SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

In the Matter of the Application of

LONG ISLAND ROLLER REBELS,

Petitioner,

v.

BRUCE BLAKEMAN, in his official capacity as NASSAU COUNTY EXECUTIVE, and COUNTY OF NASSAU,

Respondents,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules.

Index No. _____/2024

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION SEEKING A JUDGMENT PURSUANT TO ARTICLE 78 AND SEEKING A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

On February 22, 2024, Nassau County Executive Bruce Blakeman issued Executive Order No. 2-2024 ("the Order") prohibiting transgender women and girls from participating in any women's or girls' sporting league, team, event, program, competition, or organization at a Nassau-run facility. Without warning, all such leagues, teams and groups were subjected to a sweeping requirement that they identify, out, and expel members based solely on their transgender status or lose access to public facilities. The petitioner—a Nassau County-based women's roller derby league that includes transgender members and uses Nassau County-run facilities—now moves for a preliminary injunction enjoining the respondents from enforcing the Order.

All relevant factors weigh strongly in favor of the requested injunction. First, the petitioner is likely to succeed on the merits because the Order violates clear New York State law prohibiting discrimination on the basis of gender identity (Executive Law §§ 292[9], 296[2], 296[2]; Civil Rights Law § 40-c); indeed, its entire purpose and effect is to exclude transgender women and girls on the basis of their gender identity. Second, without an injunction the petitioner and countless other individuals will suffer irreparable harm including the release of confidential medical information, outing, and a wide array of related unlawful discrimination. Finally, the balance of equities weighs overwhelmingly in favor of the injunction—issuing it would maintain the status quo that has existed for many years, while Executive Blakeman has conceded that he is unaware of a single example of harm (or even a complaint) arising out of that pre-Order status quo.

For all these reasons, the Court should enjoin the respondents from enforcing the Order immediately, and the petitioner should prevail on the underlying petition.

BACKGROUND

The Long Island Roller Rebels (the "Roller Rebels") include the full factual background in their verified petition (*see* petition ¶¶ 12–68). For the Court's convenience, they summarize the

background relevant to that petition and to their request for a preliminary injunction below.

Transgender People, Gender Identity, and Gender Dysphoria

Gender identity is a deep-seated understanding everyone possesses about their own gender (petition ¶ 12[1]). When a child is born, a sex designation usually occurs at birth based on the infant child's genitals, and that sex designation is generally listed on the infant's birth certificate (*id.* ¶ 14). Most people have a gender identity that aligns with the sex they are assigned at birth, and these people are *cis*gender (*id.* ¶ 15). *Trans*gender people are people with a gender identity that differs from their assigned sex at birth (*id.* ¶ 16).

According to the American Psychiatric Association's Diagnostic & Statistical Manual ("DSM-5"), "gender dysphoria" is the diagnostic term for the condition where clinically significant distress results from the lack of congruence between a person's gender identity and the sex they were designated at birth *(id.* ¶ 17). People with gender dysphoria often experience severe psychological harm—including anxiety, depression, and/or thoughts of suicide—and this distress can be exacerbated by stigmatization, discrimination, and victimization (*id.*).

For transgender people of all ages, a critical part of treatment is affirming "social transition": the process by which a person expresses themselves consistently with gender identity (*id.* ¶ 18). Forcing a person with gender dysphoria to live in a manner that does not align with the person's gender identity undermines their "social transition" *(id.* ¶ 19). For example, requiring a girl who is transgender to use facilities or participate in single-sex activities for boys can be deeply harmful and disruptive to treatment (*id.*).

Participation in Athletics

[1] Throughout the "Background" section of this memorandum, the petitioner cites to allegations in the verified petition that, in the petition, include multiple citations to additional sources also attached as exhibits to the Affirmation of Gabriella Larios. For clarity and brevity, the petitioner does not include all of these additional citations here, but each is included in the relevant cited paragraph of the petition.

Athletics offer people a range of physical and emotional health benefits, including an opportunity to gain confidence, to develop important social and coping skills, and to build social connections. By contrast, when people are excluded from participating in sports, or do not feel accepted or respected, they do not have the opportunity to reap these benefits (*id.* ¶ 20–21). For example, participation in sports has a documented positive effect on academic achievement, with student athletes generally experiencing better academic achievement than students who are not athletes (*id.* ¶ 22).

Through participation in sports, young people also learn to better manage academic and social pressures. Participation in sports provides people of all ages the opportunity to make friends and become part of a supportive community of teammates and peers, easing social pressures to "fit in" (*id.* ¶ 23). It also reduces the effects of risk factors, such as stressful life events, that lead to increases in depression (*id.*). These benefits impact people throughout the entirety of their lives.

Policies that exclude women and girls who are transgender from athletic competition for women and girls limit the benefits of athletics for *all* women and girls and discourage, rather than encourage, participation in athletics. Such policies also interfere with treatment for gender dysphoria, increase shame and stigma, and contribute to negative physical and emotional health outcomes (*id.* ¶ 25).

Status Quo Prior to the Order

Prior to the Order, participation in sports at public facilities in Nassau County had for years been governed by the same New York State antidiscrimination laws and regulations that apply throughout the state. Specifically, these laws have prohibited discrimination on the basis of gender identity in public accommodations—like publicly-run athletic facilities—and in programs run by schools that use such facilities (*see* Executive Law §§ 292[9], 296[2]; Civil Rights Law § 40-c;

see also discussion *infra* at 9–14).

Regulations and guidance from the state agencies that enforce those antidiscrimination provisions have clarified with specificity that excluding transgender women and girls from women's and girls' teams constitutes prohibited discrimination on the basis of gender identity (*see* Division of Human Rights, *Guidance on Protections from Gender Identity Discrimination Under the New York State Human Rights Law* at 9 [Jan. 2020] ["DHR Guidance"];[2] NYSED, *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* at 8, 25 [June 2023] ["NYSED Guidance"][3] [also confirming that its guidance on this issue conforms with additional state regulations, federal Title IX protections, and federal guidance]).

To the petitioner's knowledge, entities subject to these laws and requirements have followed them in Nassau County for years without incident. They are aware of no example of any controversy, complaint, or suit arising out of their compliance (petition ¶ 41).[4]

The Order

The Order is formally titled "An Executive Order for Fairness for Women and Girls in Sports" (Larios Affirmation Exhibit 6). It purported to take effect immediately—as of the moment Executive Blakeman signed it at a press conference he organized for February 22, 2024 (*see*

[2] Attached as Exhibit 15 to the affirmation of Gabriella Larios ("Larios Affirmation"), and also available at https://dhr.ny.gov/system/files/documents/2022/04/nysdhr-genda-guidance-2020.pdf.

[3] Larios Affirmation Exhibit 16, *also available at* https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf.

[4] Indeed, on March 6, 2024, Executive Blakeman confirmed that he was personally not aware of any examples of complaints about transgender athletes in female sports in Nassau (Philip Marcelo, *County exec sues New York over an order to rescind his ban on transgender female athletes*, Associated Press [Mar. 6, 2024] [quoting him as stating that "It hasn't happened yet, but do we need something to happen before we take action?"], Larios Affirmation Exhibit 20, *available at* https://www.nbcnews.com/news/us-news/county-exec-sues-new-york-order-rescind-ban-trans-female-athletes-rcna142120).

petition ¶ 26)—although it was preceded by no public discussion previewing its contents, contemplating enforcement, or explaining the effect it would have on people in the county.

The Order explicitly prohibits transgender women and girls—whom it classifies as "males" throughout—from participating in women's and girls' sporting activities at Nassau-run facilities. Specifically, the Order states that "any sports, leagues, organizations, teams, programs, or sports entities" designated for "females, women, or girls" shall "not [be] issue[d] any permits for the use and occupancy of Nassau County Parks property for the purposes of organizing a sporting event or competition" if it includes "biological males" (Order at 1-2).[5] The Order then defines "an individual's gender" as "the individual's biological sex at birth," as stated on an "official birth certificate . . . filed at or near the time of . . . birth" (*id.* at 2). Teams designated for "males, men, or boys"—and teams designated "coed"—are permitted to include "biological females" (*id.*).

Because the Order applies to *any* "sports, leagues, organizations, teams, programs, or sports entities" without limitation and regardless of level or skill, it affects a breathtakingly wide set of groups. Applying the plain language of the Order, they range from public and private school sports teams, to recreational leagues, to competitive leagues with their own nationally- or internationally-applicable rules regarding the inclusion of transgender participants, to casual sports clubs, to groups organizing a one-off tournament, and everything in between (*see* petition ¶ 34). It applies equally to a recreational adult women's golf league as it does to a charity field day organized by a youth organization for girls.

The Order covers approximately 100 different public accommodations used for various

[5] The Endocrine Society's clinical guidelines notes that "the terms biological sex and biological male or female are imprecise and should be avoided" because the physiological aspects of a person's sex are not always aligned with each other (*see* Hembree WC, et al., *Endocrine treatment of gender-dysphoria/gender incongruent persons: An Endocrine Society clinical practice guideline*, Journal of Clinical Endocrinology, 102: 3869–3903, 3875 [2017], Larios Affirmation Exhibit 1, *also available at* https://academic.oup.com/jcem/article/102/11/3869/4157558).

sporting activities, including swimming pools, baseball fields, ice rinks, soccer fields, baseball fields, basketball courts, and golf courses (*id.* ¶ 32). Eisenhower Park, for example, is one of the largest public spaces in the New York metropolitan area and includes tennis courts, indoor and outdoor ice-skating rinks, outdoor athletic fields, golf courses, a world-class Aquatic Center, and more (*id.* ¶ 33). For each of these Nassau-run athletic facilities, certain permits are required to reserve the space for planned sporting events or competitions, and permit approval is now contingent on compliance with the Order (*id.*).

The Effect of the Order on Women's and Girls' Teams, Leagues, and Organizations

Enforcement of the Order will require teams, leagues, and sporting event organizers to aggressively police the gender identity and expression of all women and girls who participate in sports, both cisgender and transgender. The requirement that an individual's gender identity must match their "biological sex at birth" means women's and girls' teams will have to subject their players to intrusive questioning, tests, or verification requirements to comply, and then "out" any transgender women or girls and exclude them in order to obtain a permit (*id.* ¶ 37).

For example, to comply with the Order, a public school teacher who coaches a middle school girls' softball team that attends games or tournaments on Nassau-run fields will now be in the position of having to certify the "biological sex" of all of her team's members (*see id.* ¶ 28). While the Order raises many unanswered questions about how enforcement could possibly be achieved, by its plain terms this teacher would need to ask students what genitals they had when they were born, or require copies of every team member's birth certificate, or collect doctor's notes verifying a participant's "biological sex." If she identifies that any team member is transgender, even if the student's status is confidential, the teacher would then be forced to expel her from the team, even though doing so would be in clear violation of state antidiscrimination laws that apply

to school activities (*see* discussion *infra* at Part I). Even a local advocacy organization organizing a charity women's ice-skating tournament would be forced to comply with these same stringent "biological sex" verification requirements (*see* Order).

The Petitioner: The Long Island Roller Rebels

The Roller Rebels are a women's flat track roller derby league based in Nassau County, and they are a member of the Women's Flat Track Roller Derby Association (petition ¶ 52, 60). They are committed to inclusive policies and antidiscrimination principles, and they welcome all transgender women, intersex women, and gender-expansive women to participate (*id.* ¶ 56).[6] As such, they do not inquire about the sex assigned at birth of their players (*id.* ¶ 57). The Roller Rebels currently have at least one league member who would be prohibited from participating in their league under the clear language of the Order, and in the past they have had additional members who would be affected (*id.* ¶ 58).

Flat track roller derby requires certain specific types of flat surfaces that are suitable for skating, such as roller rinks and basketball courts (*id* ¶ 54). The Roller Rebels have previously used outdoor skating rinks at Nassau County parks, including at Eisenhower Park and Cedar Creek Park, for team practice and events (*id* ¶ 61). Recently, they have been searching for additional facilities to use for team practices, games, and events (*id.* ¶ 62).

The Roller Rebels are currently organizing a series of upcoming women's roller derby expo games at Nassau County Parks athletic facilities (*id.* ¶ 63). They also host an annual roller derby event in November, which they want to and intend to host at a Nassau County Parks athletic facility (*id.* ¶ 64). On March 11, 2024, the Roller Rebels submitted a request for a permit to host their

[6] Intersex is an "umbrella term" that refers to people who experience certain "traits or variations in sex characteristics" that "may be identified at birth or may not be discovered until puberty or later in life," and gender expansive refers to a "person with a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system" (NYSED Guidance at 10).

upcoming series of quarterly games at Nassau County Parks athletic facilities suitable for skating beginning on April 13, 2024. They specifically requested to use the roller rink at Cedar Creek Park, with the roller rink at Eisenhower Park as an alternative, or the basketball courts at Cedar Creek Park, Eisenhower Park, or Wantagh Park as other alternatives (*id.* ¶ 65).

However, because their trans-inclusive practices do not comport with the requirements of the Order, their request cannot be granted. As a league for "females, women, or girls" that permits transgender women to participate on their team, the Roller Rebels are now faced with the choice to either exclude transgender women from their league—in direct contradiction to their internal values and state law—or forego access to Nassau County facilities.

This Proceeding

The Roller Rebels, as a Nassau-based organization subject to the Order, have filed a verified petition challenging it and seeking for it to be declared unlawful and enjoined (*see* petition). Because in enacting and enforcing the Order the respondents have made a "determination . . . affected by an error of law" and are "proceeding . . . without or in excess of jurisdiction" (CPLR 7803) as discussed below, the Roller Rebels seek an order from this Court permanently enjoining and vacating the Order and declaring it unlawful (*see* CPLR 7806; petition at 16–17 [Causes of Action, Prayer for Relief]). During the pendency of this proceeding, they seek a preliminary injunction enjoining the respondents from implementing or enforcing the Order (*id.* at 17 [Prayer for Relief]).

ARGUMENT

To obtain a preliminary injunction, a movant must demonstrate "(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor" (*Doe v Axelrod*, 73 NY2d 748, 750 [1988] [citing CPLR 6301]). When the movant seeks to "maintain the status quo" in the face

of a defendant's action that would change it, the movant is "entitled to a reduced degree of proof" in this analysis (*Masjid Usman, Inc. v Beech 140, LLC*, 68 AD3d 942, 943 [2d Dept 2009]). Here, particularly where the petitioner seeks to preserve the longstanding status quo that the Order threatens to unlawfully upend, every factor relevant to this Court's consideration of the petitioner's request weighs strongly in favor of granting it.

I. THE PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

The Order is facially unlawful. It categorically bars transgender women and girls from participating in women's and girls' sports at publicly-run facilities, and it does so solely because of their transgender status. As such, it violates provisions of the New York State Human Rights Law ("HRL") and section 40-c of the Civil Rights Law ("CRL") prohibiting precisely such discrimination, as well as related provisions prohibiting associational discrimination and compelled discrimination. Accordingly, the petitioner is likely to succeed on the merits.

The HRL prohibits a place of public accommodation from discriminating on the basis of "gender identity" (Executive Law §§ 292[9], 296[2]), defined to include "a person's actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic *regardless of the sex assigned to that person at birth*, including, but not limited to, the status of being transgender" (*id.* § 292 [35] [emphasis added]). The CRL likewise prohibits discrimination on the basis of "gender identity" by "any other person or any firm, corporation, or institution, or by the state or any agency or subdivision of the state" (CRL § 40-c), and discrimination claims made pursuant to the CRL are evaluated under the same standard as those made under the HRL (*see Gordon v PL Long Beach, LLC*, 74 AD3d 880, 885 [2d Dept 2010] ["[F]acts sufficient . . . under Executive Law § 296 will support a cause of action under Civil Rights Law § 40–c."] [citations omitted]). Under both laws, "discrimination on the basis of gender identity . . . is also sex discrimination" (9 NYCRR § 466.13[d]); thus, a finding of "gender identity

discrimination" will also mean a finding of "sex discrimination."[7]

Here, the Order violates the plain text of the law by discriminating on the basis of "the status of being transgender" (Executive Law § 292 [35]). It categorically bars only *transgender* women and *transgender* girls from participating in or having access to the women's and girls' activities that their cisgender peers have access to—solely on the basis of transgender status (*see* Order at 1-2). Under this straightforward application of the statutory text, the Order fails.

The Order also cannot be squared with the clear guidance from multiple state agencies confirming that it constitutes prohibited discrimination to bar transgender women and girls from participating in sex-segregated activities and programs consistent with their gender identity. Guidance from the New York State Division of Human Rights provides a specific articulation of what prohibited discrimination looks like in the context of sex-segregated activities like sports: A "place of public accommodation . . . must permit a person to participate in [] sex-segregated services or programs consistent with their gender identity" (DHR Guidance at 9). The "construction and interpretation of an administrative agency of the statute under which it functions . . . are entitled to the greatest weight by the courts" (*Coffey v Joy*, 91 AD2d 923, 924 [1st Dept 1983] [internal quotation marks omitted], *aff'd at* 59 NY2d 643 [1983]), and, for the Division of Human Rights specifically, its opinions regarding discriminatory conduct are entitled to particular "deference due to its expertise in evaluating discrimination claims" (*Matteo v New York State Div. of Hum. Rts.*, 306 AD2d 484, 485 [2d Dept 2003]; *see also Eastport Assocs., Inc. v New York State*

[7] The Gender Identity and Expression Non-Discrimination Act ("GENDA") added explicit protections based on "gender identity and expression" to the HRL, the CRL, and section 313 of the New York State Education Law in 2019 (*see* S1047 [2019]). In doing so, it expressly noted that its intention was to "codify" in statute and "ensure that the public understands" the already-existing "principle" that longstanding "sex discrimination" protections prohibited gender identity discrimination (*id.* [sponsor's memo "Justification"]). Consistent with that principle, the Division of Human Rights had already promulgated formal regulations confirming that, under longstanding case law in New York, discrimination on the basis of gender identity, including discrimination based on the "status of being transgender," was prohibited as "sex discrimination," and that discrimination on the basis of actual or perceived gender dysphoria was prohibited as "disability discrimination" (9 NYCRR § 466.13).

Div. of Hum. Rts., 71 AD3d 890, 891 [2d Dept 2010] [same]).

The Division's directly-on-point guidance—to which this Court must grant "the greatest weight" and "deference"—is also consistent with related recent agency guidance considering the same set of facts. In the context of public schools, the New York State Department of Education issued a "Legal Update" in 2023 regarding compliance with state and federal laws including the HRL, the Education Law (8 Education Law §3201-a; 9 Education Law Article 2; 8 NYCRR §§100.2[c], [l], [jj], [kk]), and Title IX (20 USC § 1681[a]). It states that, in school-sponsored athletics, "students should be allowed to participate in a manner most consistent with their gender identity without penalty" and that prohibited "discrimination based on sex includes discrimination based on gender identity . . . with respect to admission into or inclusion in . . . athletic teams in public schools" (NYSED Guidance at 8, 25). The New York State Public High School Athletic Association, the governing body for interscholastic sports in public schools, has accordingly created a procedure for "providing all students with the opportunity to participate . . . in a manner consistent with their gender identity and the New York State Commissioner of Education's Regulations" (NYSPHSAA, *Rules and Regulations Handbook* at 51 [Aug. 2023][8]). The Attorney General of New York agrees (*see* letter from Sandra Park to Bruce Blakeman [Mar. 1, 2024] ["OAG Cease-and-Desist"][9] [analyzing the same statutes and guidance discussed above, finding the "Order to be in clear violation of New York State anti-discrimination laws," and "demand[ing] that it be immediately rescinded"]).

These guidance documents and agency opinions are also consistent with the persuasive

[8] Larios Affirmation Exhibit 17, *also available at* https://nysphsaa.org/documents/2023/8/21/NYSPHSAA_Handbook_082123.pdf.

[9] Larios Affirmation Exhibit 18, and also available at https://ag.ny.gov/sites/default/files/letters/2024.3.1-cease-and-desist-nassau.pdf.

reasoning of courts in other jurisdictions that have recently struck down similarly worded laws and policies as discriminatory. In *Hecox v Little*, the Ninth Circuit held that an Idaho law that "divides sports teams into three categories based on biological sex: '(a) Males, men, or boys; (b) Females, women, or girls; or (c) Coed or mixed'" (79 F4th 1009, 1022 [9th Cir 2023] [citing Idaho Code § 33-6203]), by its "plain language . . . bans transgender women" and impermissibly "discriminates based on transgender status (*id.*).[10] The *Hecox* court also cited additional precedent that squarely rejected the defendants' argument "that because [the challenged law] uses 'biological sex' in place of the word 'transgender,' it is not targeted at excluding transgender girls and women" (*id.* at 1024 (citing *Latta v Otter*, 771 F3d 456 [9th Cir 2014]), noting that the "use of 'biological sex' functions as a form of proxy discrimination" (*id.*). Here, the Order uses "biological sex" in exactly the same way: to impermissibly "target transgender women and girls" for differential treatment (*id.* at 1024-25; *see also* Michael Malaszczyk, *AG Calls Transgender Sports Ban Illegal, Nassau Exec Hits Back*, Long Island Press, Mar. 1, 2024,[11] [quoting Executive Blakeman as admitting that the purpose of the Order is to bar "transgender females who want to compete against biological females" from doing so]).[12] That is precisely what the HRL and CRL prohibit the respondents

[10] Because the *Hecox* court considered an Equal Protection claim in the absence of state statutory antidiscrimination protections, it held not only that the challenged law discriminated on the basis of transgender status, but also that it was not "substantially related" to "an important governmental objective" (79 F4th at 1028). While the same is true here, this Court need not reach the issue. This is because the constitutional analysis is in two parts: a finding of discrimination does not defeat the discriminatory practice, but only triggers "heightened scrutiny" and an analysis of whether the discriminatory practice could survive such scrutiny (*id.*). Here, where discrimination is statutorily *prohibited*, the Court does not engage in the second part of that analysis, because a finding of discrimination is independently sufficient to find that the order violates the law (*see* Executive Law §§ 292[9], 296[2]; CRL § 40-c).

[11] Larios Affirmation Exhibit 14, *also available at* https://www.longislandpress.com/2024/03/01/nassau-county-transgender-ban-update/.

[12] Similarly, in *Grimm v Gloucester County School Board* (972 F3d 586 [4th Cir 2020], *cert. denied* 141 S Ct 2878 [2021]), the Fourth Circuit persuasively explained why distinguishing between cisgender girls and transgender girls based on their sex assigned at birth discriminates based on transgender status (*id.* at 608, 610). *Grimm* considered a school district policy requiring students to use certain sex-segregated facilities according to their "biological gender" (*id.* at 609), and the court explained that such a policy—which would be enforced by "rely[ing] on the sex marker on the student's birth certificate" (*id.* at 608)—impermissibly "privilege[d] sex-assigned-at-birth over" a student's gender

from doing.

These recent decisions are also consistent with New York State court decisions that have consistently held—even before GENDA explicitly codified protections from discrimination based on "gender identity" in 2019—that misclassifying a transgender woman as "male" and denying her access to programs and activities reserved for women violated New York's antidiscrimination laws (*see* S1047 [2019] [sponsor's memo "Justification" explaining that GENDA codified the already-existing "principle" that longstanding "sex discrimination" protections prohibited gender identity discrimination). In *Advanced Recovery, Inc. v Fuller*, the Second Department affirmed in full a Division of Human Rights determination that a transgender woman who was forced to adhere to male dress codes at work had been discriminated against on the basis of sex and disability (162 AD3d 659 [2d Dept 2018][13]). And in *Wilson v Phoenix House*, a court held that discrimination against a transgender woman constituted sex discrimination and disability discrimination under New York law where the plaintiff alleged she was denied equal access to women's housing and programming after the defendant residential treatment center classified her as "biologically male" (42 Misc 3d 677, 681 [Sup Ct, NY County 2013]). Similarly, in *Doe v City of New York*, a court held that a city agency misclassifying a transgender woman as a "male" and treating her as such violated state and city anti-discrimination law, specifically holding that treating a person "who presented as female" as male "is not a light matter" and constituted prohibited discrimination (42 Misc 3d 502, 507 [Sup Ct, NY County 2013]). Indeed, as early as 1977, a New York court granted Renee Richards, a transgender woman, a preliminary injunction permitting her to participate in the

identity and thus constituted . . . discrimination on the basis of transgender status" (*id.* at 610). The school district's "framing" of transgender girls as equivalent to "boys" was the product of "bias," "misconceptions," and a fundamental misunderstanding of "what it means . . . to be . . . transgender" (*id.* at 610 n10).

[13] *See also* DHR Guidance at 4 (describing underlying facts of *Fuller* in detail).

United States Open women's tennis tournament after tournament officials refused to classify her "as a woman tennis professional, a necessary prerequisite" (*Richards v U.S. Tennis Assn.*, 93 Misc. 2d 713, 714 [Sup Ct, NY County 1977]). The court held that her exclusion squarely violated "plaintiff's rights under the Human Rights Law" (*id.* at 722).

Finally, there are several additional bases on which this Court can and should find that the Order violates the HRL. In addition to prohibiting direct discrimination, that law also prohibits "compel[ling]" others to discriminate in ways that violate its provisions (*see* Executive Law § 296[6]) and discrimination based on a "known relationship or association with" members of a protected class (*see* 9 NYCRR § 466.14[c][1]). The Order violates both of these provisions. Here, for example, the Roller Rebels' membership includes *both* directly-targeted individuals—transgender women who are barred from participating in women's sports pursuant to the Order—*and* cisgender team members, league officials, and organizers who are being forced to discriminate against their transgender teammates, peers, and friends in order to secure a Nassau permit (*see* petition ¶¶ 56–58, 67–68). The Roller Rebels also include cisgender team members who are themselves being discriminated against for their association with transgender team members (*see id.* ¶¶ 56–58).

Ultimately, any lens through which this Court analyzes the Order confirms that it perpetuates and requires discrimination based on gender identity that is squarely prohibited by New York State law.[14] For all these reasons, the petitioner is likely to succeed on the merits.[15]

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[14] In addition, as the Attorney General notes, the Order *also* "facially discriminates based on sex . . . through its permitting scheme['s]" differential treatment of men's and women's classifications, since a "team, league, or other sports entity designated for men or boys may receive a permit regardless of whether any participants were assigned female at birth, whereas a team, league, or other sports entity designated for women or girls may not receive a permit if any participant was assigned male at birth" (OAG Cease-and-Desist at 3 [citing *United States v Virginia*, 518 US 515, 555 [1996]; *Bostock v Clayton County*, 590 US 644, 659-60 [2020] [concluding that discrimination based on gender identity constitutes sex discrimination]]).

[15] For all these reasons, the underlying verified petition should also ultimately be granted in full.

II. THE PETITIONER IS IN DANGER OF IRREPARABLE INJURY ABSENT AN INJUNCTION.

Without an injunction, implementation and enforcement of the Order will subject the petitioner and many others across Nassau County (and beyond) to the "prospect of irreparable injury" (*Axelrod*, 73 NY2d at 750). "Irreparable injury" means a harm "for which monetary compensation is not adequate" (*Melvin v Union Coll.*, 195 AD2d 447, 448, [2d Dept 1993]). Here, where the Roller Rebels do not seek monetary damages and rather seek to avoid harmful discrimination and subjection to invasive inquiries about their personal anatomy and confidential medical history, they have plainly demonstrated the prospect of irreparable injury.

First, as a threshold matter, for as long as a discriminatory denial of access to public accommodations lasts, it imposes a severe dignitary harm that New York's antidiscrimination laws exist to prevent. The "[d]iscriminatory denial of equal access to goods, services and other advantages made available to the public . . . 'deprives persons of their individual dignity'" (*Gifford v McCarthy*, 137 AD3d 30, 40 [3d Dept 2016] [quoting *Roberts v United States Jaycees,* 468 US 609, 625 [1984]), and enjoining such discrimination reflects "the 'extremely strong statutory policy of eliminating discrimination' embodied by the Human Rights Law" (*id.* [quoting *Matter of New York City Tr. Auth. v State Div. of Human Rights,* 78 NY2d 207, 216 [1991]).

New York courts have cited approvingly doctrine holding that "irreparable injury is presumed once a person alleging discrimination has established a violation" (*see e.g. Hirschmann v Hassapoyannes*, 11 Misc 3d 265, 272 [Sup Ct, NY County 2005] [citing *Silver Sage Partners, Ltd. v City of Desert Hot Springs*, 251 F3d 814, 827 [9th Cir 2001] ["[W]here a defendant has violated a civil rights statute, we will presume that the plaintiff has suffered irreparable injury from the fact of the defendant's violation."]; *cf. Deide v Day*, 2023 WL 3842694, at *24 [SDNY June 6, 2023] [where "Plaintiffs have established a substantial likelihood of success on the merits with

respect to their Equal Protection . . . claims, a presumption of irreparable harm follows"]). Here, if the Court agrees that the Roller Rebels are likely to succeed on the merits, absent an injunction they and their members—and countless other teams, leagues, clubs, and schoolchildren across Nassau County—will be subjected to unlawful discrimination every time they seek to access the public facilities that they are entitled to use, including with regard to their pending request to reserve space for a series of games beginning April 13, 2024 (petition ¶ 65).

Second, beyond the prospect of encountering harmful discriminatory treatment, if the Order remains in effect the Roller Rebels' cisgender and transgender members alike will be subjected to invasive inquiries about their anatomy and the sex they were assigned at birth, along with the prospect of being outed or otherwise having their confidential medical information revealed publicly in the event the Order requires that they be expelled from their team (*see* Order at 1-2 [requiring women's and girls' teams and leagues to identify and exclude anyone whose "biological sex" was not listed as "female" on their birth certificate at the time of their birth]). The Roller Rebels do not currently require or otherwise ask for such information (petition ¶ 57), and for good reason: Demanding or publicizing such details runs afoul of multiple state laws designed to maintain the confidentiality of a person's sex assigned at birth (*see e.g.* Civil Rights Law §§ 67, 67-B [permitting the amendment of a "sex designation" on a birth certificate, regardless of sex assigned at birth, and ordering the "records of such change of sex designation proceeding to be sealed"; Public Health Law §§ 4231, 4138[f] [same]; New York State Department of Health, *Gender Designation Amendments*[16] [confirming state agency must maintain prior birth certificate in sealed file]).

Being forcibly outed can be humiliating and dangerous, as the Third Department recently

[16] Larios Affirmation Exhibit 10, *also available at* https://www.health.ny.gov/vital_records/gender_designation_corrections.htm.

emphasized when it held that records of a proceeding to change the "sex designation" on government records must presumptively be sealed pursuant to the "mandatory directive of Civil Rights Law article 6-a" (*Cody VV. v Brandi VV.*, 2024 NY Slip Op 00961, 2024 WL 716144, at *2 [3d Dept Feb. 22, 2024]). The court justified presumptive sealing because "it remains sadly true, as evidenced by [the legislative history of the law and court decisions]. . . that risk to one's safety is always present upon public disclosure of one's status as transgender;" that "disclosure of such status subjects individuals to the risk of hate crimes, public ridicule, and random acts of discrimination;" and "that violence and discrimination against transgender and nonbinary individuals continue to permeate our society at alarming rates" (*id.* [internal citations and quotation marks omitted]; *see also Powell v Schriver*, 175 F3d 107, 111 [2d Cir 1999] [finding a constitutional right to privacy in one's gender identity and holding that the "excruciatingly private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate"]).

Here, without an injunction the Order *requires* outing as part of its enforcement scheme. Courts in New York routinely recognize that the "disclosure of . . . confidential information" is a quintessential form of irreparable harm (*Willis of New York, Inc. v DeFelice*, 299 AD2d 240, 243 [1st Dept 2002]), since "[p]ublic disclosure of what is now confidential and should remain confidential would lead to an irreversible breach of that confidentiality" (*Doe v Greco*, 62 AD2d 498, 501 [3d Dept 1978] [granting PI to prevent release of confidential identities of individuals receiving public assistance]). For this reason alone, the Court should find the petitioner satisfies the irreparable harm prong (*see also Hecox*, 79 F4th at 1036 [enjoining Idaho law that mirrors the Order and finding irreparable harm flowing from the sex "verification process" and its "unnecessary examinations"]).

Finally, without an injunction the Roller Rebels—and transgender people across Nassau County—will suffer "the cognizable and irreparable 'dignitary wounds' associated with the passage of a law expressly designed to communicate the [government]'s moral disapproval of their identity, wounds that 'cannot always be healed with the stroke of a pen'" (*Doe v Horne*, 2023 WL 4661831, at *20 [D Ariz July 20, 2023] [granting preliminary injunction against Arizona state law similar to the Order] [quoting *Obergefell v Hodges*, 576 US 644, 678 [2015]; *see also Grimm*, 972 F3d at 625 [explaining that the stigma of exclusion "publicly brand[s] all transgender students with a scarlet 'T'"]). Here, as in *Horne*, the dignitary wounds associated with the Nassau County government's adoption of the Order are significant and weigh strongly in favor of granting the injunction (*see id.*; *see also Hecox*, 79 F4th at 1033 n17, 1036 [finding similar dignitary wounds constitute irreparable harm]).

III. THE BALANCE OF EQUITIES WEIGHS IN FAVOR OF THE REQUESTED INJUNCTION.

Balancing the equities confirms that, while numerous significant harms that would flow from the implementation and enforcement of the Order, no harms at all would flow from enjoining it. As a threshold matter, a "balance of the equities . . . favors the granting of preliminary injunctive relief to maintain the status quo pending the resolution of the action" (*Masjid Usman*, 68 AD3d at 943), and here the requested injunction would maintain the status quo that existed for many years prior to Executive Blakeman's sudden announcement of his Order (*see* petition ¶ 43).

Indeed, the Order would not just alter the status quo, it would fully upend it by imposing novel requirements that are both sweeping in scope and deeply confusing in nature—requiring all women's and girls' "leagues, organizations, teams, programs, or sports entities" without limitation (Order at 1) to immediately develop a process for both identifying and aggressively policing the sex designation that appeared on every participant's birth certificate at the time of her birth despite

the myriad legal and ethical barriers to doing so (*see supra* at 3-8, 15-18). Pausing the system-wide imposition of these requirements on the Roller Rebels—and on the schools, teachers, coaches, organizers, and teammates across Nassau County who are all subject to the terms of the Order, even as they are also subject to binding antidiscrimination and confidentiality requirements that the Order violates—would avoid the widescale chaos that such enforcement would wreak on an otherwise stable status quo.

By contrast, while Executive Blakeman asserted repeatedly when he announced the Order that it was intended to "protect" cisgender women and girls from "bullying" by transgender women and girls, when pressed for specifics he conceded that he was personally unaware of any current or former complaint arising from the participation of transgender women or girls in sports in Nassau County (petition ¶ 39, 41). Accordingly, the respondents can show no harm at all—let alone one that would outweigh the harms described by the petitioner—that the requested injunction would cause them.

Finally, "when the court balances the equities in deciding upon injunctive relief, it must consider the enormous public interests involved" in furthering "the public policy of this State" as articulated by the HRL's antidiscrimination provisions (*Seitzman v Hudson River Assocs.*, 126 AD2d 211, 214 [1st Dept 1987]). In *Seitzman*, the First Department considered whether to enjoin a landlord from rescinding its agreement to rent out a medical office when it discovered that its doctor tenants were treating people living with AIDS and HIV (*id.*). Because the HRL "makes it unlawful to discriminate by refusing to sell commercial space to anyone because those premises will be used, *inter alia,* in the furnishing of facilities or services to the disabled," the court held that the equities weighed particularly strongly in favor of the doctors' requested injunction (*id.*). The same "public policy of the State" is at issue here, and it similarly weighs in favor of granting

the petitioner's requested injunction.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that the Court enjoin the respondents from implementing or enforcing the Order during the pendency of these proceedings, and that the Court ultimately grant the verified petition in full.

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New York, N.Y.

Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

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CERTIFICATE OF COMPLIANCE WITH 22 NYCRR §202.8-b

I hereby certify that:

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