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 RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Authorities

INTRODUCTION

The prior administration used federal agencies to impose gender ideology on the nation, and many of those mandates are still in place. Throughout the Biden administration, agencies twisted the laws about "sex" and "disability" to ignore the basic differences between male and female and to elevate self-declared "gender identity" over biological reality. Rapides Parish School Board filed this lawsuit on January 17, 2025, to challenge some of those harmful regulations. Compl., Dkt. 1.

After taking office, the new President issued executive orders instructing all administrative agencies to withdraw gender-ideology-based regulations. But executive orders do not themselves change the regulations governing the School Board—they simply instruct agencies to change those regulations. And, for two reasons, HHS and EEOC have not yet changed their regulations. *First*, HHS cannot repeal its gender-identity mandates for Head Start preschools, school-based Medicaid services, or Section 504 of the Rehabilitation Act until it goes through notice-and-comment rulemaking, which takes years and has not yet begun. 5 U.S.C. § 553. *Second*, EEOC, which enforces Title VII, needs a quorum to fully remove its mandates. So the gender-identity mandates for Head Start (Count I), Section 1557 (Count II), Section 504 (Count III), and Title VII (Count V) remain.[1]

In its Memorandum in Support of Their Motion to Dismiss, Dkt. No. 30-1 ("Gov't Mem."), the Government claims (at 7–12) there is no Article III case or controversy, and thus no jurisdiction, because it's not likely that HHS and EEOC will enforce the prior administration's regulations against the School Board. But that is not the test. The question is objective—whether the rule is in place. It is not

[1] USDA by contrast *has* rescinded the gender-identity mandate for the School Lunch Program because doing so did not require rulemaking. So the School Board dismissed Count IV over the USDA's now-rescinded mandate. Stipulation of Dismissal of Certain Defs.: USDA and Def. Rollins, July 2, 2025, Dkt. No. 28.

a speculative exercise about the likelihood of enforcement. The Government also conflates mootness with standing, which is assessed at the time of filing (here, January 17, 2025). And the Government disregards Fifth Circuit precedent, which recognizes that when an agency binds itself to a legal position, that's reviewable. Its other arguments fail too. The Government's motion to dismiss should be denied.

BACKGROUND

I. The prior administration used the executive branch to impose gender ideology on the nation.

A. HHS's Section 1557 Gender-Identity Mandate

Through Section 1557 of the Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, 124 Stat. 119 (March 23, 2010), HHS imposed a gender-identity mandate on Medicaid providers nationwide. Section 1557 applies Title IX to healthcare like school-based Medicaid. 42 U.S.C. § 18116(a). In the rule, HHS claimed to "clarify" that "sex" means "gender identity" and "sex stereotypes." Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37522, 37691–92, 37699, 37701 (May 6, 2024) (codified at 42 C.F.R. §§ 438.3, 438.206, 440.262, 457.495(e); 45 C.F.R. §§ 92.1, 92.5, 92.6, 92.7, 92.8, 92.9, 92.10, 92.101, 92.206–211, 92.301, 92.303, 92.304) (the Section 1557 Rule); Compl. ¶¶ 57–98.

HHS's Section 1557 Rule became final in May 2024, after which three courts issued preliminary relief delaying its compliance date for Medicaid providers. *Tennessee v. Becerra*, 739 F. Supp. 3d 467 (S.D. Miss. 2024); *Texas v. Becerra*, 739 F. Supp. 3d 522 (E.D. Tex. 2024), *modified on reconsideration*, No. 6:24-cv-00211-JDK, 2024 WL 4490621 (E.D. Tex. Aug. 30, 2024); *Florida v. HHS*, 739 F. Supp. 3d 1091 (M.D. Fla. 2024). But no court vacated this mandate. The new administration has not rescinded it, and to do so it must promulgate a new regulation through notice and comment. 5 U.S.C. § 553. HHS has not done that.

B. HHS's Head Start Gender-Identity Mandate

Prior officials also imposed gender ideology on Head Start preschools and other HHS grant programs (the "Head Start" or "Grants" mandate). HHS defines "sex" in 42 U.S.C. § 9849 (which applies to Head Start) to include "gender identity," "sex stereotypes," "sex characteristics," and "gender expression." Health and Human Services Adoption of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 89 Fed. Reg. 80055 (interim final rule Oct. 2, 2024) (to be codified at 2 C.F.R. § 300.300), *previously published as* OMB Guidance for Federal Financial Assistance, 89 Fed. Reg. 30046 (Apr. 22, 2024) (codified at 2 C.F.R. § 300.300), Health and Human Services Grants Regulation, 89 Fed. Reg. 36684, 36688–89 (May 3, 2024) (codified at 45 C.F.R. § 75.300), and Health and Human Services Grants Regulation, 81 Fed. Reg. 89393 (Dec. 12, 2016) (codified at 45 C.F.R. § 75.300); Compl. ¶¶ 30–56.

HHS cannot rescind this Head Start rule until it goes through notice-and-comment procedures under the Administrative Procedure Act (APA), and it hasn't done that. 5 U.S.C. § 553.

C. HHS's Section 504 Gender-Identity Mandate

In 2024, HHS also imposed gender ideology on Medicaid programs and Head Start preschools on another theory—redefining "disability" in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, to include "gender dysphoria." Section 504 governs Head Start grants, and it applies to Medicaid providers via Section 1557. 42 U.S.C. § 18116(a). After notice and comment, HHS issued this mandate via preamble language describing Section 504 and its regulations. Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40066, 40068–69 (May 9, 2024) (citing 45 C.F.R. § 84.4) (the Section 504 Rule); Compl. ¶¶ 99–131.

The new administration has not rescinded this rule through notice-and-comment rulemaking. Months after the School Board filed its complaint, HHS issued a notice (without public comment) declaring that the preamble language is "not enforceable." Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; Clarification, 90 Fed. Reg. 15412 (Apr. 11, 2025). But under circuit precedent, because this particular preamble language was set forth in the proposed rule and finalized after public comment, it's a rule—declaring it unenforceable does not repeal it. *Cent. & S. W. Servs., Inc. v. EPA*, 220 F.3d 683, 689 n.2 (5th Cir. 2000) (a final and binding interpretation in a final preamble after notice and comment is a reviewable rule under the APA).

D. EEOC's Workplace Gender-Identity Mandate

Under the prior administration, EEOC reinforced a gender-identity mandate it had long imposed on workplace facility and speech policies by overreading Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. In 2024, EEOC issued guidance.[2] It also published statements on its website that advise employers and employees.[3] And it implemented its gender-identity mandate by pursuing enforcement actions against employers who allegedly recognize an employee's biological sex, rather than treat the employee according to a self-declared gender identity. Compl. ¶¶ 178–221. Under this mandate, EEOC makes employers use employees'

---

[2] EEOC, Enforcement Guidance on Harassment in the Workplace (Apr. 29, 2024) [hereinafter 2024 Guidance], https://perma.cc/7V7L-PN7P (archived Jan. 13, 2025).

[3] *Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity*, EEOC, https://perma.cc/V4ZX-636V (archived Jan. 13, 2025); *Prohibited Employment Policies/Practices*, EEOC, https://perma.cc/74GK-E4DS (archived Jan. 13, 2025); *Sexual Orientation and Gender Identity (SOGI) Discrimination*, EEOC, https://perma.cc/3WMS-R7D4 (archived Jan. 13, 2025); *Sex-Based Discrimination*, EEOC, https://perma.cc/EE2T-XRLA (archived Jan. 13, 2025).

self-selected pronouns and allow males into private spaces, like changing rooms and restrooms, designated for females. *Id.* ¶ 181.

A court vacated the guidance portion of EEOC's mandate. *Texas v. EEOC*, No. 2:24-CV-173-Z, 2025 WL 1414332, at *16 (N.D. Tex. May 15, 2025). But that case did not concern the portion of the mandate elsewhere on EEOC's websites.[4] EEOC lacks a quorum,[5] and so the website mandates remain in place.

II. HHS and EEOC's Gender-Identity Mandates injure the Rapides Parish School Board.

Plaintiff Rapides Parish School Board brought this case because each unlawful mandate requires it to change its policies and practices and to incur compliance costs. The School Board is subject to HHS's mandates because it receives HHS Medicaid and Head Start funds. Compl. ¶¶ 222–34. It is subject to EEOC's mandate because it has 3,200 employees. *Id.* ¶ 14; 42 U.S.C. § 2000e(b).

The School Board recognizes the reality that humans are male or female. Compl. ¶¶ 248, 266–68. It offers sex-specific athletics and P.E. classes. *Id.* ¶¶ 251–260. It separates locker rooms, restrooms, showers, gyms, searches, and overnight accommodations by sex. *Id.* ¶¶ 261–65, 275, 277–78. It uses biological pronouns, not self-selected pronouns. *Id.* ¶¶ 268, 286. And it has sex-specific policies, e.g., that "[c]lassroom instruction" on "gender identity may not occur in pre-kindergarten through grade 12 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards." *Id.* ¶¶ 266, 285.

Each rule forces the School Board to change policies. *Id.* ¶¶ 96, 128, 188, 218–21, 277–79, 282–90. The mandates take healthcare, preschool, and other resources

---

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

[5] *The State of the EEOC: Frequently Asked Questions*, EEOC, https://perma.cc/2JCR-SYPA (archived Aug. 13, 2025).

from kids—unless schools adopt new policies that threaten everyone's privacy, safety, and dignity. *Id.* ¶¶ 2, 49. Compliance thus imposes not only financial costs but also incalculable harm to students and staff. *Id.* ¶¶ 56, 97, 131, 221–26, 233–34, 245–47, 269–90.

ARGUMENT

I. The Court has jurisdiction.

The Government argues the School Board lacks standing, but its arguments really go to mootness. The School Board is an object of the challenged regulations and it is injured by their compliance costs, so it has standing. And because the rules are still in place, the Government cannot show that the case has become moot.

A. Standing depends on the timing of filing, and the School Board had standing on January 17, 2025.

"[T]he jurisdiction of the Court depends upon the state of things at the time of the action brought, and … it cannot be ousted by subsequent events." *Smith v. Sperling*, 354 U.S. 91, 93 n.1 (1957) (citation modified). So standing is assessed as of the time the complaint is filed. *See Texas v. EEOC*, 933 F.3d 433, 448–49 (5th Cir. 2019). When the School Board filed suit on January 17, 2025, *see* Compl., Dkt. No. 1, President Biden was in office, each of the challenged rules was undisputably in place, and President Trump had not issued a single executive order. On that day, the School Board suffered two independent injuries: the regulatory burden of the challenged rules and the costs of compliance. Either suffices for Article III standing. So the Court need not consider the Government's attacks on a different type of injury—future loss of funding for noncompliance with the challenged rules. Gov't Mem. 8–12. Nor is it relevant, as the Government claims (at 1, 5, 8–12), for standing whether later officials become less likely to enforce the rule. Each injury already happened when each mandate became final.

1. The object of a regulation has standing to challenge it.

When the plaintiff is "the object" of a regulation's "requirement[s]," it is "unnecessary to consider whether the requirement caused any specific economic harms" to the plaintiffs on top of their being directly regulated. *Tennessee v. EEOC*, 129 F.4th 452, 458 (8th Cir. 2025) (citation modified) (discussing *West Virginia v. EPA*, 597 U.S. 697, 719 (2022)). That is because "[t]he imposition of a regulatory burden itself causes injury." *Id.*; *accord Tex. Med. Ass'n v. HHS*, 110 F.4th 762, 773 (5th Cir. 2024). A plaintiff is an object of a regulation when it is "bound by [that regulation's] terms." *Contender Farms, LLP v. USDA*, 779 F.3d 258, 266 (5th Cir. 2015). "[R]egulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024).

The challenged mandates each require or forbid action by the School Board. Under past officials, HHS claimed that each rule "does not impose any substantive obligations" (at 13), but HHS meant that only in the sense that it said statutes required the mandates—a now-untenable merits claim that in any event wouldn't defeat constitutional claims. The Government also notes (at 11) that the School Board hasn't been "chilled" into changing policies yet. But succumbing to coercion isn't required when a regulated entity faces potential liability for ongoing conduct. *Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 794 (8th Cir. 2016).

a) HHS's Head Start Gender-Identity Mandate

Under HHS's gender-identity regulations for Head Start programs, the School Board must treat an individual's "gender identity" as his or her sex when applying Head Start's anti-discrimination provision, 42 U.S.C. § 9849. Compl. ¶¶ 41–48, 222–26; *see* 2 C.F.R. § 300.300(c)(11); 45 C.F.R. § 75.300(e)(11); 89 Fed. Reg. 36685 ("This final rule clarifies that … HHS interprets the prohibition against

discrimination on the basis of sex to include discrimination on the basis of ... gender identity, and sex characteristics."). Under this rule, the School Board must change its sex-specific policies and practices for Head Start students and staff—for example, by separating bathrooms based on gender identity instead of sex. Compl. ¶¶ 248–68. And it "threatens to require preschools to expose very young children to inappropriate material and to teach them to question their gender." *Id.* ¶ 49. These burdens give the School Board standing to challenge Section 75.300(e)(11).

b) HHS's Section 1557 Rule

HHS's Section 1557 Rule requires the School Board to adopt policies treating "discrimination on the basis of … gender identity" as "[d]iscrimination on the basis of sex." 89 Fed. Reg. at 37698–99, 37701 (codified at 45 C.F.R. §§ 92.101(a)(2), 92.208, 92.209; *see* Compl. ¶¶ 69, 79. The School Board provides over a million dollars in Medicaid services each year. *Id.* ¶¶ 227–33. The School Board must change its policies and practices to treat gender-identity discrimination as sex discrimination, at least when it comes to kids receiving school-based Medicaid services or staff providing those services. *Id.* ¶¶ 248–49. That burden is an injury.

The Government argues (at 14–15) that the Section 1557 Rule might not extend to school programs like athletics and locker rooms. That's not right, *see* Compl. ¶¶ 57–98, 227–34, and it's also a merits question not a standing issue. First, the School Board provides Medicaid services, which are "health programs or activities." 45 C.F.R. § 92.4 ("Health program or activity"). It also conducts other programs triggering the rule since it "[p]rovide[s] health education" for Rapides students in health class. *Id.*; Compl. ¶ 94. And, like many state schools, it "provide[s] … health insurance coverage" to school employees—another trigger of

the 1557 Rule. § 92.4.[6] Under the Rule's broad scope, a regulated entity must assume this combination of activities makes it "principally engaged in the provision or administration of any health projects." *Id.* This subjects "[a]ll of the operations" of the School Board to the 1557 Rule, including athletics. *Id.* Second, the Government's argument impermissibly "bootstrap[s] standing analysis to issues that are controverted on the merits." *In re Navy Chaplaincy*, 697 F.3d 1171, 1178 (D.C. Cir. 2012) (citation modified); *accord Duarte ex rel. Duarte v. City of Lewisville*, 759 F.3d 514, 520 (5th Cir. 2014). When assessing standing, the Court is to "accept as valid the merits of [Plaintiff's] legal claims." *FEC v. Cruz*, 596 U.S. 289, 298 (2022). That's because, "*if successful*," the plaintiff's interpretation of the regulation would provide standing. *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 613 (5th Cir. 2017). That means "accept[ing] the plaintiff's legal theory as correct," *Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of Homeland Sec.*, 507 F. Supp. 3d 228, 238 (D.D.C. 2020). If HHS wished to not cover all the School Board's operations even though it provides Medicaid services, health education, and health insurance, it should have written a narrower rule.

c) HHS's Section 504 Rule

HHS's Section 504 Rule, too, requires or forbids action by the School Board. Even though the statute says that "gender identity disorders not resulting from physical impairments" are not a "disability" under Section 504, 29 U.S.C. § 705(20)(F), HHS's rule concluded "gender dysphoria" *can* be a disability. *See* 89 Fed. Reg. 40068–69. To avoid liability for disability discrimination under Section 504, then, the School Board alleges it would "likely need to comply by allowing

[6] *See, e.g.*, Rapides Parish Sch. Bd., *File EGAC: Health and Group Hospitalization Insurance*, *in* Rapides Parish School Board Policy Manual § E, https://perma.cc/AZ5C-KA5U (archived Aug. 13, 2025).

students to access physical education classes, athletics, locker rooms, restrooms, and overnight accommodations on field trips based on their gender identity." Compl. ¶ 126. And even if no student currently claims that gender dysphoria "substantially limits any major life activity" and thus requires accommodation, 89 Fed. Reg. at 40069, the School Board must run its programs under the shadow of liability if it fails to accommodate gender dysphoria. That makes it an object of the regulation with standing to sue. *Contender Farms*, 779 F.3d at 264.

d) EEOC's Title VII Gender-Identity Mandate

The School Board is also the object of the EEOC's gender-identity mandate. *See* Compl. ¶¶ 178–212. As of January 17, 2025, EEOC had promulgated documents treating gender identity as "sex" under Title VII.[7] The School Board would have to change its policies and practices, such as assigning staff to restrooms or to rooms with students on overnight field trips based on gender identity. That regulatory burden is itself an injury for standing. *Tennessee v. EEOC*, 129 F.4th at 458.

The Government argues (at 15–16, 20–22) that the School Board lacks standing to challenge EEOC's mandate (Count V) for various reasons. Each fails.

First, the Government claims (at 15) that EEOC's mandate causes no injury because the School Board does not identify any current employees who claim a gender identity that differs from their biological sex. That does not matter. Even without current employees, the School Board immediately must change its policies and practices to conform to EEOC's interpretation of Title VII. *See Tennessee v. EEOC*, 129 F.4th at 458 (rejecting the EEOC's argument that "updat[ing] employment policies and train[ing] their staffs on new requirements … are voluntary measures" that don't support standing). As an employer of more than 15 employees, the School Board is an object of the regulation. The EEOC's mandate immediately

[7] *See supra* notes 2–4.

forbids and prohibits it from maintaining its current employment policies. *All. for Hippocratic Med.*, 602 U.S. at 382. Beyond that, Title VII applies to job applicants, not just current employees, so the School Board would have to adopt a policy treating job applicants based on gender identity rather than sex.

Second, the Government points out that Title VII's antidiscrimination requirements are not conditions on federal funding, but "an outright prohibition." Gov't Mem. 15 (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998)). That is correct, but irrelevant. The School Board claims not a future injury but a present one. Its standing is based on ongoing regulatory burden and compliance costs, not merely on future loss of federal funds.

Third, the Government argues (at 15–16) redressability is lacking because even if EEOC enforcement is enjoined, the School Board still faces "possible liabilities in private damages actions arising from failing to prohibit discrimination and harassment in the workplace." Indeed, that is one reason the School Board seeks vacatur. Compl. ¶ 291. The School Board's existing policies satisfy Title VII, properly understood. *See Bostock v. Clayton County*, 590 U.S. 644, 681 (2020) (declining "to address bathrooms, locker rooms, or anything else of the kind"). But EEOC claims employers must treat sex-specific privacy as discrimination based on gender identity, and private litigants can rely on EEOC's interpretation to claim employment discrimination. *Contra* Gov't Mem. 8–9. That is not a lack of redressability—it is an additional injury that would be remedied by vacatur. In any event, vacating the mandate "needn't completely cure" the School Board's every injury, so long as it "would lessen" the injury that EEOC caused. *Inclusive Cmtys. Project, Inc. v. Dep't of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019).

2. Compliance costs are also an injury in fact.

The challenged agency actions also impose compliance costs on the School Board, and this independently gives it standing to sue. *Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ.*, 98 F.4th 220, 234 (5th Cir. 2024), *cert. granted in part*, 145 S. Ct. 1039 (2025) (mem.) (injury established where the regulation would require "at least some degree of preparatory analysis, staff training, and reviews of existing compliance protocols" (quotation modified)); *Young Conservatives of Tex. Found. v. Smatresk*, 73 F.4th 304, 310 (5th Cir. 2023) (similar). A "loss of even a small amount of money" is an injury. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017).

The School Board has identified the costs of complying with each of the challenged agency actions. *See* Compl. ¶¶ 52–56 (Head-Start regulation), 96–97 (Section 1557 Rule), 125–31 (Section 504 Rule), 217–21 (EEOC's gender-identity mandate). Indeed, the agencies acknowledge these compliance costs, and all this is enough to show that they "will materialize." *Purl v. HHS*, 760 F. Supp. 3d 489, 499 (N.D. Tex. 2024) (rejecting similar argument by HHS); *see also Rest. L. Ctr. v. U.S. Dep't of Lab.*, 66 F.4th 593, 600 (5th Cir. 2023) ("Stringently insisting on a precise dollar figure reflects an exactitude our law does not require."). As an object of the regulations, and because of its compliance costs, the School Board has standing.

The Fifth Circuit's decision in *Neese v. Becerra*, 123 F.4th 751 (5th Cir. 2024), does not support dismissal. In *Neese*, the plaintiff doctors feared that a gender-identity mandate would prevent, for example, "preventive care consistent with [a transgender patient's] biological sex." *Id.* at 753. But HHS "disagree[d] with the assertion that it would prosecute a doctor who … treated a biological male or female according to the medical needs of the physical body." *Id.* And "'HHS ha[d] never taken the position that [the plaintiffs'] conduct constitutes gender-identity discrimination.'" *Id.* at 754 (Jones, J., concurring) (quoting HHS at argument). HHS—during the prior administration—even disclaimed any such interpretation. *Id.*

So the court concluded the doctors lacked standing because they had "not shown how their conduct constitutes gender-identity discrimination under any plausible reading of the [challenged rule]." *Id.* at 753.

That is not on point here, where the School Board's sex-specific policies and practices are open-and-shut violations on the face of each mandate. *See* Compl. ¶¶ 274–90. The prior administration certainly thought such policies invalid and discriminatory.[8] Each mandate requires "access" to sex-specific facilities based on gender identity. 89 Fed. Reg. at 37593, 37698–701 (45 C.F.R. §§ 92.101, 92.206) ("equal access" to programs and "intimate space[s]"); 89 Fed. Reg. at 36686, 36692–93 ("access" to single-sex programs); 89 Fed. Reg. at 40068, 40078, 40187 (codified at 45 C.F.R. §§ 84.31, 84.45(a)) ("access to" and non-exclusion from education, including "housing"); *Prohibited Employment Policies/Practices*, *supra* notes 3–4 ("assigning work stations, or setting any other term or condition of employment—however small"); Compl. ¶¶ 213–16. Schools also must change their speech. 89 Fed. Reg. at 37596, 37692, 37698–701 (to be codified at 45 C.F.R. §§ 92.101, 92.206) (refusing to disavow that "equal access" requires self-selected pronouns and curricular changes); 89 Fed. Reg. at 36692–93 (similar); 89 Fed. Reg. at 40069 (similar); Compl. ¶¶ 213–16; *see Florida v. HHS*, 739 F. Supp. 3d at 1112. And if officials now disagree (at 10–11), that is a question of mootness, not standing.

B. The Government cannot show that the case is moot.

No mootness warrants dismissal of the School Board's claims. An executive order instructing administrative agencies to change their regulations does not itself change those regulations—they can change only after notice and comment. The Section 504 Rule's interpretation of the Rehabilitation Act's exclusions has not been

[8] *See, e.g.*, Brief for Appellants 17–25, *Texas v. Becerra*, No. 24-40568 (5th Cir. Nov. 27, 2024), Dkt. No. 21.

repealed—the Secretary's recent "clarification" stating that interpretation is not itself "enforceable" does not repeal it or moot the School Board's challenge. And because EEOC's gender-identity mandate announced on its website has not been completely eliminated—despite another court's vacating one embodiment of that mandate in other guidance—the School Board's challenge is not moot.

1. An executive order does not moot judicial review.

The Government's lead argument is that there is no case or controversy because after President Trump took office, he issued an executive order saying that "any reading of Title IX and other similar antidiscrimination statutes as requiring 'gender identity-based access to single-sex spaces … is legally untenable.'" Gov't Mem. 10 (quoting Exec. Order No. 14,168 of Jan. 20, 2025, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, 90 Fed. Reg. 8615 (Jan. 30, 2025) ("the Defending Women executive order"). That goes to mootness, not standing. And it does not moot the School Board's claims because an executive order does not change a regulation.

Although the plaintiff has the burden to show standing, the defendant has the burden to prove the case has become moot. "[That] burden is a heavy one." *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953). Standing and mootness differ in scope. Circumstances that would not have given the plaintiff standing at the outset can still prevent mootness. Although mootness used to be described as "the doctrine of standing set in a time frame," the Supreme Court clarified decades ago that this "description of mootness is not comprehensive." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000). For example, if a defendant voluntarily ceases its wrongful conduct after the complaint is filed, it cannot obtain dismissal for mootness unless it shows "there is *no* reasonable expectation that the wrong will be repeated." *DeFunis v. Odegaard*, 416 U.S. 312,

318 (1974) (emphasis added) (quotation modified). This voluntary cessation doctrine recognizes that dismissal leaves the defendant "'free to return to [its] old ways.'" *Id.* (quoting *W. T. Grant*, 345 U.S. at 632).

The Government cannot show mootness from the Defending Women executive order. It cannot even show voluntary cessation. On its own terms, the order directs agencies to take action in the future. *See* Exec. Order No. 14,168 §§ 3(e), (f), 7(c). The regulatory mandates have not yet ceased because notice and comment has not yet repealed them. Although the order directed removal of "statements, policies, regulations, forms, communications, or other internal and external messages that promote or otherwise inculcate gender ideology," *id.* § 3(e), the order itself did not change any rules. The order admits it has no legally binding effect. *Id.* § 8(c). It also states that it "shall be implemented consistent with applicable law," *id.* § 8(b), which includes the APA.[9] A future plan to repeal rules does moot a challenge to those rules. "A case is not rendered moot simply because there is a possibility, or even a probability, that the outcome of a separate administrative proceeding may provide the litigant with similar relief." *El Paso Elec. Co. v. FERC*, 667 F.2d 462, 467 (5th Cir. 1982).

An exception for voluntary cessation moreover applies. The President may have instructed his subordinates not to enforce the prior administration's gender-identity mandates, but until the mandates are formally rescinded, agencies remain "'free to return to [their] old ways.'" (quoting *W. T. Grant*, 345 U.S. at 632). *DeFunis*, 416 U.S. at 318. There is no guarantee that HHS and EEOC will actually repeal these rules. The Fifth Circuit has said that Section 1557 rules in particular

[9] The Department of Agriculture by contrast rescinded unlawful mandates that did not require notice-and-comment rulemaking, USDA Policy Memo, *Guidance on the Interpretation of Discrimination Based on "Sex" in USDA Child Nutrition Programs* (July 7, 2025), so the School Board voluntarily dismissed its claim against it (Count IV). Stipulation of Dismissal, *supra* note 1.

are a continuing threat due to changing administrations. *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 375 (5th Cir. 2022). One court says it can revive *President Obama's* 1557 rule. *Walker v. Kennedy*, 2025 WL 1871070 (E.D.N.Y. July 8, 2025).

2. HHS's "clarification" does not moot the School Board's challenge to the 504 Rule.

The Government also argues (at 17–20) that the claim challenging HHS's Section 504 Rule (Count III) is moot. The new administration recently issued a "clarification" saying that its interpretation of how the statute applies to gender dysphoria is not binding or "enforceable." *See* 90 Fed. Reg. at 15412. For two independent reasons, that clarification does not moot the School Board's claim.

First, HHS's interpretation of Section 504 has not been repealed or replaced. That would require notice-and-comment rulemaking, which has not happened—and as a practical matter cannot happen for years. In the Rule, HHS interpreted the statute and committed to "approach gender dysphoria as it would any other disorder or condition … [if it] affects one or more body systems, or is a mental or psychological disorder, it may be considered a physical or mental impairment." 89 Fed. Reg. 40069. Without repealing the Rule, or going through notice-and-comment rulemaking, the Secretary of HHS published a "clarification" declaring that HHS's statements in the preamble about gender dysphoria are not "enforceable." 90 Fed. Reg. at 15412. He stopped short of abandoning the Section 504 Rule's interpretation of the statute, and he did not disclaim the Rule's commitment to treating gender dysphoria as a possible basis for liability notwithstanding the statute' exclusion of "gender identity disorders not resulting from physical impairments." 29 U.S.C. § 705(20)(F)(i); *see* 90 Fed. Reg. at 15412. HHS thus did not rescind this mandate.

Nor can HHS show "there is *no* reasonable expectation that the wrong will be repeated." *DeFunis*, 416 U.S. at 318 (emphasis added). A statement issued without notice and comment about the significance of prior agency action can be withdrawn

as easily as it was issued. And with the existing Section 504 Rule still in place, the next administration may enforce its own interpretation.

Second, HHS's clarification does not prevent private suits alleging that gender dysphoria is not within the Rehabilitation Act's exclusion of "gender identity disorders not resulting from physical impairments." 29 U.S.C. § 705(20)(F)(i). Even assuming the current HHS will not initiate enforcement action on that basis, the School Board still risks private liability for failing to accommodate gender dysphoria under the Rehabilitation Act. After all, private litigants are not bound by HHS's clarification and remain free to rely on the Section 504 Rule's interpretation of the Rehabilitation Act and its exclusions. *Cf. Haaland v. Brackeen*, 599 U.S. 255, 293 (2023). Because of HHS's action, the School Board's must change its policies to accommodate gender dysphoria, or risk liability. Its challenge is not moot.

3. A judgment vacating one portion of EEOC's gender-identity mandate does not moot challenges to the remainder.

Turning to the EEOC's gender-identity mandate (Count V), the Government claims (at 21) the School Board's claim is moot because a court vacated EEOC's guidance. *See Texas v. EEOC*, 2025 WL 1414332, at *16. A judgment does not moot other challenges to the same agency action until it is final on appeal, as the Department of Justice has recognized elsewhere.[10] But since the appeal deadline has now passed and the judgment is final, the School Board agrees it no longer needs vacatur of the 2024 Guidance.

Yet that does not moot the claim overall. EEOC still maintains two public-facing webpages claiming that discrimination based on "transgender status" is,

[10] *See* Joint Status Report, *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ.*, No. 4:24-cv-00461-O (N.D. Tex. Feb. 17, 2025), Dkt. No. 85.

without qualification, discrimination based on sex.[11] One such statement remains unaltered on EEOC's website. On this basis alone, the agency still maintains its legal position about *Bostock*'s application. The other bears a heading declaring it is "under review," but that does not eliminate the claim or show there is no possibility of recurrence.[12] These create a risk of liability that necessitates compliance. And as long as EEOC maintains these statements on its websites, it gives ammunition to private litigants. The School Board's challenge to these rules is not moot.

C. There is no "undergoing significant modification" exception to jurisdiction—a case is moot, or it is not.

The Government is wrong to suggest (at 16–17) that *A. L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324 (1961), represents a jurisdictional reason to dismiss the School Board's claims. *Mechling Barge holds* that *Munsingwear* vacatur (that is, vacating a judgment when the case has become moot on appeal) applies to "unreviewed administrative orders." *Id.* at 329–30 (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950)). The *Munsingwear* doctrine "instruct[s] [appellate courts] to prevent appellants from being forced to acquiesce in a judgment that they can no longer challenge on the merits" because it has become moot. *Valspar Sourcing, Inc. v. PPG Indus., Inc.*, 780 F. App'x 917, 921 (Fed. Cir. 2019). That has no application in this case. This is the first stage of judicial review, not an appeal from an underlying agency order that injured the School Board. When *Mechling Barge* observed that the agency's procedures were "undergoing significant modification," it was to explain why it would not reach an argument that the agency had used improper procedures in issuing the now-moot order. *Mechling Barge*,

[11] *See Sex-Based Discrimination*, *supra* note 4.

[12] *See Sex-Based Discrimination*, *supra* note 4.

368 U.S. at 331. That just recognizes that deciding a moot case would be an impermissible advisory opinion. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

Perhaps the Government means to invoke the non-jurisdictional prudential mootness doctrine of *Chamber of Commerce of United States v. United States Department of Energy*, 627 F.2d 289 (D.C. Cir. 1980), a case that it cites without discussion (at 17). This doctrine is "a facet of equity" that some courts applied to withhold relief "[w]here it is … unlikely that the court's grant of declaratory judgment will actually relieve the injury." *Penthouse Int'l, Ltd. v. Meese*, 939 F.2d 1011, 1019 (D.C. Cir. 1991). But here the School Board's remedy—vacating the challenged regulations or enjoining their enforcement—"*will* benefit the party alleging injury." *Id.* at 1020 (emphasis added). The Government just thinks the injury may be remedied in a different way at some point, but that is no justification for treating the case as moot today.

The Fifth Circuit has not adopted the prudential mootness doctrine, *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 432 n.15 (5th Cir. 2011), and it is unlikely to do so. The Supreme Court has abandoned the doctrine of "prudential standing," *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126–28 (2014), and retreated from its cousin, "prudential ripeness," *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014). Like these, "prudential mootness" is in tension with "the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark*, 572 U.S. at 126 (citation modified). This Court should not adopt "prudential mootness," particularly to dismiss a complaint at the pleading stage.

II. The challenged rules are final agency action.

Agency action is final, and thus reviewable, when it is "one by which rights or obligations have been determined, or from which legal consequences will flow."

Bennett v. Spear, 520 U.S. 154, 177–78 (1997) (citation modified). The Government argues (at 17–18, 20–21) that the Section 504 Rule (Count III) and EEOC's gender-identity mandate (Count V) do not meet this requirement, so they are unreviewable. That argument cannot stand up to Fifth Circuit precedent. Agency action is final when it commits the agency to a legal position or creates safe harbors on which private parties can rely. *Texas v. EEOC*, 933 F.3d at 443–44 (holding that EEOC "guidance" was binding and could be challenged under the APA).

A. HHS's Section 504 Rule is final agency action.

In the Section 504 Rule's preamble, HHS states that "gender dysphoria ... may be considered a physical or mental impairment" covered by Section 504 of the Rehabilitation Act. 89 Fed. Reg. at 40068–69; *see* Compl. ¶¶ 116–24. That is final agency action, and thus a reviewable rule under the APA. Even if found in a preamble, a final and binding interpretation issued after notice and comment is reviewable. *Cent. & S. W. Servs., Inc.*, 220 F.3d at 689 n.2.

The Section 504 Rule's gender-identity mandate is final agency action. If "the agency action binds the *agency*," it is one from which "legal consequences flow." *Texas v. EEOC*, 933 F.3d at 445. In the Section 504 Rule, HHS bound itself to a legal position on how the Rehabilitation Act applies to gender dysphoria. It adopted a court's decision holding that "the language excluding gender identity disorders from coverage" under Section 504 "did not encompass gender dysphoria." 89 Fed. Reg. at 40069 (citing *Williams v. Kincaid*, 45 F.4th 759, 780 (4th Cir. 2022)). It committed the agency to that legal position. *See id.* ("The Department will approach gender dysphoria ….). And it represented that private parties could rely on that interpretation to claim a violation of Section 504. *Id.*

The Government also argues (at 18) the Section 504 Rule's statements on gender dysphoria are not reviewable because the Rule "speak[s] in the conditional,

using the term 'may.'" That misstates the sense in which HHS used the word "may." Here, the word "may" acknowledges that the existence of a covered disability is not the only element of Section 504's requirements. As HHS put it:

> A determination … that gender dysphoria is a physical or mental impairment is, of course, not the end of the question. It must then be determined whether the impairment substantially limits any major life activity. Depending on that analysis, gender dysphoria may rise to the level of a disability under section 504 and would provide protection against discrimination … prohibited by section 504.

89 Fed. Reg. at 40069. As used here, the word "may" does not qualify the agency's legal position—it simply recognizes the additional elements of a 504 claim.

B. EEOC's mandate is final agency action.

On Count V, the Government suggests in passing that EEOC's 2024 Guidance and numerous public statements "[n]ever [themselves] created binding legal rights or obligations," so they are not final agency action reviewable under the APA. Gov't Mem. 21. That is incorrect. EEOC bound itself to a legal position—that Title VII treats gender identity just like "sex." It extends *Bostock*'s reasoning to all aspects of employment, not just hiring and firing. *See supra* notes 2–4. That is final agency action under *Texas v. EEOC*. *See supra* Arg.II. EEOC's revised webpages still provide for the same gender-identity mandates, so the website mandates remain subject to challenge. *See Biden v. Texas*, 597 U.S. 785, 807–14 (2022) (considering a prior agency action even after it was formalized by a later, similar action).

EEOC reiterated that legal position on its public-facing webpages, which are themselves final agency action. *See Barrick Goldstrike Mines Inc. v. Browner*, 215 F.3d 45, 48–49 (D.C. Cir. 2000) (acknowledging that "final agency action may result from a series of agency pronouncements rather than a single edict" (quotation modified)). For example, EEOC declared "[d]iscrimination against an individual

because of sexual orientation or transgender status is discrimination because of sex in violation of Title VII," and that applies to "any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment."[13] That committed the agency to enforcing the law based on that legal position. And it gave private parties rights and obligations on that basis, declaring "it is illegal to discriminate against someone (applicant or employee) because of that person's … sex (including transgender status[)] … in every aspect of employment."[14]

The Government also argues (at 20–21) that EEOC's past enforcement actions are not "a discrete, reviewable 'agency action'" or a "rule" that can be reviewed under the APA. To be sure. The School Board does not seek judicial review of EEOC's past enforcement actions against other employers. Instead, EEOC's history of imposing gender ideology in enforcement actions shows that the agency has "applied" its gender-identity guidance "in a way that indicates it is binding." *Texas v. EEOC*, 933 F.3d at 441. That shows reviewability under the APA. *See id.*

III. The Department of Justice is a proper defendant because it enforces the challenged regulations.

The Government argues (at 22) that the Department of Justice and its officials should be dismissed as defendants because other agencies promulgated the challenged rules. That motion should be denied. When this case reaches the remedial stage, injunctive relief must extend to DOJ as well as the issuing agency.

The School Board seeks injunctive relief, and any injunction must run against DOJ as well as the other agencies. *See* Compl. at Prayer for Relief ¶ C. That is because an injunction operates *in personam* by directing an individual to act or

[13] *Sex-Based Discrimination*, *supra* notes 3–4.

[14] *Prohibited Employment Policies/Practices*, *supra* notes 3–4.

refrain from acting. *Nken v. Holder*, 556 U.S. 418, 428 (2009). After all, "federal courts enjoy the power to enjoin individuals tasked with enforcing laws, not the laws themselves." *Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021).

An injunction against enforcement against only HHS or EEOC officials would not give the School Board complete relief. The threat of DOJ enforcement is part of what harms the School Board, as the Complaint explains. Compl. ¶¶ 21–25, 110–13, 122–24. For example, DOJ's Civil Rights Division enforces Title VII against local government entities like the School Board. *See* 42 U.S.C. §§ 2000e-5(f), 2000e-6. The Attorney General is tasked with "coordinat[ing] the implementation and enforcement" of federal nondiscrimination laws. *See* Exec. Order No. 12,250 of Nov. 2, 1980, Leadership and Coordination of Nondiscrimination Laws, 45 Fed. Reg. 72995 (Nov. 4, 1980). And the Department of Justice also enforces the Head Start funding statute, 42 U.S.C. § 9849(b), Section 1557 of the ACA, *id.* § 18116, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

IV. There is no first-to-file rule under the APA.

Finally, the Government asks the Court (at 22–23) to dismiss the School Board's challenges to HHS's Section 1557 Rule and Section 504 Rule because these rules have been challenged in other lawsuits, too. That is no basis for dismissal.

The APA authorizes any person "aggrieved" by agency action to seek judicial review. 5 U.S.C. § 702. It creates a strong presumption favoring judicial review. *See Texas v. United States*, 809 F.3d 134, 163 (5th Cir. 2015), *aff'd by equally divided Court*, 579 U.S. 547 (2016). And "[c]ourts routinely grant follow-on injunctions against the [federal g]overnment." *Whitman-Walker Clinic, Inc. v. HHS*, 485 F. Supp. 3d 1, 59–60 (D.D.C. 2020) (collecting cases). The same holds for vacatur.[15]

[15] *See, e.g.*, *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ.*, No. 4:24-cv-00461-O, 2025 WL 1782572 (N.D. Tex. 2025) (vacating a regulation that had been recently

The School Board seeks permanent relief from HHS's unlawful regulations. No lawsuit has resulted in a final judgment vacating the challenged rules. The case challenging the Section 504 Rule never proceeded past the pleadings, and it has been stayed since January. Electronic Order, *Texas v. Kennedy*, No. 5:24-cv-00225-H (N.D. Tex. Jan. 25, 2025), Dkt. No. 44. HHS acknowledges it is still "evaluat[ing]" its "position in light of the President's recent Executive Order." Joint Status Report, *Texas v. Kennedy*, No. 5:24-cv-00225-H (N.D. Tex. July 29, 2025), Dkt. No. 69. And the lawsuits challenging the Section 1557 Rule resulted in preliminary relief delaying the Rule's effective date, but none has proceeded to final judgment. *See Texas v. Becerra*, 739 F. Supp. 3d 522 (E.D. Tex. 2024), *modified on reconsideration*, No. 6:24-cv-00211-JDK, 2024 WL 4490621 (E.D. Tex. Aug. 30, 2024); *Tennessee v. Becerra*, 739 F. Supp. 3d 467 (S.D. Miss. 2024). So the School Board has no permanent relief protecting it from these regulations.

To be sure, *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967), said reviewing courts can dismiss an APA suit "if the same issue is pending in litigation elsewhere." *Id.* at 155. That is not how APA litigation proceeds today. Even in *Abbot Laboratories* the Court discussed transfer and consolidation. *See id.* That was also the approach taken in the one recent case that the Government cites, *Chamber of Commerce of United States v. Federal Trade Commission*, 732 F. Supp. 3d 674 (E.D. Tex. 2024). In *Chamber of Commerce*, a related challenge had been filed one day earlier, and it was filed by one of the plaintiff organization's members, which meant duplicative relief and res judicata were at issue. *See id.* at 677 (discussing Complaint, *Ryan, LLC v. FTC*, No. 3:24-CV-00986 (N.D. Tex. Apr. 23, 2024), Dkt. No. 1). But other cases do not overlap with the School Board as a plaintiff. And

---

vacated in *Tennessee v. Cardona*, 762 F. Supp. 3d 615, 628 (E.D. Ky. 2025), *as amended* (Jan. 10, 2025)).

contrary to the Government's characterization (at 23), the court waited to dismiss the second-filed case until the plaintiff intervened in the first.[16] That is not precedent for the extreme request the Government makes here—complete dismissal of the School Board's lawsuit. Because other challenges to the Section 1557 Rule and 504 Rule are at varying stages of litigation, consolidation or intervention would be inefficient and prejudicial—that is probably why the Government does not even suggest it.

The Government's request is particularly troubling because its position—maintained in these very cases—is that APA relief must be limited to a plaintiff in its case.[17] In other words, the Government is asking federal courts to *both* dismiss cases filed by various individual plaintiffs in lieu of the first-filed challenge, *and* to rule that any relief provided in that remaining case cannot encompass parties who are not there, including because they filed elsewhere but were dismissed. This sleight-of-hand would mean only the first plaintiff can get relief, and only for itself.

The School Board should not be forced to wait upon the litigation tactics of other parties in other courts. There is no reason this Court cannot be first to finally resolve the lawfulness of HHS's Section 1557 and Section 504 Rules.

CONCLUSION

The Court should deny the Government's motion to dismiss [Dkt. No. 30].

---

[16] Order, *Ryan, LLC v. FTC*, No. 3:24-CV-00986 (N.D. Tex. May 9, 2024), Dkt. No. 34 (order granting intervention); Order, *Chamber of Com. of U.S. v. FTC*, No. 6:24-cv-00148 (E.D. Tex. May 30, 2024), Dkt. No. 32 (order dismissing second-filed complaint).

[17] *See, e.g.*, Memorandum in Support of Defendants' Cross-Motion to Dismiss 11, 13, *Tennessee v. Kennedy*, 1:24-cv-00161 (S.D. Miss. May 21, 2025), Dkt. No. 69; Appellant's Brief 43 n.10, *Tennessee v. Becerra*, No. 24-40568 (5th Cir. Nov. 27, 2024), Dkt. No. 21; Defendant's Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment 28–30 & n.19, *McComb Child.'s Clinic LTD. v. Becerra*, 5:24-cv-00048 (S.D. Miss. Oct. 23, 2024), Dkt. No. 41.

Respectfully submitted this 15th day of August, 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