SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

LONG ISLAND ROLLER REBELS, Plaintiff, -against- COUNTY OF NASSAU, THE NASSAU COUNTY LEGISLATURE, BRUCE BLAKEMAN, in his official capacity as Nassau County Executive, Defendants.	INDEX NO: _____ **ORAL ARGUMENT REQUESTED**

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

On June 24, 2024, the Nassau County Legislature enacted Local Law 121-24 (the "Local Law") prohibiting transgender women and girls from participating in any women's or girls' sports league, team, event, program, competition, or organization at a county-run facility. 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 plaintiff—a Nassau County-based women's roller derby league that includes transgender members and uses county-run facilities—now moves for a preliminary injunction enjoining enforcement of the Local Law.

All relevant factors weigh strongly in favor of the requested injunction. First, the plaintiff is likely to succeed on the merits because the Local Law 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 plaintiff and countless other teams and individuals will suffer irreparable injuries including categorical exclusion from equal access to public facilities while enduring ongoing 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 Nassau County merely speculates about a hypothetical future harm without identifying a single complaint arising out of the preexisting status quo.

For all these reasons, the Court should enjoin the enforcement of the Local Law immediately.

BACKGROUND

The Long Island Roller Rebels (the "Roller Rebels") include the full factual background in their complaint (*see* NYSCEF Doc No. 2 ["complaint"] ¶¶ 13–73). For the Court's convenience, they summarize the background relevant 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.[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.[2] Most people have a gender identity that aligns with the sex they are assigned at birth, and these people are *cis*gender.[3] *Trans*gender people are people with a gender identity that differs from their assigned sex at birth.[4]

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.

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[1] *See* NYSED, *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* ("NYSED Guidance") at 10, 14 (June 2023), attached as Exhibit 1 to the affirmation of Gabriella Larios ("Larios Affirmation"), *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.

[2] *Id.* at 9–10.

[3] *Id.*

[4] *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.[5] 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.[6] 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.

Participation in Athletics

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.[7] 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.[8] 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."[9] These

[5] *Id.* at 14.

[6] *Id.*

[7] *See* Eather, N., Wade, L., Pankowiak, A. et al., *The impact of sports participation on mental health and social outcomes in adults: a systematic review and the 'Mental Health through Sport' conceptual model,* Syst Rev 12, 102 (2023), Larios Affirmation Exhibit 2, *available at* https://doi.org/10.1186/s13643-023-02264-8; *see also* Leanne C. Findlay, & Robert J. Coplan*, Come Out and Play: Shyness in Childhood and the Benefits of Organized Sports Participation*, 40 Canadian J. Behavioural Science / Revue Canadienne des sciences du comportement 153 (2008), Larios Affirmation Exhibit 3, *available at* https://doi.org/10.1037/0008-400X.40.3.153.

[8] *See e.g.* Angela Lumpkin & Judy Favor, *Comparing the Academic Performance of High School Athletes and Non-Athletes in Kansas in 2008-2009*, 4 J. Sport Admin & Supervision 41 (2012), Larios Affirmation Exhibit 4, *available at* http://hdl.handle.net/2027/spo.6776111.0004.108

[9] *See* Erin M. Boone & Bonnie J. Leadbeater, *Game On: Diminishing Risks for Depressive Symptoms in Early Adolescence Through Positive Involvement in Team Sports*, 16 J. Res. Adolesc. 79 (2006), Larios Affirmation Exhibit 5, *available at* https://doi.org/10.1111/j.1532-7795.2006.00122.x.

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.

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 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"];[10] NYSED Guidance at 8, 25 [also confirming that its guidance on this issue conforms with additional state regulations, federal Title IX protections, and federal guidance]).

To the plaintiff's knowledge, entities subject to these laws and requirements have followed

[10] Larios Affirmation Exhibit 6, *available at* https://dhr.ny.gov/system/files/documents/2022/04/nysdhr-genda-guidance-2020.pdf.

them in Nassau County for years without incident. They are aware of no complaints arising out of their compliance (complaint ¶ 45).

The Local Law

The Local Law is formally titled "A Local Law to Maintain a Safe and Fair Competitive Environment for Women and Girls Participating in Sports and Athletic Events" (Local Law No. 121-24 of the County of Nassau[11]). Nassau County Executive Bruce Blakeman signed the Local Law on July 15, 2024. It became effective immediately upon its signing.

Executive Blakeman previously issued an Executive Order ("the Order") that was identical in substance to the Local Law.[12] On May 10, 2024, the Nassau County Supreme Court vacated and permanently enjoined enforcement of the Order because the County Executive "did not have authority" to issue the Order.[13] The County Legislature has now codified the provisions of the Order through enactment of the Local Law.

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-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

[11] Larios Affirmation Exhibit 7, *available at* https://www.nassaucountyny.gov/AgendaCenter/ViewFile/Item/3159?fileID=244145.

[12] *See* Nassau County Executive Order 2-2024, Larios Affirmation Exhibit 8, *available at* https://www.nassaucountyny.gov/DocumentCenter/View/43897/EXEC-ORDER-2-24?bidId=.

[13] *See* NYSCEF Doc. No. 44 (May 10, 2024 Order Granting Petition) in *Long Island Roller Rebels v Bruce Blakeman et al.*, Sup Ct, Nassau County, Index No. 604254/2024, Larios Affirmation Exhibit 9, *available at* https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=2rX8ORzeGpOgdD2c5KKGZg==.

a sporting event or competition" if it includes "biological males" (*see* Local Law 121-24.).[14] It then defines an individual's 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 (*see* complaint ¶ 37). 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 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.[15] 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

[14] 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 10, *available at* https://academic.oup.com/jcem/article/102/11/3869/4157558).

[15] Eyewitness News ABC7NY, *Press Conference - Nassau County announces ban on transgender athletes competing at county-run facilities*, YouTube (Feb. 22, 2024), *available at* https://www.youtube.com/watch?v=vo7lNqiM1X4 (last accessed July 14, 2024).

more.[16] 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 Local Law.

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.

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 (*see* Affirmation of Amanda Urena ["Urena Affirmation"] ¶¶ 2, 8). They are committed to inclusive policies and antidiscrimination principles, and they welcome all transgender women, intersex women, and gender-expansive women to participate (*id.* ¶¶ 6, 9).[17] As such, they do not inquire about the sex assigned at birth of their players (*id.* ¶ 7) 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 (*id.* ¶ 10).

[16] Nassau County, *Eisenhower Park*, *available at* https://www.nassaucountyny.gov/2797/Eisenhower-Park.

[17] 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).

Flat track roller derby requires certain specific types of flat surfaces that are suitable for skating, such as roller rinks and basketball courts (*id.* ¶ 4). The Roller Rebels have previously used outdoor skating rinks at Nassau County parks for team practices and events (*id.* ¶ 15). For months, they have been searching for additional facilities to use for team practices, games, and events (*id.* ¶ 16). On March 11, 2024, the Roller Rebels submitted a request for a permit to use Nassau County Parks facilities for a series of games beginning April 13, 2024. That application has not been approved (*id.* ¶ 23). The Roller Rebels are currently organizing a series of upcoming women's roller derby games and practices at Nassau County Parks athletic facilities (*id.* ¶ 24). 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 beginning on August 8, 2024 (*id.* ¶¶ 25–27). They specifically requested to use the roller rinks at Cedar Creek Park or Eisenhower Park, or the basketball courts at Cedar Creek Park, Eisenhower Park, or Wantagh Park as other alternatives. If those facilities are unavailable, they requested alternate athletic facilities suitable for skating (*id.*).

However, because their 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 on their team, the Roller Rebels are now prevented from accessing Nassau County facilities because they refuse to exclude transgender women from their league.

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 plaintiff seeks to preserve the longstanding status quo that the Local Law threatens to unlawfully upend, every factor relevant to this Court's consideration of the plaintiff's request weighs strongly in favor of granting it.

I. THE PLAINTIFF IS 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 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. It also violates Section 10 of the Municipal Home Rule Law. Accordingly, the plaintiff 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."[18]

Here, the Local Law 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* Local Law 121-24). 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 HRL 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" (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

[18] 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).

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 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][19]).

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

[19] Larios Affirmation Exhibit 11, *available at* https://nysphsaa.org/documents/2023/8/21//NYSPHSAA_Handbook_004.pdf.

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 2023] [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 discrimination" (*id.*). 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* Michael Malaszczyk, *AG Calls Transgender Sports Ban Illegal, Nassau Exec Hits Back*, Long Island Press, Mar. 1, 2024 [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]). [20] That is precisely what the HRL and CRL 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*, the Second Department affirmed a

[20] *Available at* https://www.longislandpress.com/2024/03/01/nassau-county-transgender-ban-update/ (last accessed June 25, 2024).

Division of Human Rights determination[21] finding that a transgender woman had been discriminated against on the basis of sex and disability under the HRL when her employment was terminated after she 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, 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 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, the Local Law also violates the HRL 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 §

[21] The full Division of Human Rights determination is available at *Fuller v Advanced Recovery, Inc.*, NYSDHR Case No. 10144572, Notice and Final Order [Apr. 01, 2015], Larios Affirmation Exhibit 12, *available at* https://dhr.ny.gov/system/files/documents/2022/05/fuller_v_advanced_recovery.pdf.

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 permit (*see* Urena Affirmation ¶¶ 10–11, 30–32). The Roller Rebels also include cisgender team members who are themselves being discriminated against for their association with transgender team members (*see id.* ¶ 11).

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.[22] Because the Local Law is inconsistent with the HRL and the CRL, 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 long as those local laws are "not inconsistent with any general law" of the state]). For all these reasons, the plaintiff is likely to succeed on the merits.

II. THE PLAINTIFF FACES IRREPARABLE INJURY ABSENT AN INJUNCTION.

Without an injunction, implementation and enforcement of the Local Law will 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 447, 448, [2d Dept 1993]). Here, the Roller Rebels face numerous irreparable injuries that monetary damages could not fix. For as

[22] 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 (*see* Local Law 121-24).

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. Because of this categorical exclusion, they also lose the ability to grow as a league in Nassau County. 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 plaintiff has 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 countless other individuals and teams—cannot participate fully in their communities because they include and welcome transgender people. For as long as this 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]).

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*, 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]]; *see also Grimm v Gloucester County School Board*, 972 F3d 586, 625 [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 (Urena Affirmation ¶ 35). 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 9–14)—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 Title IX [] 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 of Title IX 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 Title IX has likely been violated"]). Here, absent an injunction the Roller Rebels—and countless other teams, leagues, clubs, and schoolchildren across Nassau County—will 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 team 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 before the official roller derby season ends in November (Urena Affirmation ¶¶ 16–20). They have a pending request to reserve

space for recurring practices and games beginning August 8, 2024 (*id.* ¶¶ 25–27). 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 (*id.* ¶¶ 17–18). For months prior to the issuance of the 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.* ¶ 16). 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.* ¶ 21). 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.* ¶ 22). 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* Local Law 121-24 [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 (*see* Affidavit of Trisha Newman ¶¶ 2–6).

The Roller Rebels do not currently require or otherwise ask for information about team

members' sex assigned at birth (Urena Affirmation ¶ 7), 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 §§ 4231, 4138[f] [same]; New York State Department of Health, *Gender Designation Amendment*s[23] [confirming state agency must maintain prior birth certificate in sealed file]). 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 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

[23] Larios Affirmation Exhibit 13, *available at* https://www.health.ny.gov/vital_records/gender_designation_corrections.htm.

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, the Roller Rebels have demonstrated they are in danger of irreparable injury absent an injunction.

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

Balancing the equities confirms that, while numerous significant harms would 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*, 68 AD3d at 943), and here the requested injunction would maintain the status quo that existed for many years prior to the Local Law's enactment.

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 9–19). 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 the widescale chaos that such enforcement would wreak 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 shows that Executive Blakeman and the County legislators are unaware of any current or former complaint arising from the participation of transgender women or girls in sports in Nassau County (complaint ¶ 45). Accordingly, the defendants can show no harm at all—let alone one that would outweigh the harms described by the plaintiff—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 plaintiff's requested injunction.

CONCLUSION

For the foregoing reasons, the Roller Rebels respectfully request that the Court enjoin the defendants from enforcing the Local Law during the pendency of this action.

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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

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