked to dramatic decreases in depression, anxiety, and suicidal ideation among transgender and nonbinary students. *See* Toomey et al., *Gender-Affirming Policies Support Transgender and Gender Diverse Youth's Health*, Soc'y for Rsch. in Child Dev. (Jan. 27, 2022), <https://tinyurl.com/ms6eubb7>.

without risking student privacy or safety.<sup>9</sup> First, allowing students to use bathrooms consistent with their gender identity helps safeguard against common harms to transgender students, such as students choosing to forego drinking or eating during the school day to avoid using the restroom for fear of exclusion, reprimand, or bullying.<sup>10</sup> Moreover, transgender students who are permitted to use bathroom and locker room facilities consistent with their gender identity experience mental health outcomes more comparable to their cisgender peers.<sup>11</sup> These benefits redound to society as a whole, as equal education better prepares students to contribute to society, both culturally and economically. *Cf. Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

Amici States' experience shows that public schools are unlikely to experience instances of transgender students harassing others when using restrooms or locker rooms consistent with their gender identity.<sup>12</sup> The documented experience of school administrators in thirty-one States and the District of Columbia demonstrates that sex-based protections for gender identity in bathroom- and locker room-use policies result in no public safety or privacy risks, nor is there evidence that students

---

<sup>9</sup> For example, approximately half of transgender and nonbinary youth reported in 2023 having seriously considered suicide in the past twelve months. The Trevor Project, *2023 U.S. National Survey on the Mental Health of LGBTQ Young People* 5 (2023), <https://tinyurl.com/mvbmabrw>.

<sup>10</sup> See Assemb. B. 1266, 2013-2014 Sess. (Cal. 2013); Alexa Ura, *For Transgender Boy, Bathroom Fight Just Silly*, Tex. Trib. (June 14, 2016), <https://tinyurl.com/mtpescst>.

<sup>11</sup> See Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* e20153223, at 5-7 (Mar. 2016); Br. of Amici Curiae Sch. Adm'rs from Thirty-One States & D.C. in Supp. of Resp't (Br. of Amici Curiae Sch. Adm'rs) at 4, *Gloucester Cnty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 1239 (2017) (No. 16-273), 2017 WL 930055.

<sup>12</sup> See Alberto Arenas et al., *7 Reasons for Accommodating Transgender Students at School*, Phi Delta Kappa (Sept. 1, 2016); Beatriz Pagliarini Bagagli et al., *Trans Women and Public Restrooms: The Legal Discourse and Its Violence*, 6 *Frontiers Socio.* 1, 8 (Mar. 31, 2021).

pose as transgender to gain improper restroom access.<sup>13</sup>

The Final Rule affords ample flexibility for our schools to implement policies to address privacy concerns, and Amici States have increased privacy options for all students in a cost-effective manner without singling out any one student. For example, in Washington, where districts must allow students to use the restroom or locker room consistent with their gender identity, schools must provide any student “who has a need or desire for increased privacy, regardless of the underlying reason,” with “access to an alternative restroom (e.g., staff restroom, health office restroom),” “a reasonable alternative changing area, such as the use of a private area (e.g., a nearby restroom stall with a door), or a separate changing schedule.”<sup>14</sup> At least twelve other States and the District of Columbia offer comparable guidance to ensure that school districts can comply with nondiscrimination policies and privacy concerns.<sup>15</sup> Solutions range from offering privacy curtains to

---

<sup>13</sup> See Br. of Amici Curiae Sch. Adm’rs at 14-16; Off. of Elementary & Secondary Educ., U.S. Dep’t of Educ., *Safe & Supportive Schools* (May 30, 2023), <https://tinyurl.com/yv397h94>.

<sup>14</sup> See Susanne Beauchaine et al., *Prohibiting Discrimination in Washington Public Schools* 30-31 (Wash. Off. of Superintendent of Pub. Instruction 2012).

<sup>15</sup> **California:** Cal. Sch. Bds. Ass’n, Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities 2 (2014). **Colorado:** Colo. Ass’n of Sch. Bds. et al., Guidance for Educators Working with Transgender and Gender Nonconforming Students 4-5 (n.d.). **Connecticut:** Conn. Safe Sch. Coal., Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws 9-10 (2012). **Illinois:** Ill. Dep’t of Hum. Rts., Non-Regulatory Guidance: Relating to Protection of Transgender, Nonbinary, and Gender Nonconforming Students Under the Illinois Human Rights Act 6-7 (2021); Ill. State Bd. of Educ., Non-Regulatory Guidance: Supporting Transgender, Nonbinary and Gender Nonconforming Students 10-11 (2020); Affirming & Inclusive Schs. Task Force, *Strengthening Inclusion in Illinois Schools* 19-21 (2020). **Maryland:** Md. State Dep’t of Educ., Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination 13-14 (2015). **Massachusetts:** Mass. Dep’t of Elementary & Secondary Educ., Guidance for Massachusetts Public Schools: Creating a Safe and Supportive School Environment (Oct. 28, 2021). **Michigan:** Mich. Dep’t of Educ., State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students 5-6 (2016). **Minnesota:** Minn. Dep’t of Educ., A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students 10 (2017). **New Jersey:** N.J. State Dep’t of Educ., Transgender Student Guidance for School Districts

separate restroom and changing rooms to all who desire them, none of which require costly construction or remodeling upgrades.

Maintaining sex-separated spaces while allowing transgender students to use facilities that align with their gender identity not only results in positive educational and health outcomes, but also promotes States' compelling interest in "removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups." *Roberts v. U. S. Jaycees*, 468 U.S. 609, 626 (1984). And more specifically ensuring equal access to facilities that align with gender identity is not only consistent with Title IX's provision for sex-separated facilities, 20 U.S.C. § 1686, but also consonant with the constitutional guarantee that education be "made available to *all* on equal terms," *Brown*, 347 U.S. at 493 (emphasis added).

**B. The Final Rule Will Not Impose Significant Compliance Costs.**

Plaintiffs grossly overstate the expense of updating policies and training, arguing that compliance with "the Final Rule will inflict irreparable harm on the States, their school systems, and their citizens." Br. 21. Amici States' experience confirms that these concerns are unfounded. Of significance, Plaintiffs fail to note that States are already required to prohibit gender identity discrimination for all employees in their school districts under Title VII. *See Bostock*, 590 U.S. at 659-62. Training staff members and implementing policies so that the same protections extend to students under Title IX is not a "significant expenditure[]," as compared to the "construction of new

---

7 (2018). **New York**: N.Y. State Educ. Dep't, Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices 22-24 (June 2023). **Oregon**: Or. Dep't of Educ., Supporting Gender Expansive Students: Guidance for Schools 24-26 (2023). **Rhode Island**: R.I. Dep't of Educ., Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students 8-9 (2016). **Vermont**: Vt. Agency of Educ., Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students 6, 8 (2017). **District of Columbia**: D.C. Pub. Schs., Transgender and Gender-Nonconforming Policy Guidance 9 (2015).

facilities or creation of new programs.” 89 Fed. Reg. at 33,876; *see also id.* at 33,862-77 (noting benefits “far outweigh” costs). Further, at least twenty-two States and the District of Columbia,<sup>16</sup> and

---

<sup>16</sup> **California:** Cal. Civ. Code § 51(b), (e)(5) (public accommodations); Cal. Educ. Code §§ 220 (education), 221.5(f) (education and school athletic participation); Cal. Gov’t Code §§ 12926(o), (r)(2), 12940(a), 12949 (employment); *id.* § 12955 (housing); Cal. Penal Code §§ 422.55, 422.56(c) (hate crimes). **Colorado:** Colo. Rev. Stat. § 24-34-301(7) (definition); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations). **Connecticut:** Conn. Gen. Stat. § 10-15c (schools); *id.* § 46a-51(21) (definition); *id.* § 46a-60 (employment); *id.* § 46a-64 (public accommodations); *id.* § 46a-64c (housing). **Delaware:** Del. Code Ann. tit. 6, § 4501 (public accommodations); *id.* tit. 6, § 4603(b) (housing); *id.* tit. 19, § 711 (employment). **Hawai‘i:** Haw. Rev. Stat. § 368D-1 (education); *id.* § 302A-461 (school athletics); *id.* § 489-2 (definition); *id.* § 489-3 (public accommodations); *id.* § 515-2 (definition); *id.* § 515-3 (housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (housing, employment, access to financial credit, public accommodations); *id.* 5/1-103(O-1) (definition). **Iowa:** Iowa Code § 216.2(10) (definition); *id.* § 216.6 (employment); *id.* § 216.7 (public accommodations); *id.* § 216.8 (housing); *id.* § 216.9 (education). **Kansas:** Kan. Hum. Rts. Comm’n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court’s Bostock Decision* (Aug. 21, 2020) (advising that Kansas laws prohibiting discrimination based on “sex” in “employment, housing, and public accommodation” contexts “are inclusive of LGBTQ and all derivatives of ‘sex’”). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(9-C) (definition); *id.* § 4571 (employment); *id.* § 4581 (housing); *id.* § 4591 (public accommodations); *id.* § 4601 (education). **Maryland:** Md. Code Ann., State Gov’t § 20-304 (public accommodations); *id.* § 20-606 (employment); *id.* § 20-705 (housing); Md. Code Ann., Educ. § 26-704 (schools). **Massachusetts:** Mass. Gen. Laws ch. 4, § 7, fifty-ninth (definition); *id.* ch. 76, § 5 (education); *id.* ch. 151B, § 4 (employment, housing, credit); *id.* ch. 272, §§ 92A, 98 (public accommodations) (as amended by Ch. 134, 2016 Mass. Acts). **Minnesota:** Minn. Stat. § 363A.03(44) (definition); *id.* § 363A.08 (employment); *id.* § 363A.09 (housing); *id.* § 363A.11 (public accommodations); *id.* § 363A.13 (education). **Nevada:** Nev. Rev. Stat. §§ 118.075, 118.100 (housing); *id.* §§ 613.310(4), 613.330 (employment); *id.* §§ 651.050(2), 651.070 (public accommodations). **New Hampshire:** N.H. Rev. Stat. Ann. § 354-A:2(XIV-e) (definition); *id.* § 354-A:6 (employment); *id.* § 354-A:8 (housing); *id.* § 354-A:16 (public accommodations); *id.* § 354-A:27 (education). **New Jersey:** N.J. Stat. Ann. § 10:5-5(rr) (definition); *id.* § 10:5-12 (public accommodations, housing, employment); *id.* § 18A:36-41 (directing issuance of guidance to school districts permitting transgender students “to participate in gender-segregated school activities in accordance with the student’s gender identity”). **New Mexico:** N.M. Stat. Ann. § 28-1-2(Q) (definition); *id.* § 28-1-7(A) (employment); *id.* § 28-1-7(F) (public accommodations); *id.* § 28-1-7(G) (housing). **New York:** N.Y. Exec. Law §§ 291, 296 (education, employment, public accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); *id.* § 659.850 (education); *id.* § 659A.006 (employment, housing, public accommodations). **Rhode Island:** 11 R.I. Gen. Laws § 11-24-2 (public accommodations); 28 R.I. Gen. Laws §§ 28-5-6(11), 28-5-7 (employment); 34 R.I. Gen. Laws §§ 34-37-3(9), 34-37-4 (housing). **Utah:** Utah Code Ann. § 34A-5-106 (employment); *id.* § 57-21-5 (housing). **Vermont:** Vt. Stat. Ann. tit. 1, § 144 (definition); *id.* tit. 9, § 4502 (public accommodations); *id.* tit. 9, § 4503 (housing); *id.* tit. 21, § 495 (employment). **Washington:** Wash. Rev. Code Ann. § 28A.642.010 (education); *id.* § 49.60.030(1)(a)-(e) (employment, public accommodations, real estate transactions, credit transactions, and insurance

at least 374 municipalities,<sup>17</sup> already offer express protections against gender identity discrimination in areas such as education, housing, public accommodations, and employment—all demonstrating that the Final Rule’s protections are entirely feasible. A return to the 2020 Rule’s regulatory scheme comes with weighty costs to students who are denied protections under Title IX, including increased costs from absenteeism and student dropouts, as well as unemployment and health service costs that redound to States when students experience un-remediated incidents of discrimination and harassment.

### CONCLUSION

This Court should deny Plaintiffs’ motion for emergency and preliminary relief.

---

transactions); *id.* § 49.60.040(27) (definition); *id.* § 49.60.180 (employment); *id.* § 49.60.215 (public accommodations); *id.* § 49.60.222 (housing). **District of Columbia:** D.C. Code § 2-1401.02(12A-i) (definition); *id.* § 2-1402.11 (employment); *id.* § 2-1402.21 (housing); *id.* § 2-1402.31 (public accommodations); *id.* § 2-1402.41 (education).

<sup>17</sup> Movement Advancement Project, *Local Nondiscrimination Ordinances*, <https://tinyurl.com/59p55bap> (current as of January 1, 2023).

Date: May 31, 2024

Respectfully submitted,

**ROB BONTA**  
*Attorney General*  
*State of California*

**MATTHEW J. PLATKIN**  
*Attorney General*  
*State of New Jersey*

*/s/ Laura Faer*

*/s/ Giancarlo G. Piccinini*

---

LAURA FAER  
Supervising Deputy Attorney General  
CHRISTINA RIEHL  
DELBERT TRAN  
EDWARD NUGENT  
Deputy Attorneys General  
California Attorney General's Office  
1515 Clay Street, 20th Floor  
Oakland, CA 94612-0552  
(510) 879-3305  
Laura.Faer@doj.ca.gov

---

GIANCARLO G. PICCININI (*pro hac vice* pending)  
JESSICA L. PALMER  
ANDREW H. YANG  
AMANDA I. MOREJÓN  
LAUREN E. VAN DRIESEN  
Deputy Attorneys General  
New Jersey Attorney General's Office  
124 Halsey Street, 5th Floor  
Newark, NJ 07101  
(973) 648-2893  
Giancarlo.Piccinini@law.njoag.gov

*Attorneys for Amicus Curiae State of California*

*Attorneys for Amicus Curiae State of New Jersey*

**MICHELLE HENRY**  
*Attorney General*  
*Commonwealth of Pennsylvania*

*/s/ Lisa E. Eisenberg*

---

LISA E. EISENBERG  
Deputy Attorney General  
Office of Attorney General  
1600 Arch Street, Suite 300  
Philadelphia, PA 19103  
(215) 560-2980  
leisenberg@attorneygeneral.gov

*Attorney for Amicus Curiae Commonwealth of Pennsylvania*

*[additional counsel listed on subsequent page]*

**ADDITIONAL COUNSEL**

PHILIP J. WEISER  
*Attorney General*  
*State of Colorado*  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203

BRIAN L. SCHWALB  
*Attorney General*  
*District of Columbia*  
400 6th Street N.W.  
Washington, DC 20001

KWAME RAOUL  
*Attorney General*  
*State of Illinois*  
115 South LaSalle Street  
Chicago, IL 60603

DANA NESSEL  
*Attorney General*  
*State of Michigan*  
P.O. Box 30212  
Lansing, Michigan 48909

LETITIA JAMES  
*Attorney General*  
*State of New York*  
28 Liberty Street  
New York, NY 10005

PETER F. NERONHA  
*Attorney General*  
*State of Rhode Island*  
150 South Main Street  
Providence, RI 02903

ROBERT W. FERGUSON  
*Attorney General*  
*State of Washington*  
P.O. Box 40100  
Olympia, WA 98504

KATHLEEN JENNINGS  
*Attorney General*  
*State of Delaware*  
Delaware Department of Justice  
820 N. French Street  
Wilmington, DE 19801

ANNE E. LOPEZ  
*Attorney General*  
*State of Hawai'i*  
425 Queen Street  
Honolulu, Hawai'i, 96813

ANDREA JOY CAMPBELL  
*Attorney General*  
*Commonwealth of Massachusetts*  
One Ashburton Place  
Boston, MA 02108

KEITH ELLISON  
*Attorney General*  
*State of Minnesota*  
102 State Capitol  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

ELLEN F. ROSENBLUM  
*Attorney General*  
*State of Oregon*  
1162 Court Street NE  
Salem, OR 97301

CHARITY R. CLARK  
*Attorney General*  
*State of Vermont*  
109 State Street  
Montpelier, Vermont 05609-1001