IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

Rapides Parish School Board, *Plaintiff*, v. **United States Department of Health and Human Services**, et al., *Defendants*.	**Case No.** 1:25-cv-00070-DDD-JPM **Judge Dee D. Drell** **Magistrate Judge Joseph H.L. Perez-Montes**

PLAINTIFF RAPIDES PARISH SCHOOL BOARD'S
REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

In a litany of agency mandates, the last administration required regulated parties to act as if a person's self-professed "gender identity" is that person's sex. Many of these mandates have not been repealed. Here, the Rapides Parish School Board challenges four: HHS's Head Start grants regulation, Section 1557 Rule, and Section 504 Rule; as well as EEOC's gender-identity mandates. These rules require "allow[ing] biological males who are transgender into female private spaces, including bathrooms, changing rooms, living facilities, dual-occupancy bedrooms, etc., if the natal males would otherwise suffer harm 'more than de minimis.'" *Fla. v. HHS*, 739 F. Supp. 3d 1091, 1111 (M.D. Fla. 2024) (discussing Section 1557 Rule).

The Government does not defend the gender-identity mandates on their merits or the equities, and its jurisdictional quibbles are misplaced. For purposes of Article III standing, only the state of affairs when the School Board filed suit is relevant—that was January 17, 2025. For mootness, President Trump's executive order has not removed the mandates because that is not how executive orders work. To eliminate its rules, HHS must go through notice and comment to repeal the gender-identity mandates in its Head Start regulations, Section 1557 Rule, and Section 504 Rule. EEOC must remove the webpages that still include gender-identity discrimination within sex discrimination. And the School Board's challenges to these rules are ripe. The rules directly regulate the School Board, and its practices are heartland violations of each rule's gender-identity mandate; if the rules stay in place, the School Board will continue to be in violation. No further factual developments are needed to determine the rules' illegality.

The School Board welcomes the new administration's efforts towards removing rules of this kind. But for better or worse, rulemaking takes years. Under the APA, the School Board has a right to immediate relief from illegal rules like these.

ARGUMENT

I. Resolving this case through partial summary judgment and Rule 54(b) certification is appropriate and efficient.

The School Board's motion for partial summary judgment shows that each challenged rule exceeds statutory authority. Pl.'s MPSJ [Dkt. 19]; MPSJ Mem. [Dkt. 22] at 17–32; *see* Compl. [Dkt. 1], Counts I.A, II.A, III.A, V.A. This Court can and should vacate the rules on this basis. MPSJ Mem. at 13–14; *see, e.g.*, *Purl v. HHS*, No. 2:24-CV-228-Z, 2025 WL 1708137, at *27 (N.D. Tex. June 18, 2025) (declining to reach whether a substantively unlawful regulation was also arbitrary and capricious under the APA). The Court can then certify a partial final judgment under Rule 54(b), which lets the Government take an immediate appeal. Meanwhile, the Court can stay the remaining claims, and if there is no appeal or the Court's judgment is affirmed, no further proceedings will be necessary.[1]

The Government argues (at 3–4) that partial summary judgment is never available in APA cases and (at 22–25) that the Court cannot certify a partial final judgment here. Both are wrong. This procedure is hardly "unorthodox," *contra* Gov't Opp'n to MPSJ [Dkt. 34] at 3 (Gov't Opp'n). Indeed, DOJ has agreed to exactly this procedure elsewhere.[2]

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[1] The School Board preserves its claims that the rules are arbitrary and capricious, procedurally deficient, and in violation of constitutional rights, yet the procedure proposed here saves the parties from briefing—and the Court from deciding—these issues. *See* Compl. Counts I.B–D, II.B–C, III.B–C, V.B–D.

[2] *See, e.g.*, Joint Status Report, *Texas v. Becerra*, No. 5:22-cv-00185-H (N.D. Tex. Dec. 9, 2022), Dkt. No. 105 (agreeing to final judgment on two dispositive APA claims, certifying appealability under Rule 54(b), and staying the remaining claims pending appeal), *aff'd by* 89 F.4th 529, 537 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 139 (2024) (mem.). *See also Louisiana v. EEOC*, No. 2:24-CV-00629, 2025 WL 1462583, at *15 (W.D. La. May 21, 2025) (granting motion for partial summary judgment); *Lewis v. United States*, 764 F. Supp. 3d 362, 366 (M.D. La. 2025) (same).

II. This Court has jurisdiction.

The School Board has Article III standing because it is an object of the challenged regulations and, distinctly, is injured by the costs of compliance. MPSJ Mem. at 9–12, 33–34; Pl.'s Opp'n to MTD [Dkt. 35] at 6–13 (Pl.'s Opp'n). Standing is assessed at the time of filing, so events after January 17, 2025, cannot affect it. *See* Pls.'s Opp'n at 13–16; *contra* Gov't Opp'n at 1, 6.

Nothing has mooted the case. True, President Trump has instructed the executive branch to eventually rescind rules imposing gender ideology. But as relevant here, that hasn't happened yet. MPSJ Mem. at 14–17. Notice-and-comment rulemaking is a lengthy and uncertain process, and HHS hasn't even begun. Pl.'s Opp'n at 13–19.

The Government is wrong (at 5–6) to claim the School Board must rely on the "traditional pre-enforcement standing doctrine" from the First Amendment context. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014) ("*SBA List*"). The School Board has standing because of presently occurring regulatory burdens and compliance costs. For example, to avoid liability under the Section 1557 Rule, it must change its policies on sex-specific private spaces in school health facilities. These injuries occur now; they exist whether or not the Government ever brings an enforcement action. *See* MPSJ Mem. at 9–12; Pl.'s Opp'n at 6.

The Fifth Circuit requires only that a final regulation govern an entity's behavior for it to be able to sue. In *Texas Medical Association v. United States Department of Health and Human Services*, 110 F.4th 762 (5th Cir. 2024), for instance, the court allowed medical entities to challenge a rule that changed arbitration criteria even before any arbitration affected the plaintiffs. *Id.* at 772. The court rejected the defendant's attempt to reframe the injury as one involving only future harm, explaining, "the fact that the Plaintiffs are now subject to regulations that are contrary to law is itself a concrete injury." *Id.* at 773; *see also*

Tex. Corn Producers v. EPA, 141 F.4th 687, 697 (5th Cir. 2025) (unregulated entities were injured by a rule because it changed standards affecting them); *Contender Farms, LLP v. USDA*, 779 F.3d 258, 267–68 (5th Cir. 2015) (similar).

Neese v. Becerra, 123 F.4th 751 (5th Cir. 2024) (per curiam), is not to the contrary. There, plaintiffs unsuccessfully *sought* standing to challenge agency action based on fear of future enforcement. *Id.* at 753. *Neese* did not negate the principle that being subject to regulatory burdens is itself a present and concrete injury. And in any event, the Government is wrong (at 5) about what pre-enforcement standing doctrine requires. A plaintiff does not have to believe, much less prove, that his conduct violates the challenged law—he simply needs to show it is "arguably proscribed." *SBA List*, 573 U.S. at 162 (citation modified); *see Scott v. Allen*, No. 24-1349, 2025 WL 2525296, at *7 (10th Cir. Sep. 3, 2025). In *Neese*, the court concluded the plaintiffs' conduct was not arguably proscribed, so they had no credible fear of enforcement. 123 F.4th at 754.

Next (at 6), the Government attacks the School Board's standing by arguing the challenged rules don't require "gender identity-based access to single-sex spaces" or "preclude[ ]" the School Board's practices. It offers a strained reading of each regulation in which somehow *the Biden Administration's* HHS and EEOC never mandated any gender-identity policies. Gov't Opp'n at 6–11. The Government's claims about the rules' meaning (at 6–11) do not affect jurisdiction. Pl.'s Opp'n at 9; *see also Tex. Med. Ass'n*, 110 F.4th at 773 ("for standing purposes, the court must accept as valid [plaintiffs'] claim that the Final Rule favors" criteria harmful to them). And they're wrong: there's no serious question that the School Board's policies would have to be changed to comply with the gender-identity mandates. MPSJ Mem. at 2–6, 10. Forcing such predictable policy changes "is the whole point." *Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121, 2134–35 (2025).

Finally, the Government argues (at 11–14) that the School's Board's claims are not ripe. That too is wrong. If the Government means to invoke prudential ripeness, its argument is in "tension with … the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126–28 (2014) (citation modified); *see* Pl.'s Opp'n at 19. In any event, these claims "present[ ] a pure question of law that needs no further factual development," so they're "fit for judicial decision." *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 930 (5th Cir. 2023); MPSJ Mem. at 12–14. An APA claim is ripe when "the promulgation of a regulation will itself" be "felt in a concrete way by the challenging parties." *Reno v. Cath. Soc. Servs.*, 509 U.S. 43, 57–58 (1993) (citation modified). That has already happened. Unlike in *Texas v. Becerra*, No. 3:22-cv-419, 2024 WL 1221168 (S.D. Tex. Mar. 21, 2024), where the plaintiff did not show a concrete effect from the agency actions it challenged, *id.* at 6, the School Board is subject to immediate regulatory burdens and compliance costs. The new administration's statement that it will repeal gender mandates in the future cannot retroactively unripen the School Board's claims. *Contra* Gov't Opp'n at 13.

III. The challenged rules exceed the agencies' statutory authority.

Partial summary judgment should be granted. HHS and EEOC lacked statutory authority to add gender identity to sex discrimination laws (Count I, II, and V) or treat gender dysphoria as a basis for accommodations (Count III).

A. HHS and EEOC unlawfully added gender-identity discrimination to statutes barring sex discrimination.

HHS issued regulations adding gender identity to sex discrimination laws. 42 U.S.C. § 9849(b) (Head Start); *id.* § 18116(a) (Section 1557). EEOC did the same in many documents, two of which remain in force. *See id.* § 2000e-2(a) (Title VII).

HHS issued a rule declaring that for all grants, including Head Start programs, "sex discrimination includes discrimination based on sexual orientation and gender identity." 89 Fed. Reg. 36684, 36685 (May 3, 2024). That interpretation is still in force. 45 C.F.R. §§ 75.300(e)(11), 92.101(a)(2)(iv); *see also* 2 C.F.R. § 300.300(c) (effective Oct. 1, 2025). In the Section 1557 Rule, HHS defined "sex" to mean "gender identity" and "sex stereotypes." 89 Fed. Reg. 37522, 37699 (May 6, 2024) (codified at 45 C.F.R. § 92.206(a); *see also id.* at 37691–92, 37699; *e.g.*, 45 C.F.R. § 92.101(2)(iv) ("Discrimination on the basis of sex includes … discrimination on the basis of … gender identity"). Several courts have concluded this mandate is likely unlawful, but it has not been vacated. MPSJ Mem. at 2–3.

It's no secret what these rules mean. The Section 1557 Rule prohibits "adopting a policy or engaging in a practice that prevents an individual from participating … consistent with the individual's gender identity." 45 C.F.R. § 92.206(b)(3). HHS specified that "[a] covered entity will be in violation … if [it] refuse[s] to … place [transgender people] in facilities consistent with their gender identity, because doing so would result in more than de minimis harm." 89 Fed. Reg. at 37593. In the Head Start rule, HHS illustrated the same principle's "application in numerous circumstances." 89 Fed. Reg. at 36690 & n.20, 36692 (citing cases holding that a gender-identity mandate requires treating a person according to gender identity in restrooms, athletics, Medicaid, and employment).

EEOC likewise declared that "sex-based harassment includes harassment based on … gender identity," which includes "use of a name or pronoun inconsistent with the individual's known gender identity (misgendering); or the denial of access to a bathroom … consistent with the individual's gender identity."[3] Although one

[3] EEOC, *Enforcement Guidance on Harassment in the Workplace* (Apr. 28, 2024), https://perma.cc/7V7L-PN7P (archived Jan. 13, 2025).

manifestation of that rule has been vacated, *Texas v. EEOC*, 2025 WL 1414332, at *16 (N.D. Tex. May 15, 2025), EEOC still says on its website that it is sex discrimination to "harass" or "discriminate against someone … because of that person's … transgender status," including when an employer "assign[s] work stations" or "set[s] any other term of condition of employment—however small."[4]

These rules exceed both agencies' statutory authority. *Bostock*'s "text-driven reasoning" is inapplicable to other statutes and contexts. *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 484 (6th Cir. 2023), *aff'd sub nom. United States v. Skrmetti*, 145 S. Ct. 1816 (2025). And even if *Bostock* applied, it "did not establish a new … protected class" or "broaden the definition of 'sex.'" *Texas v. EEOC*, No. 2:21-CV-194-Z, 2022 WL 22869778, at *2 (N.D. Tex. May 26, 2022). Indeed, the Government concedes (at 16) that "redefining 'sex' to mean gender identity would violate" federal law, and it seems to acknowledge (at 19–20) that agencies cannot "preclude[ ] the School Board from operating [ ]separate athletics programs, physical education classes, and private spaces" based on sex. But that is what the rules do. *See Fla. v. HHS*, 739 F. Supp. 3d at 1111 (discussing Section 1557 Rule).

Ignoring the School Board's pleadings, the Government instead addresses a claim not alleged here—"a facial challenge." Gov't Opp'n at 2. Under this theory, a claimant would have to prove "no set of circumstances exists under which the particular challenged provision would be valid." Gov't Opp'n at 14 (citation modified). But the School Board nowhere alleged a "facial" challenge to which that heightened standard applies. The School Board raises APA claims contending HHS and EEOC lacked statutory authority. *See* 5 U.S.C. § 706(2).

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[4] *Prohibited Employment Policies/Practices*, EEOC, https://perma.cc/TYK5-JU3X (archived May 27, 2025); *Sex-Based Discrimination*, EEOC, https://perma.cc/ZZF8-UVXJ (archived May 27, 2025).

To be sure, one recent decision of the Supreme Court, *Bondi v. VanDerStok*, 145 S. Ct. 857 (2025), discusses facial challenges in an APA context. But the Court did so only because a "facial" challenge was how the parties "ha[d] chosen to frame" the case. *Id.* at 866 n.2. That did not occur here. The School Board did not and does not bring a "facial" challenge. And *Bondi* does not hold that APA claims must always satisfy the facial challenge doctrine. It reserved that question, *id.*, for good reason: in the APA, Congress requires the court to set aside rules that lack statutory authority, without heightened standards of review. 5 U.S.C. § 706(2).

In any event, the Government's attempted example of a valid application (at 15) illustrates how unlawful the rules are. Head Start's statute prohibits discrimination "on the ground of sex," not gender identity. 42 U.S.C. § 9849(b). The Government raises a hypothetical concerning denied access to females in comparison with males. But the Government admits this could be *sex* discrimination without resort to gender identity. In contrast, these rules illegally give gender-identity independent protection. *Cf.* 89 Fed. Reg. at 37593.

B. HHS unlawfully declared it will treat gender dysphoria as a disability covered by Section 504 of the Rehabilitation Act.

Under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which applies to the School Board (MPSJ Mem. at 3–4), "transvestism, transsexualism, … [or] gender identity disorders not resulting from physical impairments" are not covered. 29 U.S.C. § 705(20)(F)(i). But HHS proposed in its Section 504 rule, then declared in the final rule, that gender dysphoria is *not* excluded, and it *can* trigger compliance (if other elements are met). 89 Fed. Reg. 40066, 40068–69 (May 9, 2024).

The Government does not defend HHS's position found in the rule. It's right not to try. The statute cannot reasonably mean that gender dysphoria is not a "gender identity disorder." *See* MPSJ Mem. at 25–28. And even if that were one permissible reading, it could not overcome the clear statement rule applicable to

spending clause legislation, the major questions doctrine, or other constitutional standards. *See* MPSJ Mem. at 31–32.

Instead, the Government argues the 504 Rule's language doesn't matter. First, it says (at 16–17) that only language put into the Code of Federal Regulations can be challenged. That is not correct in the Fifth Circuit. *See Cent. & S. W. Servs., Inc. v. EPA*, 220 F.3d 683, 689 n.2 (5th Cir. 2000); Pls.' Opp'n at 20–21. Second, the Government returns to a mootness theory, pointing (at 17) to the new secretary's "clarification" stating the preamble is not enforceable. 90 Fed. Reg. 15412 (Apr. 11, 2025). That's not enough. The "clarification" did not abandon the preamble's (erroneous) statutory interpretation; and it still "has practical binding effect." *Texas v. EEOC*, 933 F.3d 433, 442 (5th Cir. 2019). The preamble's binding interpretation of 29 U.S.C. § 705(20)(F)(i) was in HHS's proposed rule and was finalized after notice and comment, so a statement issued without notice and comment does not negate it. And with HHS free to return to its old ways, the voluntary cessation doctrine would prevent mootness. Pl.'s Opp'n at 16–17; MPSJ Mem. at 4.

IV. The rules should be vacated and their enforcement enjoined.

Because the challenged rules are contrary to law, the Court should vacate each one or enjoin its enforcement. MPSJ Mem. at 32–35.

A. Although the Government asks the Court not to vacate, it does not disagree about the governing standards. Gov't Opp'n at 19–22. Congress authorized vacatur, and it is by default the "proper remedy" for an unlawful regulation. *Rest. L. Ctr. v. U.S. Dep't of Lab.*, 120 F.4th 163, 177 (5th Cir. 2024). Equitable factors, like the principle that relief be "no more burdensome to the defendant than necessary," *Califano v. Yamaski*, 442 U.S. 682, 702 (1979); *see* Gov't Opp'n at 19–20, do not apply. *Braidwood Mgmt., Inc. v. Becerra*, 104 F.4th 930, 952 (5th Cir. 2024), *rev'd on other grounds sub nom. Kennedy v. Braidwood Mgmt., Inc.*, 145 S. Ct. 2427

(2025). "[V]acatur operates on the status of agency action in the abstract," *id.* at 951, and a vacated rule is void as to everyone, *Tex. Med. Ass'n*, 110 F.4th at 779.

As the School Board has shown, each of the challenged rules exceeded the agency's statutory authority. *See supra* III; MPSJ Mem. at 32–35. The rules are "unlawful as to all participants, not just the Plaintiffs." *Texas v. Becerra*, No. 6:24-cv-211, 2024 WL 4490621, at *1 (E.D. Tex. Aug. 30, 2024). The Government offers no way it could justify its action if remanded, and it offers no reason this Court should depart from the default remedy. Vacatur is proper.

B. Equitable relief is also appropriate under the APA, and the School Board has shown an injunction is warranted to prevent the agencies from enforcing these statutory excesses. MPSJ Mem. at 33–35. These rules are part of a political ping-pong match. *See* MPSJ Mem. at 2–5. Equity favors protecting the School Board from continuing reversals in the regulatory regime that governs it. MPSJ Mem. at 34–35.

To oppose injunctive relief, the Government again ignores the nature of the injury. Gov't Opp'n at 17–19. The agency review mechanism that precedes funding withdrawal is no remedy for "the nonrecoverable costs of complying with … invalid regulation[s]." *Rest. L. Center v. U.S. Dep't of Lab.*, 66 F.4th 593, 597 (Apr. 28, 2023); *e.g.*, MPSJ Ex. 13 [Dkt. 19-14] ¶¶ 57–84. And complete relief requires protecting students and staff when they travel away from campus for school programs. *See* MPSJ Ex. 13 ¶ 40.

CONCLUSION

The Court should grant the School Board's motion for partial summary judgment [Dkt. 19] and certify a partial final judgment under Rule 54(b).

Respectfully submitted this 10th day of September, 2025.

s/ Michael T. Johnson
Michael T. Johnson
LA Bar No. 14401
Johnson, Siebeneicher & Ingram
2757 Highway 28 East
Pineville, Louisiana 71360
Telephone: (318) 484-3911
Facsimile: (318) 484-3585
mikejohnson@jslawfirm.com

s/ Matthew S. Bowman
Matthew S. Bowman (Lead Attorney)
WDLA Temp. Bar No. 913956
Natalie D. Thompson
WDLA Temp. Bar No. 918095
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
mbowman@ADFlegal.org
nthompson@ADFlegal.org

Julie Marie Blake
WDLA Temp. Bar No. 918094
Alliance Defending Freedom
44180 Riverside Parkway
Lansdowne, VA 20176
Telephone: (571) 707-4655
Facsimile: (571) 707-4790
jblake@ADFlegal.org

Counsel for Plaintiff Rapides Parish School Board