To Be Argued By: Gabriella Larios
Time Requested: 15 Minutes

New York Supreme Court

APPELLATE DIVISION – SECOND DEPARTMENT

LONG ISLAND ROLLER REBELS,

Plaintiff-Appellant,

-against-

COUNTY OF NASSAU, THE NASSAU COUNTY LEGISLATURE, BRUCE BLAKEMAN, in his official capacity as Nassau County Executive,

Defendants-Respondents.

BRIEF FOR PLAINTIFF-APPELLANT

Date: March 3, 2025
New York, New York

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

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Appellate Division, Second Department Docket No. 2025-02099
New York County Supreme Court Index No. 612363/2024

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QUESTIONS PRESENTED

1. Whether Nassau County Local Law No. 121-24 (hereinafter "Local Law"), which prohibits transgender women and girls from participating in women's and girls' sporting events at county-run athletic facilities, violates the New York State Human Rights Law and Civil Rights Law by denying access to public accommodations on the basis of gender identity.

The lower court erred in holding that the Local Law does not exclude transgender women and girls from public facilities based on their gender identity and finding that Plaintiff-Appellant had not shown discrimination under the New York State Human Rights Law and Civil Rights Law.

2. Whether the Local Law violates Section 10 of the Municipal Home Rule Law.

The lower court did not address whether the Local Law violates Section 10 of the Municipal Home Rule Law but it held that the Plaintiff-Appellant had not shown discrimination under the New York State Human Rights Law and Civil Rights Law.

3. Whether the lower court abused its discretion in denying Plaintiff-Appellant's (hereinafter the "Long Island Roller Rebels or "Roller Rebels") motion for a preliminary injunction.

The lower court's order failed to set forth specific findings as to the likelihood of success on the merits, the prospect of irreparable injury, and the balance of the equities—which all weigh strongly in favor of the Roller Rebels' requested injunction—and therefore abused its discretion in denying the Roller Rebels' motion for a preliminary injunction.

PRELIMINARY STATEMENT

The Long Island Roller Rebels challenge an unlawful and discriminatory Nassau County Local Law that prohibits transgender women and girls from participating in women's and girls' sporting events at Nassau County-run athletic facilities. Under the Local Law's sweeping requirements, any women's or girls' team that seeks equal access to county-run facilities would have to develop a process for identifying, outing, and expelling members based solely on their transgender status. If teams instead choose to comply with their own transgender-inclusive participation policies or with state antidiscrimination laws, they will lose access to public facilities pursuant to the Local Law.

The Roller Rebels, a Nassau County-based recreational women's roller derby league, sought preliminary injunctive relief immediately following the Local Law's enactment to ensure they could use county-run athletic facilities in a manner that is inclusive of all their members, including transgender women.

The lower court's order ("the Order") denied the Roller Rebels' requested injunction, finding that the Local Law does not exclude transgender women and girls based on their gender identity. In doing so, it erred on the law and failed to set forth necessary specific findings as to each of the three preliminary injunction factors—all of which weigh strongly in favor of the Roller Rebels' requested injunction. It therefore constitutes an abuse of discretion warranting reversal under this Court's

and the Court of Appeals's clear precedent when considering similar denials of preliminary injunction requests.

The Roller Rebels are likely to succeed on the merits because the Local Law cannot be squared with state antidiscrimination law—it violates the plain text of the New York State Human Rights Law and the Civil Rights Law by discriminating on the basis of gender identity. The Local Law 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. This is quintessential discrimination under the Human Rights Law and Civil Rights Law.

Without an injunction, the Roller Rebels and countless other teams and individuals across Nassau County continue to suffer irreparable injuries including categorical exclusion from equal access to public facilities while enduring ongoing unlawful discrimination. To date, the Roller Rebels' requests for permits to use county-run athletic facilities remain pending as the 2025 roller derby season is underway. An injunction would maintain the status quo that has existed for many years, while the record in this case confirms that Nassau County failed to identify a single complaint or example of harm arising out of that status quo. Accordingly, the Court should reverse the Order and enjoin the enforcement of the Local Law during the pendency of the proceeding.

STATEMENT OF FACTS

The Long Island Roller Rebels are a Nassau County-based recreational women's roller derby league that includes and welcomes transgender women consistent with the league's internal bylaws and the long-standing policies of their sport's international governing body, the Women's Flat Track Roller Derby Association (R406–408). Because the Roller Rebels allow transgender women to participate in their league and on their team, they are barred from accessing Nassau County athletic facilities for women's sporting events (R411). A brief summary of the facts relevant to this appeal is below.

I. TRANSGENDER STATUS AND TRANSGENDER PARTICIPATION IN SPORTS.

Gender identity is a deep-seated understanding everyone possesses about their own gender (R040, R044). 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 (R039–040). Most people have a gender identity that aligns with the sex they are assigned at birth, and these people are *cis*gender (R040, R044). *Trans*gender people are people with a gender identity that differs from their assigned sex at birth (*id*).

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. 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 (R009).

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 their gender identity (R044). 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*). 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 (R009–010).

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 (R074–110). 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. 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 (R112–133). 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" (R135–146). These benefits impact people throughout the entirety of their lives (*id*).

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 (R010).

II. NASSAU COUNTY ENACTS LOCAL LAW NO. 121-24.

On July 15, 2024, Nassau County enacted Local Law No. 121-24, titled "A Local Law to Maintain a Safe and Fair Competitive Environment for Women and Girls Participating in Sports and Athletic Events" (R162–164). The Local Law explicitly prohibits transgender women and girls—whom it classifies as "males" throughout—from participating in women's and girls' sporting activities at Nassau County-run facilities. Specifically, the Local Law 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" (R163).[1] It then defines an individual's

[1] 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 (R183–217).

gender as "the individual's biological sex assigned to that individual at birth," as stated on an "official birth certificate . . . filed at or near the time of . . . birth" (*id*). Teams designated for "males, men, or boys"—and teams designated "coed"—are permitted to include "biological females" (*id*).

Because the Local Law 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 Local Law, 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 (R014). 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 (*id*).

The Local Law covers approximately 100 different public accommodations used for various sporting activities, including swimming pools, baseball fields, ice rinks, soccer fields, baseball fields, basketball courts, and golf courses (R013). 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*). For each of these Nassau County-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 Local Law (*id*).

Enforcement of the Local Law 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, if they want access to sporting facilities. 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 (R014–015).

Nassau County Executive Bruce Blakeman previously issued an Executive Order that was identical in substance to the Local Law (R166–167). On May 10, 2024, the Nassau County Supreme Court vacated and permanently enjoined enforcement of the Executive Order because the County Executive "did not have authority" to issue the Executive Order (R169–181). The County Legislature codified the provisions of the Executive Order through enactment of the Local Law.

III. STATUS QUO PRIOR TO THE ENACTMENT OF THE LOCAL LAW.

Prior to the enactment of the Local Law, 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 14–21).

Regulations and guidance from the state agencies that enforce those antidiscrimination provisions have made clear that excluding transgender women and girls from women's and girls' teams constitutes prohibited discrimination on the basis of gender identity (R156, R038, R055 [also confirming that guidance on this issue conforms with additional state regulations, federal Title IX protections, and federal guidance]).

To the Roller Rebels' knowledge, entities subject to these laws and requirements have followed them in Nassau County for years without incident. The record here reflects that there had been no complaints arising out of their compliance (R015–016).

IV. THE ROLLER REBELS SUE TO ENJOIN THE LOCAL LAW.

On July 15, 2024, the day the Local Law went into effect, the Long Island Roller Rebels filed a motion for a preliminary injunction seeking to enjoin Nassau from enforcing the Local Law (R004–420). In support of their motion, the Roller Rebels submitted a factual record that included multiple sworn affirmations and sixteen exhibits (R025–419, R511–564). In response, Nassau County did not create

a factual record and did not submit a single affirmation or exhibit (R466–492).

The Roller Rebels are a recreational 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 (R406–407). They are committed to inclusive policies and antidiscrimination principles, and they welcome all transgender women, intersex women, and gender-expansive women to participate in league events and on their roller derby team (*id*).[2] As such, they do not inquire about the sex assigned at birth of their players (*id.*) and do not collect or otherwise verify birth certificates. 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 Local Law, and in the past, they have had additional members who would be affected (R407–408).

Flat track roller derby requires certain specific types of flat surfaces that are suitable for skating, such as roller rinks and basketball courts (*id*). The Roller Rebels have previously used outdoor skating rinks at Nassau County parks for team practices and events (*id*). For months, they have been searching for additional facilities to use for team practices, games, and events (*id.*). On March 11, 2024, the Roller Rebels submitted a request for a permit to use Nassau County Parks facilities

[2] 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" (R040).

for a series of games beginning April 13, 2024. That application has not been approved (R409–410). The Roller Rebels are currently organizing a series of upcoming women's roller derby games and practices at Nassau County Parks athletic facilities (*id*). On July 15, 2024, the Roller Rebels submitted a permit request to host recurring team practices and an upcoming series of monthly games and/or recruiting bootcamps at Nassau County Parks athletic facilities suitable for skating from August 2024 through October 2025 (*id.*; R414–415). The Roller Rebels' July 15, 2024 request for a permit to use Nassau County athletic facilities remains pending as the 2025 roller derby season is underway.

Because the Roller Rebels' trans-inclusive policies do not comport with the requirements of the Local Law, their request cannot be granted. As a league for "females, women, or girls" that permits transgender women to participate, the Roller Rebels are now prevented from accessing Nassau County facilities because they refuse to exclude transgender women from their league (R020).

V. THE LOWER COURT ISSUES AN ORDER DENYING THE ROLLER REBELS' PRELIMINARY INJUNCTION REQUEST.

On January 21, 2025, the lower court issued a four-page decision and order denying the Roller Rebels' motion for a preliminary injunction in full. The Order held that the Local Law does not "exclude[] transgender women and girls from the public facilities based on their gender identity" and that the Roller Rebels had not shown "discrimination under the Human Rights Law and Civil Rights Law" (R569).

It did not engage with the statutory text of the Human Rights Law or Civil Rights Law. The Order also did not address the Roller Rebels' claim under Section 10 of the Municipal Home Rule Law. The Roller Rebels now appeal from that Order.

ARGUMENT

I. THE LOWER COURT ERRED IN DENYING THE ROLLER REBELS' MOTION FOR A PRELIMINARY INJUNCTION.

In reviewing a lower court's denial of a preliminary injunction, the Court reviews whether the lower court's "discretionary powers were exceeded or, as a matter of law, abused" (*Doe v Axelrod*, 73 NY2d 748, 750 [1988]). The Court may reverse the lower court's denial of a preliminary injunction "on the law, on the facts, and in the exercise of discretion" (*Samaha v Brooklyn Bridge Park Corp.*, 230 AD3d 608, 609 [2d Dept 2024]; *see also Stockley v Gorelik*, 24 AD3d 535, 535–36 [2d Dept 2005] [reversing denial of preliminary injunction "on the law and as a matter of discretion"]). A court "by definition abuses its discretion when it makes an error of law" (*Koon v United States*, 518 US 81, 100 [1996]).

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" (*Axelrod*, 73 NY2d at 750 [citing CPLR 6301]). In exercising its discretionary powers, the lower court "must" consider these three factors, and the lower court's failure "to set forth specific findings with respect to the tripartite test

for injunctive relief" is an abuse of discretion (*Matter of Merscorp, Inc. v Romaine*, 295 AD2d 431, 432–33 [2d Dept 2002]).

Here, reversal is warranted because: the Order was premised on a clear error of law; the Order failed to set forth "specific findings" with respect to the three injunctive relief factors; and, on the undisputed record, each of those factors weighs heavily in favor of the Roller Rebels' requested injunction.

A. The Roller Rebels Remain Likely to Succeed on the Merits.

The Local Law 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 section 40-c of the Civil Rights Law and provisions of the New York State Human Rights Law prohibiting precisely such discrimination, as well as related provisions prohibiting associational discrimination and compelled discrimination. It also violates Section 10 of the Municipal Home Rule Law. Accordingly, the Roller Rebels are likely to succeed on the merits and the lower court erred in finding that the Local Law did not violate the Human Rights Law and Civil Rights Law.

i. The Local Law Discriminates on the Basis of Gender Identity in Violation of the Human Rights Law and Civil Rights Law.

The Human Rights Law 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 Civil Rights Law 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" (Civil Rights Law § 40-c). Discrimination claims made pursuant to the Civil Rights Law are evaluated under the same standard as those made under the Human Rights Law (*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."[3]

Here, the Local Law violates the plain text of the law by discriminating on the

[3] The Gender Identity and Expression Non-Discrimination Act ("GENDA") added explicit protections based on "gender identity and expression" to the Human Rights Law, the Civil Rights Law, 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).

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* R162–164). Under this straightforward application of the statutory text, the Local Law fails.

Although this Court need not go further than the plain text of the Human Rights Law to see that the Local Law directly conflicts with it, clear guidance from multiple state agencies confirms 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" (R156).[4] 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], *affd,* 59 NY2d

[4] A copy of Division of Human Rights, *Guidance on Protections from Gender Identity Discrimination Under the New York State Human Rights Law* (Jan. 2020) is included in the Record on Appeal at R148–160 and is available at https://dhr.ny.gov/system/files/documents/2022/04/nysdhr-genda-guidance-2020.pdf.

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 Human Rights*, 306 AD2d 484, 485 [2d Dept 2003]; *see also Eastport Assoc., Inc. v New York State Div. of Human Rights*, 71 AD3d 890, 891 [2d Dept 2010] [same]).

The Division's guidance—to which the Court must grant "the greatest weight" and "deference"—is also consistent with related recent state 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 Human Rights Law, 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" (R038, R055).[5] The New York State Public High School Athletic Association, the

[5] A copy of NYSED, *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* (June 2023) is included in the Record on Appeal at R031–072 and is available at https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-

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" (R269).[6]

These guidance documents and agency opinions are also consistent with the persuasive 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'" (104 F4th 1061, 1075 [9th Cir 2024] *as amended* [June 14, 2024] [citing Idaho Code § 33-6203]), by its "plain language . . . bans transgender women" and impermissibly "discriminates based on transgender status" (*id*). The *Hecox* court 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 1077 [citing *Latta v Otter*, 771 F3d 456 [9th Cir 2014]]), noting that the "use of biological sex functions as a form of proxy

supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf.

[6] A copy of NYSPHSAA, *Rules and Regulations Handbook* (Aug. 2023) is included in the Record on Appeal at R219–374 and is available at https://nysphsaa.org/documents/2023/8/21//NYSPHSAA_Handbook_004.pdf.

discrimination" (*id.* [cleaned up]). Here, the Local Law uses "biological sex" in exactly the same way: to impermissibly "target transgender women and girls" for differential treatment (*id.* at 1078; *see also* R015 [quoting Executive Blakeman as admitting that the purpose of the Executive Order was to bar "transgender females who want to compete against biological females" from doing so]). That is precisely what the Human Rights Law and Civil Rights Law prohibit.

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*, this Court affirmed a Division of Human Rights determination[7] finding that a transgender woman had been discriminated against on the basis of sex and disability under the Human Rights Law when her employment was terminated after she

[7] The full copy of the Division of Human Rights determination in *Fuller v Advanced Recovery, Inc.* (NYSDHR Case No. 10144572, Notice and Final Order [Apr. 01, 2015]) is in included in the Record on Appeal at R376–402, and is available at https://dhr.ny.gov/system/files/documents/2022/05/fuller_v_advanced_recovery.pdf.

requested to be treated as a woman in all respects, including by being allowed full access to the women's restroom and to dress as a woman at work (162 AD3d 659 [2d Dept 2018]). 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, 680 [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 antidiscrimination 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 United States Open women's tennis tournament after tournament officials refused to classify her "as a woman tennis professional, a necessary prerequisite" (*Richards v United States 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, the Local Law also violates the Human Rights Law by "compel[ling]"

others to discriminate in ways that violate its provisions (*see* Executive Law § 296[6]) and discriminating based on a "known relationship or association with" members of a protected class (*see* 9 NYCRR § 466.14[c][1]). 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 Local Law—*and* cisgender team members, league officials, and organizers who would be forced to discriminate against their transgender teammates, peers, and friends in order to secure a Nassau County permit (R407–411). The Roller Rebels also include cisgender team members who are themselves being discriminated against for their association with transgender team members (*id*).

Ultimately, any lens through which this Court analyzes the Local Law confirms that it perpetuates and requires discrimination based on gender identity that is squarely prohibited by New York state law.[8] Because the Local Law is inconsistent with the Human Rights Law and the Civil Rights Law, it therefore also violates Section 10 of the Municipal Home Rule Law (*see* Municipal Home Rule Law § 10(1)[i] [providing local governments with the power to adopt local laws so

[8] In addition, the Local Law *also* facially discriminates based on sex because it selectively excludes transgender women and girls, but not transgender men and boys, from participation in sports teams that align with their gender identity. Under the Local Law, a team for "males, men, or boys" may obtain a permit if it allows transgender men or boys to participate, whereas a team for "females, women, or girls" cannot obtain a permit if it allows transgender women or girls to participate (R163).

long as those local laws are "not inconsistent with any general law" of the state]).

ii. Nassau County's Arguments to the Contrary are Unavailing, and the Order Warrants Reversal on the Law and the Facts.

In its briefing before the lower court, Nassau County's primary argument in defense of the Local Law was that it is "impossible" to comply with the Human Rights Law and Civil Rights Law because Title IX—the federal statute that prohibits sex discrimination in *educational institutions*—somehow "preempts" them and requires Nassau County to prohibit adult women's recreational sports leagues with transgender members from roller skating in public parks (R481–486). While the Order does not indicate clearly whether it accepted or otherwise relied upon this argument (R566–569), it is plainly without merit.

First, and dispositive here: Title IX plainly does not apply to Nassau County's park permitting scheme, which is not an educational institution (*see* 20 USC § 1681 [Title IX's prohibitions on sex discrimination are limited to "education" programs or activities]; *see also Blakeman v James*, No. 2:24-cv-1655, 2024 WL 3201671, at *14 [EDNY Apr. 4, 2024] [holding that because Title IX only "applies to educational institutions . . . [it] does not apply to any sporting and athletic endeavors on Nassau County Parks property"]). Second, no court has ever found that Title IX preempts state antidiscrimination law or that it otherwise requires any entity to exclude transgender people. Nassau County's contention that Title IX *requires* the exclusion of girls who are transgender "is an interpretation of Title IX that no court has ever

adopted" (*Soule v Conn. Assn. of Sch., Inc.*, 90 F4th 34, 66 [2d Cir 2023] [en banc] [Nathan, J., concurring]).[9] This Court should not be the first.

For all the reasons described above, the Order must be reversed "on the law" (*Samaha*, 230 AD3d at 609); independently, and while the Court need not reach this issue if it reverses on the law, the Order also includes multiple unsupported assertions of fact that are contradicted by the undisputed record and misconstrue key issues, meriting reversal "on the facts" (*id*). For example, the Order speculates that allowing transgender women to play on women's teams poses safety risks to cisgender women because they "would not even be aware" that they could be playing alongside "a biological male" (R568). This assertion is contradicted by the undisputed record in this case, which confirms that all members of the Roller Rebels—an adult recreational league—must sign the league's bylaws and acknowledge that they are joining a team that allows transgender women to play (R407), and where the sport's international governing body has policies requiring

[9] On February 5, 2025, President Donald Trump issued an executive order purporting to interpret Title IX as requiring sex-separated athletic teams to exclude transgender girls and women from participating in girls' and women's (*see* 90 Fed Reg 9279 [Feb. 5, 2025]). The President cannot unilaterally restrict the meaning of "sex" under Title IX in a manner that is "incompatible with the [] will of Congress" (*Youngstown Sheet & Tube Co. v Sawyer*, 343 US 579, 637 [1952]). The federal cases cited in support of the Roller Rebels arguments below remain good law (*see* R499–502), and New York state antidiscrimination law continues to prohibit discrimination based on transgender status in educational institutions (*see* Joint Statement of the Office of the Attorney General and the State Education Department Regarding Transgender Students' Rights [Feb. 13, 2025], *available at* https://www.nysed.gov/sites/default/files/nysed-oag-joint-statement-regarding-transgender-students.pdf).

the inclusion of transgender women on women's teams (R417).[10]

The Order also asserts that "common sense requires" the classifications imposed by the Local Law "to protect the safety of [] individuals" (R568), but nothing in the record supports that assertion, and indeed the undisputed record here plainly contradicts it.[11] First, the record confirms that the Roller Rebels have clear and robust safety standards that all league members must abide by (R407). Second, any purported interest in "safety" is undermined by the fact that Nassau County permits co-ed leagues to use the same exact contested facilities (R162–164, R491). Because it allows people of all genders to play contact sports alongside each other on co-ed teams, Nassau County cannot argue that safety somehow requires transgender and cisgender women to be separated when playing sports in its facilities. These undisputed facts make clear that Nassau County's purported safety interests are a pretext for discrimination against transgender women because Nassau County chooses to only exclude transgender-inclusive teams and leagues from equal

[10] Indeed, state antidiscrimination law (*see* Executive Law §§ 292[9], 296[2]; Civil Rights Law § 40-c) and guidance from the Division of Human Rights and the Department of Education, along with the New York State Public High School Athletic Association's policies, make clear that athletes across New York have long similarly been aware that transgender and cisgender women and girls participate in sports alongside one another routinely (*see supra* at 14–21*;* R038, R055, R156, R269).

[11] In support of their motion for a preliminary injunction, the Roller Rebels submitted a factual record that included multiple sworn affirmations and sixteen exhibits (R025–419, R511–564). In response, Nassau County submitted no factual record: no affirmations, no exhibits, and therefore nothing that puts any of the Roller Rebels' straightforward factual showings in dispute (R466–492).

access to county-run athletic facilities.

Ultimately, the Order's factual conclusions are unsupported by the record and do not provide any basis to hold that the Local Law does not "exclude[] transgender women and girls from public facilities based on their gender identity" (R569). Had the Order engaged in the proper statutory analysis, it would have concluded that the Local Law facially discriminates based on transgender status in violation of the Human Rights Law and Civil Rights Law.

Accordingly, the Roller Rebels' likelihood of success of the merits "is plain on the facts of facts of the case" (*Melvin v Union Coll.*, 195 AD2d 447, 448 [2d Dept 1993]). As in other cases where the Appellate Division found that a local law was in violation of state law, this Court should order that the Local Law be enjoined during the pendency of this proceeding (*see e.g. Niagara Recycling, Inc. v Town of Niagara*, 83 AD2d 316, 334 [4th Dept 1981] [reversing lower court's denial of preliminary injunction and enjoining local law where there was a "substantial likelihood" that challenged local law would be found unconstitutional]; *Time Square Books, Inc. v City of Rochester*, 223 AD2d 270, 278 [4th Dept 1996] [reversing lower court's denial of preliminary injunction and ordering preliminary injunction where the plaintiffs were "likely to succeed" in challenging a local law "on State constitutional grounds"]; *see also Med. Malpractice Ins. Assn. v Cuomo*, 138 AD2d 177, 181–82 [1st Dept 1988] [finding preliminary injunction enjoining implementation and

enforcement of challenged statute due to plaintiffs' likelihood to succeed on the merits "appropriate"], *revd on other grounds*, 74 NY2d 651 [1989]). The Order here should therefore be reversed on the law, on the facts, and in the exercise of discretion.

B. The Roller Rebels Properly Demonstrated and Continue to Face Irreparable Injury Absent Injunctive Relief.

Without an injunction, enforcement of the Local Law continues to subject the Roller Rebels 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 at 448). Here, the Roller Rebels face at least three distinct irreparable injuries that monetary damages could not fix. First, for as long as the Local Law is in effect, the Roller Rebels will be categorically excluded from equal access to public facilities while facing ongoing discrimination due to a law designed to communicate government disapproval of transgender people. Second, because of this categorical exclusion, they also lose the ability to grow as a league in Nassau County (R408). Third, to gain access to county facilities, the Roller Rebels would have to develop a process for identifying and policing the sex designation on every team member's birth certificate at time of birth—even though doing so would violate their own internal values and the policies of their international governing body—and exclude transgender participants. In light of these significant harms, the Roller Rebels have

plainly demonstrated the prospect of irreparable injury.

First, the ongoing deprivation of equal access to public facilities is a clear and irreparable injury. Every day that the Local Law stands sends the government-endorsed message that the Roller Rebels and its members—and countless other individuals and teams—cannot participate fully in their communities because they include and welcome transgender people. This discriminatory denial of access to public accommodations 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 Transp. Auth. v State Div. of Human Rights,* 78 NY2d 207, 216 [1991]).

Without an injunction the Roller Rebels and its members—and transgender people across Nassau County—continue to 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*, 683 F Supp 3d

950, 976 [D Ariz 2023] [granting preliminary injunction against Arizona state law similar to the Local Law] [quoting *Obergefell v Hodges*, 576 US 644, 678 [2015]] *affd*, 115 F4th 1083 [9th Cir 2024]; *see also Grimm v Gloucester County Sch. Bd.*, 972 F3d 586, 618 [4th Cir 2020], *cert denied* 141 S Ct 2878 [2021] [explaining that the stigma of exclusion "publicly brand[s] all transgender students with a scarlet 'T'"]). The enactment of this Local Law has resulted in increased fear and anxiety for at least one of the Roller Rebels' transgender members—they now worry that members of the public will protest their participation on a women's team and that they may have to stop playing sports in Nassau County altogether (R411–412). They are experiencing the shame and humiliation of being unable to participate equally in sports simply because they are transgender (*id*). Here, as in *Horne*, the dignitary wounds associated with the government's adoption of the Local Law are significant and weigh strongly in favor of granting the injunction (*see Horne*, 683 F Supp 3d at 975–76).

The Local Law subjects the Roller Rebels and countless others to ongoing discrimination in violation of the state's antidiscrimination laws (*see supra* at 14–21)—this, too, constitutes irreparable injury due to the insult of unequal treatment. New York courts have cited approvingly doctrine holding that "irreparable injury is presumed once a person alleging discrimination has established a violation" of a civil rights statute (*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*, 676 F Supp 3d 196, 232 [SDNY 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"]). In enjoining an Arizona state law similar to the Local Law, the court in *Horne* held that a violation of an antidiscrimination statute "causes irreparable harm" (683 F Supp 3d at 975 [citing *Anders v California State Univ., Fresno*, No. 1:21-CV-179, 2021 WL 1564448, at *18 [ED Cal Apr. 21, 2021] [finding there is a "presumption of irreparable injury where plaintiff shows violation of a civil rights statute" in light of "the insult that comes from unequal treatment"]; *see also Roberts v Colorado State Bd. of Agric*., 998 F2d 824, 833 [10th Cir 1993] [finding "monetary relief alone is inadequate" where "defendant's continuing violation . . . operates to deprive plaintiffs of the opportunity to play" a sport]; *Mayerova v E. Michigan Univ.*, 346 F Supp 3d 983, 997–98 [ED Mich 2018] [finding irreparable injury where "the plaintiffs have demonstrated that their right to be free from discrimination under [a civil rights statute] has likely been violated"]). Here, absent an injunction the Roller Rebels—and countless other teams, leagues, clubs, and schoolchildren across Nassau County—will continue to be deprived of

the opportunity to play sports at public facilities they are entitled to use and will be subjected to unlawful discrimination every time they seek to access those facilities.

Second, as a women's league that includes transgender women, there is no way for the Roller Rebels to obtain a permit to use county-run facilities under the plain text of the Local Law. They therefore permanently lose the ability to access these facilities, which will in turn hurt their ability to grow as a league (*cf. N. Fork Distrib., Inc. v New York State Cannabis Control Bd.*, 81 Misc 3d 952, 963 [Sup Ct, Albany County 2023] ["[A] loss of customer goodwill can constitute irreparable harm for preliminary injunction purposes."]). The Roller Rebels want to access county-run facilities in order to grow as a league and to improve their skills (R408–409). The Roller Rebels have had a pending request for recurring practices and games from August 2024 through October 2025 (R410). Currently, the Roller Rebels are limited in the times they can access private facilities for games and practices, which has negatively impacted their recruitment and membership (R408–409). For months prior to the issuance of the Executive Order and the enactment of the Local Law, the Roller Rebels had been searching for private and public facilities alike that would fit their needs (*id*). The Roller Rebels are eager to expand their use of Nassau County Parks athletic facilities for a number of reasons—they are available in the daytime, they are outdoors (which is critical during COVID and flu surges), and they are in areas with high foot traffic (*id*). In addition to the ideal physical space that

these county facilities offer, the Roller Rebels want to practice and play at Nassau County Parks facilities because Nassau County Parks are community hubs—these parks are where the Roller Rebels spend time with friends and family (*id*). With the Local Law in place, the Roller Rebels are permanently shut out of these spaces.

Third, to gain access to county facilities, the Roller Rebels would have to subject their cisgender and transgender members alike 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 Local Law requires that they be expelled from their team (*see* R162–164 [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]). As a member of the Women's Flat Track Derby Association, the Roller Rebels cannot exclude transgender women from participation—the WFTDA requires that all member leagues allow transgender women to skate on women's teams (R416–417).

The Roller Rebels do not currently require or otherwise ask for information about team members' sex assigned at birth (R407), and for good reason: Demanding or publicizing such details violates the WFTDA's policies and 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 amendment of "sex designation"

on a birth certificate and ordering "records of such change. . . to be sealed"]; Public Health Law §§ 4132, 4138[f] [same]; New York State Department of Health, *Gender Designation Amendment*s [confirming state agency must maintain prior birth certificate in sealed file]).[12] Being forcibly outed can be humiliating and dangerous, as the Third Department recently emphasized when it held that records of a proceeding to change the "sex designation" on government records must be presumptively sealed because "it remains sadly true . . . that risk to one's safety is always present upon public disclosure of one's status as transgender;" "disclosure of such status subjects individuals to the risk of hate crimes, public ridicule, and random acts of discrimination;" and "violence and discrimination against transgender and nonbinary individuals continue to permeate our society at alarming rates" (*Cody VV. v Brandi VV.*, 226 AD3d 24, 27–28 [3d Dept 2024] [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 Local Law *requires* outing as part of its enforcement

[12] A copy of New York State Department of Health, *Gender Designation Amendment*s is included in the Record on Appeal at R404–405 and is available at https://www.health.ny.gov/vital_records/gender_designation_corrections.htm.

scheme. New York courts routinely recognize that the "disclosure of . . . confidential information" is a quintessential form of irreparable injury (*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]; *see also Hecox*, 104 F4th at 1088 [enjoining Idaho law that mirrors the Local Law and finding irreparable harm flowing from the sex "verification process" and its "unnecessary examinations"]).

For all these reasons, where "the record discloses that the plaintiffs will suffer irreparable injury absent preliminary injunctive relief," reversal of the Order is appropriate (*Williams v Hertzwig*, 251 AD2d 655, 656–57 [2d Dept 1998] [reversing lower court's order and granting preliminary injunction]; *see also Niagara Recycling, Inc.*, 83 AD2d at 334 [reversing denial of preliminary injunction in light of "irreparable damage that could result to plaintiffs" from enforcement of local law likely to be found unconstitutional]; *Time Square Books, Inc*, 223 AD2d at 278 [reversing denial of preliminary injunction in light of "irreparable injury" from to local law's "[i]nfringement of constitutionally guaranteed right"]). The Roller Rebels have demonstrated irreparable injury absent an injunction, and the Order "failed to set forth any specific findings" (*Matter of Merscorp, Inc.,* 295 AD2d at 432–33) to the contrary, thereby warranting reversal.

C. The Roller Rebels Properly Demonstrated that the Balance of the Equities Weighs in Favor of the Requested Injunction.

Balancing the equities confirms that, while numerous significant harms will flow from the enforcement of the Local Law, 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, Inc. v Beech 140, LLC*, 68 AD3d 942, 943 [2d Dept 2009]), and here the requested injunction would maintain the status quo that existed for many years prior to the Local Law's enactment and that currently exists around the state.

Indeed, the enforcement of the Local Law does not just alter the status quo, it fully upends it by imposing novel requirements that are both sweeping in scope and deeply confusing in nature—requiring all women's and girls' sports leagues, organizations, teams, programs, or sports entities without limitation 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 in order to access county facilities despite the myriad legal and ethical barriers to doing so (*see supra* at 31–33). 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 Local Law, even as they are also subject to binding antidiscrimination and confidentiality requirements

that the Local Law violates—would avoid upsetting on an otherwise stable status quo.

By contrast, Nassau County will suffer no harm at all if the Local Law is enjoined. Nassau County officials have repeatedly asserted that the Local Law and the preceding Order were intended to "protect" cisgender women and girls from "bullying" by transgender women and girls, but the legislative record and the record in this case confirm that Executive Blakeman and the County legislators were unaware of any complaint arising from the participation of transgender women or girls in sports in Nassau County at the time the law was enacted (R015–016). Accordingly, Nassau County can show no harm at all—let alone one that would outweigh the harms described by the Roller Rebels—that the requested injunction would cause them (*see Melvin,* 195 AD2d at 448–49 [reversing lower court's denial of preliminary injunction where appellant showed she would suffer irreparable injury "without an injunction to preserve the status quo" while the respondent did not show it would "suffer any harm"]; *Stockley*, 24 AD3d at 535–36 [reversing lower court's order where the "status quo will not be preserved absent a preliminary injunction"]).

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 Human Rights Law's

antidiscrimination provisions (*Seitzman v Hudson River Assoc.*, 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 Human Rights Law "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 Roller Rebels' requested injunction.

For all these reasons, the Roller Rebels have shown that balance of the equities favors granting their requested injunction, and the Order "failed to set forth any specific findings" (*Matter of Merscorp, Inc.,* 295 AD2d at 432–33) on this issue. The lower court therefore "improvidently exercised its discretion in denying the [Roller Rebels'] motion for injunctive relief" (*id*).

CONCLUSION

For the foregoing reasons, the Roller Rebels respectfully request that this Court reverse the Order and enjoin the enforcement of the Local Law during the pendency of the proceeding.

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Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

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