

First, Plaintiff incorrectly posits that R.I. Gen. Laws § 16-38-1.1 is the “sole legal basis” of the Commissioner’s authority to promulgate the Regs. See Pltf.’s Brief at 1, 12-14; Complaint, ¶ 6 at 2 (emphasis added). In fact, the Commissioner’s authority is a function not only of the specific directive from the General Assembly under § 16-38-1.1(a)(5), but also pursuant to a more general delegation of authority under § 16-60-6 and pursuant to her role as the Chief Executive Officer of the Council on Elementary and Secondary Education (the “Council”). (Discussed *infra* pp. 9-15). Moreover, § 16-38-1.1 must be read *in pari materia* with other anti-discrimination statutes enacted by the General Assembly and with the binding precedent of the federal courts interpreting Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, both of which make clear that “discrimination on the basis of sex” includes discrimination based on gender identity or expression. (Discussed *infra* pp. 14-15).

Alternatively, Plaintiff relies upon President Trump’s January 20, 2025 Executive Order entitled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (the “J20 EO”) and erroneously concludes that Title IX does not include “gender” in its definition of “sex” and preempts any state law to the contrary. See *id.* at 16-17. In fact, Plaintiff’s federal preemption argument has the exact opposite effect as claimed since, despite the President’s inflated view of his own authority, he can no more make the 1.6 million Americans who identity as transgender magically disappear than he can redefine “sex” and unilaterally overrule the law as construed by the U.S. Supreme Court, which has held that discrimination “because of . . . sex” includes discrimination based on transgender status. (See *infra* pp. 15-18, discussing, *inter alia*, *Bostock v. Clayton County*, 590 U.S. 644, 660-661 (2020) and distinguishing the Court’s recent decision in *U.S. v. Skrametti*, 605 U.S. __ (June 18, 2025)).

Indeed, it is the J20 EO, not the LGBTQ+ Regs., that interjects the government into personal decisions best left to parents and children.

Finally, Plaintiff alleges in her Complaint that the LGBTQ+ Regs. interfered with her “fundamental liberty interest in the care, custody, and management of [her] children.” *See* Complaint, ¶¶ 30-33 at 6. In fact, a substantially similar claim was squarely rejected by the First Circuit weeks *after* the J20 EO was signed by President Trump. (*See infra* at Sec. III(3), discussing *Foote v. Ludlow School Committee*, 128 F.4th 336 (1st Cir. 2025) and distinguishing *Mahmoud v. Taylor*, 606 U.S. __ (June 27, 2025)).

Thus, Plaintiff’s request for a declaratory judgment pursuant to R.I. Gen. Laws § 42-35-7 should be denied and the remaining Count I of her Complaint should be dismissed.

II. THE COMPLAINT AND RELATED LEGAL PROVISIONS

1. On March 26, 2025, Plaintiff filed a complaint in the above matter (the “Complaint”) which originally contained two Counts.¹

2. Count I of the Complaint sought a declaratory judgment that the LGBTQ+ Regs. were invalid on the ground that they were *ultra vires*, preempted by Title IX and allegedly interfered with Plaintiff’s “fundamental liberty interest in the care, custody, and management of [her] children.” *See id.*, ¶¶ 30-33 at 6. (A copy of the LGBTQ+ Regs. is attached to the Complaint as Exhibit B).

¹ Although the Complaint is self-described as a “Verified Complaint,” the document filed was not verified and was filed anonymously. However, the Defendant withdrew her objection to the anonymity of the filing after Plaintiff represented to the Court that: (a) a verified complaint signed by the plaintiff had been filed with the Court, which was to be kept under seal; and (b) the facts alleged in Plaintiff’s May 2, 2025 Motion to Proceed Under Pseudonym were not to be considered in the context of the request for a declaratory judgment beyond the aspect relating to standing, as reflected in the parties’ written stipulation attached as Exhibit A (*see also* note 9, *infra* at 8).

3. Count II sought a temporary restraining order, and preliminary and permanent injunctive relief ordering the Commissioner to rescind the LGBTQ+ Regs. See Complaint, ¶¶ 34-37 at 6-7.

4. R.I. Gen. Laws § 16-38-1.1, which was enacted in 1985,² provides that “[d]iscrimination on the basis of sex is prohibited in all public elementary and secondary schools in the state[.]” *id.* at (a)(1), and makes clear that “the commissioner of elementary and secondary education shall be responsible for enforcing this section and is empowered to promulgate rules and regulations to enforce the provisions of this section.” *Id.* at (a)(5).

5. In 1986, language was added to the Rhode Island State Constitution providing that “[n]o otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state.” R.I. Cons., Art. I, § 2.³

6. In 1995, the General Assembly amended R.I. Gen. Laws § 28-5-7 to prohibit discrimination on the basis of “sexual orientation” in the rendering of state services.⁴

7. In 2001, the General Assembly amended the State’s anti-discrimination law applicable to public accommodation to prohibit discrimination on the basis of, *inter alia*, “sex, or sexual orientation.” R.I. Gen. Laws § 11-24-2.3.⁵

² The statute was amended once in 2013 to delete language permitting schools to:

Provide extracurricular activities for students of one sex, including, but not limited to, father–daughter/mother–son activities, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex. School districts are required to allow and notify students that they may bring the adult of their parent’s or guardian’s choice to the event.

P.L. 2013, ch. 522, § 1.

³ See Patrick T. Conley and Robert G. Flanders, *The Rhode Island Constitution: A Reference Guide* at 52 (Praeger, 2007).

⁴ See P.L. 1995, ch. 32, § 8.

⁵ See P.L. 2001, ch. 340, § 6.

8. In 2010, the statutory predecessor to the Council, i.e., the Board of Regents, revised its *Policy Statement on Discrimination Based on Sexual Orientation and Gender Identity/Expression*, to include the following language:

The Rhode Island Board of Regents for Elementary and Secondary Education recognizes that all educational agencies must provide all people and groups with full access to educational opportunities and barriers to student participation based on sexual orientation or gender identity/expression must be identified and removed. The Board also recognizes that all students, without exception, have the right to attend a school in which they feel safe and able to express their identity without fear.

Id.

9. In 2015, the General Assembly amended the Rhode Island Children’s Bill of Rights to include language providing that: “[n]o child shall be discriminated against on the basis of . . . gender, sexual orientation, or gender identity or expression . . .” R.I. Gen. Laws § 42-72-15(q).⁶

10. In 2016, RIDE issued *Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students* (the “RIDE Guidance”),⁷ which included the following definitions:

- **Assigned Sex at Birth:** the assignment and classification of people as male, female or intersex or another sex assigned at birth based on physical anatomy at birth and or karyotyping (Trans Student Educational Resources, 2016).
 - **Biological Sex:** the biological state of having: 1) female or male genitalia; 2) female or male chromosomes and 3) female or male hormones. It is estimated that one in 2,000 babies is born with the biological characteristics of both sexes or of neither sex entirely (Advocates For Youth, 2016).
- * * *
- **Gender:** social and cultural expression of sex, not biological sex (Advocates For Youth, 2016).

⁶ See P.L. 2015, ch. 178, § 1.

⁷ Available at <https://ride.ri.gov/sites/g/files/xkgbur806/files/2023-06/Guidance-Rhode-Island-Schools-Transgender-Gender-Nonconforming-Students.pdf>.

- **Gender Expression:** the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms (GLSEN, 2015).
- **Gender Identity:** a person's deeply held sense or psychological knowledge of his or her own gender. One's gender identity can be the same or different than the gender assigned at birth. Most people have a gender identity that matches their assigned gender at birth. For some, however, their gender identity is different from their assigned gender. All people have a gender identity, not just transgender people. Gender identity is an innate, largely inflexible characteristic of each individual's personality that is generally established at a very early age, although the age at which individuals come to understand and express their gender identity may vary (GLSEN, 2015).
- **Gender Non-conforming:** a term used to describe people whose gender expression differs from stereotypic expectations. This includes people who identify outside traditional gender categories or identify as both genders. Other terms that can have similar meanings include gender variant, gender expansive, or gender atypical (GLSEN, 2015).
- **Sexual Orientation:** A person's romantic or sexual attraction to people of the same or opposite sex or multiple sexes. Some common sexual orientations are straight, gay, lesbian, bisexual, pansexual, queer, etc. A transgender or gender non-conforming person can have any sexual orientation (GLSEN, 2015).
- **Transgender:** an umbrella term used to describe a person whose gender identity or gender expression is different from that traditionally associated with their assigned sex at birth (GLSEN, 2015).
- **Transition:** The process in which a person goes from living and identifying as one gender to living and identifying as another. Transition is a process that is different for everyone, and it may or may not involve social, legal or physical changes. There is no one step or set of steps that an individual must undergo in order to have their gender identity affirmed and respected (GLSEN, 2015).

Id. at 4-5.

11. The RIDE Guidance recited that:

The Human Rights Campaign Foundation's survey including more than 10,000 youth entitled, *Growing UP LGBT in America*, found that 42% of gender nonconforming youth report frequently or often being called names and 40% reported being frequently or often excluded. Further, over half of gender

nonconforming youth reported that they did not participate in activities offered by the school out of fear of discrimination. Additionally, the Journal of Adolescent Health (2015) reported that transgender youth were more likely to report: being diagnosed with depression compared with students who were not transgender (50.6% vs. 20.6%); suffering from anxiety (26.7% vs. 10%); attempting suicide (17.2% vs. 6.1%); and engaging in self-harm activities with lethal intentions (16.7% vs. 4.4%).

Id. at 1.

12. The LGBTQ+ Regs., which were promulgated by the Commissioner in 2018, include the following definitions:

A. “Gender non-conforming” means a term used to describe people whose gender expression differs from stereotypic expectations. This includes people who identify outside traditional gender categories or identify as both genders. Other terms that can have similar meanings include “gender variant”, “gender expansive”, or “gender atypical”.

B. “Transgender” means an umbrella term used to describe a person whose gender identity or gender expression is different from that traditionally associated with their assigned sex at birth.

Id. at § 1.2.

13. The Regs. go on to provide that “[b]y July 1, 2018, each Local Education Agency (‘LEA’) shall adopt a policy addressing the rights of transgender and gender non-conforming students to a safe, supportive and non-discriminatory school environment[,]” adding that:

The LEA policy shall be consistent with state and national best practices, guidance, and model policies and shall address, at a minimum, such issues as confidentiality and privacy, discipline and exclusion, staff training, access to school facilities and participation in school programs, dress codes, official school records and use of preferred names and pronouns.

Id. at § 1.3(A) and (B).

14. Title IX provides, in pertinent part, that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any education program or activity receiving Federal financial assistance . . .” *Id.*

15. In support of her legal arguments, Plaintiff relies upon: (a) the J20 EO, which provides that the United States “recognize two sexes, male and female” (a copy of the J20 EO is attached to the Complaint as Exhibit C); and (b) a February 4, 2025 “Dear Colleague” Letter from the U.S. Department of Education (the “DCL” and “USDE,” respectively) implementing the J20 EO. (A copy of the DCL is attached to the Complaint as Exhibit D).

16. On April 10, 2025, the Defendant filed an Answer to the Complaint in which she denied the legal conclusions and, for the most part, denied sufficient information to either admit or deny the Complaint’s factual allegations, as neither the Commissioner nor anyone at RIDE had any involvement with the events in the school district alleged in the Complaint.

17. The matter was placed on the Formal and Special Cause Calendar and during a chambers conference with Judge McBurney on April 10, 2025, Plaintiff’s counsel agreed to dismiss Count II of the Complaint, without prejudice, and to proceed exclusively with Plaintiff’s legal arguments contesting the validity of the LBGTQ+ Regs. in furtherance of the declaratory judgment sought in Count I pursuant to R.I. Gen. Laws § 42-35-7.⁸ A copy of the executed Stipulation is attached as Exhibit A.⁹

⁸ That Section provides that:

The validity or applicability of any rule may be determined in an action for declaratory judgment in the superior court of Providence County, when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

Id.

⁹ As noted and as per the agreement of the parties, the facts alleged in the Complaint are only relevant to the extent that they allege that the application of the LBGTQ+ Regs. “has interfered with or impaired, or threatens to interfere with or impair, Plaintiff’s legal rights or privileges such as to confer jurisdiction over an action for declaratory judgment” pursuant to § 42-35-7. The parties have thus not engaged in any discovery so that the purely legal issue raised could be promptly put before the Court.

III. ARGUMENT

1. **Contrary to Plaintiff’s theory of the case, § 16-38-1.1(a)(5) is not the “sole” source of the Commissioner’s authority to promulgate the LGBTQ+ Regs.**

The Rhode Island Supreme Court has held that matters involving public education policy are within the plenary authority of the General Assembly, *see Pawtucket v. Sundlun*, 662 A.2d 40, 57 (R.I. 1995) and *Woonsocket Sch. Comm. v. Chafee*, 89 A.2d 778, 791 (R.I. 2014), and the General Assembly, while vesting much of the “care, control and management of all public school interests” in the “school committees of the several cities and towns,” R.I. Gen. Laws § 16-2-9(a), has delegated the responsibility for setting education policy and regulating the school committees to the Council and the Commissioner. *See generally* R.I. Gen. Laws §§ 16-60-1, 16-60-4 and 16-60-6.

Accordingly, the Council has been authorized by the Legislature: (a) “[t]o adopt standards and require enforcement and to exercise general supervision over all elementary and secondary public and nonpublic education in the state . . .” R.I. Gen. Laws § 16-60-4(a)(2); and (b) to maintain a department of elementary and secondary education (“RIDE”). *See id.* at (a). And the Commissioner, who serves as the Council’s chief executive officer as well as RIDE’s chief administrative officer, § 16-60-6, has been invested by the General Assembly with broad interpretative and enforcement powers and duties, as well as adjudicatory powers and duties exercised pursuant to the state’s Administrative Procedures Act (the “State APA”).¹⁰

¹⁰ Thus, the Commissioner has:

- (i) jurisdiction over “any matter of dispute. . . arising under any law relating to schools or education . . .” R.I. Gen. Laws §§ 16-39-1 and 16-39-3.1;
- (ii) a “duty” to “decide such controversies as may be appealed . . . the Commissioner from decisions of local school committees.” R.I. Gen. Laws §§ 16-1-5(10) and 16-60-6(9)(viii); and
- (iii) power to decide “petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency” under the APA. R.I. Gen. Laws § 42-35-8.

Significantly, the Commissioner has been charged by the General Assembly with the duty:

- (a) “To implement broad policy as it pertains to the goals and objectives established by the board of education[.]” § 16-60-6(4);
- (b) “To perform the duties vested in the board of education and council on elementary and secondary education with relation to nonpublic elementary and secondary educational institutions within the state under the terms of chapter 40 of this title, and other laws that affect nonpublic elementary and secondary education in the state[.]” *Id.* at (8);
- (c) “To require the observance of all laws relating to elementary and secondary schools and education[.]” *Id.* at (9)(vii);
- (d) “To interpret school law and to decide any controversies that may be appealed to him or her from decisions of local school committees[.]” *Id.* at (9)(vii); and finally,
- (e) “To be responsible for the administration of policies, rules, and regulations of the board of education and the council on elementary and secondary education with relation to the entire field of elementary and secondary education within the state not specifically granted to any other department, board, or agency and not incompatible with law.” *Id.* at (11).

Thus, the Commissioner’s authority to adopt the LBGTQ+ Regs. is a function not only of the specific directive from the General Assembly under § 16-38-1.1(a)(5), but also pursuant to a more general delegation of authority by the General Assembly under § 16-60-6 and her role as the Chief Executive Officer of the Council. Moreover, as noted by the Rhode Island Supreme Court, “in the course of performing its discrete functions,” a state administrative agency “is called upon both to interpret certain acts of the Legislature and to promulgate applicable regulations not inconsistent with its delegated authority.” *Clarke v. Morsilli*, 714 A.2d 597, 600 (R.I. 1998) (citing *Lerner v. Gill*, 463 A.2d 1352, 1358 (R.I.1983)).

Although the Plaintiff (and evidently the President) are of the opinion that the very existence of 1.6 million Americans can magically be swept away by the mere issuance of an

executive order, the 3.3% of high school students who identify as transgender (the additional 2.2% who have at some point questioned if they were), have not disappeared.¹¹ Indeed, as noted by Justice Sotomayer in her dissent in *Skrmetti*, “[t]ransgender people have long been subject to discrimination in healthcare, employment, and housing, and to rampant harassment and physical violence.” *Id.*, slip op. at 25 (Sotomayer, J., dissenting);¹² see also *id.*, slip op. at 19 (Alito, J., concurring) (“transgender persons have undoubtedly experienced discrimination”).

In Rhode Island, 3.8% of high school students in the Youth Risk Behavior Survey conducted by the R.I. Department of Health in 2023 identified as transgender. See *id.* at 130-132.¹³ Moreover the CDC has concluded that “stigma, discrimination, and other factors” put students who identify as lesbian, gay, bisexual, transgender, queer, and questioning “at increased risk for negative health and life outcomes.” See *Health Disparities Among LGBTQ Youth* (CDC, November 29, 2024);¹⁴ see also *RIDE Guidance*, § II, ¶11, *supra* at 6-7 (documenting bullying of LBGTQ+ youth).

¹¹ See *Disparities in School Connectedness, Unstable Housing, Experiences of Violence, Mental Health, and Suicidal Thoughts and Behaviors Among Transgender and Cisgender High School Students — Youth Risk Behavior Survey, United States, 2023* (U.S. Centers for Disease Control and Prevention, October 10, 2024). Available at https://www.cdc.gov/mmwr/volumes/73/su/su7304a6.htm?s_cid=su7304a6_e&ACSTrackingID=USCDC_921-DM138032&ACSTrackingLabel=MMWR%20Supplement%20%E2%80%93%20Vol.%2073%2C%20October%208%2C%202024&deliveryName=USCDC_921-DM138032.

¹² Citing *Grimm v. Gloucester Cty. School Bd.*, 972 F. 3d 586, 611 (CA4 2020) (detailing that history); K. Barry, B. Farrell, J. Levi, & N. Vanguri, *A Bare Desire To Harm: Transgender People and the Equal Protection Clause*, 57 B. C. L. Rev. 507, 556-557 (2016) (describing Congress's exclusion of transgender people from the Fair Housing Act, Americans with Disabilities Act, and Rehabilitation Act).

¹³ Available at <https://health.ri.gov/sites/g/files/xkgbur1006/files/2025-02/2023HighSchoolDetailTables.pdf>.

¹⁴ Available at <https://www.cdc.gov/healthy-youth/lgbtq-youth/health-disparities-among-lgbtq-youth.html>. In their ongoing war against scientific fact, the Trump Administration ordered the CDC studies to be removed from its website, only to have the order rescinded by a federal court. The study now contains the following notice:

Per a court order, HHS is required to restore this website as of 11:59PM ET, February 14, 2025. Any information on this page promoting gender ideology is extremely inaccurate and disconnected from the immutable biological reality that there are two sexes, male and female. The Trump Administration rejects gender ideology and condemns the harms it causes to children, by promoting their chemical and surgical mutilation, and to women, by depriving them of their dignity, safety, well-being, and opportunities. This page does not reflect biological reality and therefore the Administration and this Department rejects it.

Id.

At the same time, Rhode Island’s Safe School Act provides that “[e]ach student, staff member, teacher, and administrator has a right to attend and/or work at a school which is safe and secure, and which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student.” R.I. Gen. Laws § 16-2-17(a). Thus, the Commissioner’s authority to promulgate the LBGTQ+ Regs. is also a function of her specific duty to “[t]o require the observance of all laws relating to elementary and secondary schools and education,” R.I. Gen. Laws § 16-60-6(9)(vii), which includes ensuring that *all students* have the benefits described in the Safe School Act. *See Guidance to Rhode Island Local Education Agencies, School Administrators and Educators* from the Commissioner and State Attorney General Peter F. Neronha dated February 28, 2025 (the “Joint Guidance”) at 4-5.¹⁵

The Rhode Island Supreme Court has made clear that “[r]egulations that are duly promulgated by an administrative agency . . . pursuant to a specific grant of legal authority to do so, are legislative rules that carry the force and effect of law and thus enjoy a presumption of validity.” *In re Advisory Opinion to the Governor*, 732 A.2d 55, 75 (R.I. 1999) (citing *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289, 1293 (R.I.1997); *see also Lerner, supra*, 463 A.2d at 1358 and *DiLuglio v. Rhode Island Ethics Commission*, 726 A.2d 1149, 1151 n. 2 (R.I.1999) (courts shall presume the validity of agency regulations). In addition, the Court has held that it must “defer[] to an agency’s interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency’s construction is neither clearly erroneous nor unauthorized.” *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 445 (R.I. 2008). Moreover, the case for judicial deference is strongest when, as here, the case involves the application of an agency regulation which, as noted, has “the force and effect of

¹⁵ Available at <https://ride.ri.gov/sites/g/files/xkgbur806/files/2025-02/Feb%2028%202025%20RIAG%20RIDE%20Guidance.pdf>.

law.” See *Town of Warren v. Bristol Warren Regional School District*, 159 A.3d 1029, 1039 (R.I. 2017) (quoting *Great American Nursing Centers, Inc. v. Norberg*, 567 A.2d 354, 356 (R.I. 1989)).¹⁶

In *Skrmetti*, *supra*, the Court very recently held that a Tennessee law prohibiting certain medical treatments for transgender minors was not subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment and satisfied rational basis review. See *id.*, slip op. at 8–24.¹⁷ In reaching this conclusion, the Court emphasized that the need for

¹⁶ And it should be emphasized that the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled the federal standard of agency deference set out in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), does not compel this Court to abandon its own settled precedents concerning the deference owed to a state agency’s interpretation of its own regulations. It is a fundamental principle of our federalism that, although the United States Supreme Court can definitively interpret the APA and other federal laws, it has no corresponding authority over questions of state law. “The highest court of each State, of course, remains ‘the final arbiter of what is state law.’” *Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) (quoting *West v. American Telephone & Telegraph Co.*, 311 U.S. 223, 236 (1940)); see *Danforth v. Minnesota*, 552 U.S. 264, 278–79 (2008) (“Since *Teague [v. Lane]*, 489 U.S. 288 (1989), is based on statutory authority that extends only to federal courts applying a federal statute, it cannot be read as imposing a binding obligation on state courts.”).

¹⁷ Since the Plaintiff here has not relied upon equal protection, the Court’s holding in *Skrmetti* is of limited relevance. Yet, it is worth noting that the Court reasoned that the Tennessee statute in question (referred to as “SB1”):

On its face . . . incorporates two classifications. First, SB1 classifies on the basis of age. Healthcare providers may administer certain medical treatments to individuals ages 18 and older but not to minors. Second, SB1 classifies on the basis of medical use. Healthcare providers may administer puberty blockers or hormones to minors to treat certain conditions but not to treat gender dysphoria, gender identity disorder, or gender incongruence. Classifications that turn on age or medical use are subject to only rational basis review.

Id., slip op. at 9 (citations omitted). However, as noted by Justice Sotomayer in her dissent:

The problem with the majority’s argument is that the very ‘medical purpose’ SB1 prohibits is defined by reference to the patient’s sex. Key to whether a minor may receive puberty blockers or hormones is whether the treatment facilitates the ‘medical purpose’ of helping the minor live or appear ‘inconsistent with’ the minor’s sex. That is why changing a patient’s sex yields different outcomes under SB1.

* * *

SB1 prohibits Tennessee physicians from offering hormones and puberty blockers to allow a minor to ‘identify with’ a gender identity inconsistent with her sex. Tenn. Code Ann. §68–33–103(a)(1)(A). Desiring to ‘identify with’ a gender identity inconsistent with sex is, of course, exactly what it means to be transgender. The two are wholly coextensive. See Oxford English Dictionary (3d ed., Dec. 2023), https://www.oed.com/dictionary/transgender_adj (Transgender, when used as an adjective, means ‘a person whose sense of personal identity and gender does not correspond to that person’s sex at birth . . . ’). That is why it would defy common sense to suggest an employer’s policy of firing all persons identifying with or living as an identity inconsistent with their sex does not discriminate on the basis of transgender status.

Id., slip op. at 16, 22–23 (Sotomayer, J., dissenting). Justice Sotomayer went on to argue that the Court’s reliance on the “now infamous footnote 20 of *Geduldig v. Aiello*, 417 U. S. 484 (1974), which declared that discrimination on the basis of pregnancy is not discrimination on the basis of sex,” was misplaced and “*Geduldig’s* reasoning may well

judicial restraint and “legislative flexibility” is strongest in areas involving “fierce scientific and policy debates,” where “[t]he calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility.” *Skrmetti*, *supra*, slip. op., at 24 (quoting *Personnel Administrator of Mass. v. Feeney*, 442 U. S. 256, 272 (1979)). As Justice Barrett noted in her concurring opinion in *Skrmetti*:

Beyond the treatment of gender dysphoria, transgender status implicates several other areas of legitimate regulatory policy- ranging from access to restrooms to eligibility for boys’ and girls’ sports teams. If laws that classify based on transgender status necessarily trigger heightened scrutiny, then the courts will inevitably be in the business of ‘closely scrutiniz[ing] legislative choices’ in all these domains. *Cleburne*, 473 U. S., at 441–442. To be sure, an individual law ‘inexplicable by anything but animus’ is unconstitutional. *Trump v. Hawaii*, 585 U. S. 667, 706 (2018). But legislatures have many valid reasons to make policy in these areas, and so long as a statute is a rational means of pursuing a legitimate end, the Equal Protection Clause is satisfied.

Id., slip op. at 6-7 (Barrett, J., concurring). Indeed, the Supreme Court has long emphasized that “[n]o single tradition in public education is more deeply rooted than local control over the operation of schools.” *Milliken v. Bradley*, 418 U.S. 717, 741 (1974).

- a. **Section 16-38-1.1 must be read *in pari materia* with other anti-discrimination statutes enacted by the General Assembly and with the binding precedent of the federal courts interpreting Title IX, both of which make clear that “discrimination on the basis of sex” includes discrimination based on gender identity or expression.**

Plaintiff is correct that R.I. Gen. Laws § 16-38-1.1 refers to “sex” in a binary fashion in certain contexts. *See id.* at (a)(2)(iv) (Schools may “[p]rovide extracurricular activities for students of one sex, including, but not limited to, father-daughter/mother-son activities, but if such activities are provided for students of one sex, opportunities for reasonably comparable

suggest that a law depriving all individuals who ‘have ever, or may someday, menstruate’ of access to health insurance would be sex neutral merely because not all women menstruate.” *Id.* at 23-24; *see also id.*, slip op. at 9 (Alito, J., concurring) (taking issue with the Court’s conclusion that the Tennessee statute being challenged did not classify on the basis of transgender status or gender identity).

activities shall be provided for students of the other sex.”). However, § 16-38-1.1 must be construed *in pari materia* with other state anti-discrimination statutes. As the Court noted in *Purcell v. Johnson*, 297 A.3d 464 (R.I. 2023):

It is ‘an especially well-settled principle of statutory construction’ that when two laws are *in pari materia*, the Court will harmonize them whenever possible. *Horn v. Southern Union Co.*, 927 A.2d 292, 295 (R.I. 2007); *see also Kells v. Town of Lincoln*, 874 A.2d 204, 212 (R.I. 2005). Even if the laws appear at first to be inconsistent, the Court will make every effort to construe the provisions ‘in such a manner so as to avoid the inconsistency.’ *Kells*, 874 A.2d at 212 (quoting *Montaquila v. St. Cyr*, 433 A.2d 206, 214 (R.I. 1981)). ‘This rule of construction applies even though the statutes in question [may] contain no reference to each other and are passed at different times.’ *State v. Ahmadjian*, 438 A.2d 1070, 1081 (R.I. 1981).

Id. at 470-471.

i. Relevant State Anti-Discrimination Provisions

The fallacy of Plaintiff’s claim that § 16-38-1.1 somehow precludes the Commissioner from promulgating regulations which include a definition of “sex” that encompasses “gender non-conforming” and “transgender” individuals becomes apparent when one reads § 16-38-1.1 in the context of other state law that prohibits discrimination *based upon that very definition*. *See* § II, ¶¶ 6-7, 9, *supra* at 4-5, citing R.I. Gen. Laws §§ 28-5.1-7, 11-24-2.3 and 42-72-15(q).¹⁸ Indeed, state law specifically prohibits discrimination against children on the basis of “gender, sexual orientation, or gender identity or expression.” *See* R.I. Gen. Laws § 42-72-15(q) (Children’s Bill of Rights).

ii. Federal Law

As to federal law, Title IX provides that “[n]o person ... shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]” 20 U.S.C. § 1681(a),

¹⁸ *See* P.L. 2015, ch. 178, § 1.

and the U.S. Supreme Court has expressly held that discrimination “because of . . . sex” includes discrimination based on transgender status. *Bostock v. Clayton County*, 590 U.S. 644, 660-661 (2020).

In *Bostock*, the Supreme Court held that the prohibition of discrimination on the basis of sex in employment contained within Title VII of the Civil Rights Act of 1964, which contains language that is nearly identical to that in Title IX,¹⁹ encompassed discrimination on the basis of transgender status. Justice Gorsuch, writing for the Court, explained: “it is impossible to discriminate against a person for being ... transgender without discriminating against that individual based on sex.” *Id.* at 660. As noted by Justice Gorsuch:

[h]omosexuality and transgender status are inextricably bound up with sex. Not because homosexuality or transgender status are related to sex in some vague sense ..., but because to discriminate on these grounds requires an employer to treat individual employees differently because of their sex.

Id.; see also *United States v. Virginia*, 518 U.S. 515 (1996) (“when state actors draw distinctions using sex or gender, the constitutional mandate call[s] for a heightened standard of review . . . because sex or gender generally provides no sensible ground for differential treatment”).

Contrary to Plaintiff’s theory of the case, the First Circuit has squarely rejected the argument that *Bostock*’s definition of “discrimination based on sex” is for some reason inapplicable under Title IX, as has the Fourth, Seventh, Ninth and D.C. Circuit Courts of Appeal.²⁰ And the U.S. Supreme Court recently affirmed the continued validity of *Bostock* in

¹⁹ Under Title VII, it is an “unlawful employment practice” for an employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s ... sex.” 42 U.S.C. § 2000e-2(a).

²⁰ See *Grimm v. Gloucester County School Board*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020) (*Bostock* “guides our evaluation of claims under Title IX”); *Kadel v. Folwell*, 100 F.4th 122, 64 (4th Cir. 2024) (applying *Bostock* to Section 1557 of the Affordable Care Act, thus explicitly rejecting the idea that *Bostock*’s analysis applied only to Title VII claims); *Grabowski v. Arizona Bd. of Regents*, 69 F.4th 1110, 1116 (9th Cir. 2023) (Holding that *Bostock* applies to Title IX); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 770-71 (7th Cir. 2023), cert. denied sub nom. *Metro. Sch. Dist. of Martinsville v. A. C.*, 144 S. Ct. 683 (2024) (“Applying *Bostock*’s reasoning to Title IX, we have no trouble concluding that discrimination against transgender persons is

Skrmetti, supra, while noting that there was “no need” to consider whether “*Bostock*’s reasoning reaches beyond the Title VII context.” *Skrmetti, supra*, slip op. at 19. As the District Court noted in *Tirrell v. Edelblut*, 2024 WL 4132435 (D.N.H., September 10, 2024), while preliminarily enjoining the enforcement of a New Hampshire law prohibiting transgender girls from participating in girls’ sports:

[w]hile *Bostock* concerned Title VII, its analysis of the logical relationship between sex discrimination and transgender discrimination extends to other contexts. The First Circuit has ‘recognized that the analytical framework for proving discriminatory treatment under Title VII is equally applicable to constitutional ... claims.’ *Lipsett v. Univ. of P.R.*, 864 F.2d 881, 896 (1st Cir. 1988) (quotation, brackets, and ellipsis omitted). Several courts have held, guided by *Bostock*’s reasoning, that discrimination based on transgender status necessarily constitutes discrimination based on sex for purposes of the Equal Protection Clause.

Id. at *9.

On April 19, 2024, the USDE (under the Biden Administration) released a final rule under Title IX (the “2024 Rule”), which altered key principles of the Rule promulgated by the first Trump administration. Specifically, the 2024 Rule expanded the scope of discriminatory conduct prohibited by Title IX, increased schools’ responsibility to prevent and respond to Title IX complaints, and adopted a more complainant-friendly evaluation process. Four States (Indiana, Ohio, Tennessee, and West Virginia) and two Commonwealths (Kentucky and Virginia) filed lawsuits to block enforcement of the Rule, and various District Courts, *adopting the very reasoning that was rejected by the First, Seventh, Ninth and D.C. Circuit Courts of Appeal*, reasoned, in pertinent part, that the 2024 Rule exceeded the USDE’s statutory authority by

sex discrimination for Title IX purposes, just as it is for Title VII purposes.”); *Whitman-Walker Clinic. V. U.S. Dep’t Health and Human Services*, 485 F.Supp.3d 1, 40 (D.D.C. 2020) (“*Bostock*’s textual analysis to Title IX (by way of Section 1557’s incorporation of that statute) would yield the conclusion that the statute forbids discrimination based on gender identity and sex stereotyping, insofar as such stereotypes are based on the belief that an individual should identify with only their birth-assigned sex.”).

broadening the definition of discrimination “on the basis of sex” beyond “discrimination on the basis of being male or female.”²¹

Significantly, the federal caselaw addressing the overturned Biden Title IX Regulations upon which Plaintiff relies *are all from outside the First Circuit*. See Plaintiff’s Brief at 7-9.²²

The one Supreme Court case cited by the Plaintiff – *United States Dep’t of Educ. v. Louisiana*, 603 U.S. 866 (2024) – merely denied a motion for a stay pending appeal. See *id.* at 868.

However, as the Court explained in *Tirrell, supra*, “[w]hile the Supreme Court recently upheld (in a per curiam opinion on an emergency application for relief) the Fifth and Sixth Circuits’ refusals to stay preliminary injunctions against the Department of Education’s new administrative rule interpreting Title IX to bar discrimination on the basis of transgender status, *it expressed no opinion as to whether the rule correctly interpreted Title IX.*” 784 F.Supp.3d at 42 (citing *Dep’t of Ed. v. Louisiana*, 603 U.S. 866, 144 S. Ct. 2507, 2509-10, 219 L.Ed.2d 1189 (2024) (emphasis added)).²³

²¹ See *Tennessee v. Cardona*, 762 F.Supp.3d 615, 622 (E.D. Ky., as amended Jan. 10, 2025); *Louisiana v. U.S. Dep’t Education*, 737 F.Supp.3d 377, 397-98 (W.D. La. 2024); *Oklahoma v. Cardona*, 743 F.Supp.3d 1314, 1324-25 (W.D. Okla.2024); *Arkansas v. U.S. Dep’t of Educ.*, 742 F.Supp.3d 919, 941-42 (E.D. Mo. 2024); *Kansas v. U.S. Dep’t of Educ.*, 739 F.Supp.3d 902, 919-920 (D. Kan. July 2, 2024); *Carroll Indep. Sch. Dist. v. U.S. Dep’t of Educ.*, 741 F.Supp.3d 515, 520-21 (N.D. Tex. 2024); see also Regina Lambert Hillman, *Boosted by Bostock: LGBTQ Title IX Protections*, 58 INLR 503, 555-578 (2025). For a comprehensive discussion of the contrasting approaches to Title IX under the Obama, first Trump and Biden Administrations, see *id.* at 511-519.

²² Citing *Texas v. Cardona*, Civil Action 4:23-cv-00604-O (N.D. Tex. Aug 05, 2024); *Tennessee v. Cardona*, Case No. 2:24-cv-72-DCR, 2024 WL 3631032 (E.D. Ky. June 10, 2024); *Oklahoma v. Cardona*, Case No. 5:24-cv-461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. U.S. Dep’t of Educ.*, Case No. 4:24-cv-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Carroll Indep. Sch. Dist. v. U.S. Dep’t of Educ.*, Case No. 4:24-cv-461-O, 2024 WL 3381901 (N.D. Tex. July 11, 2024); *Kansas v. U.S. Dep’t of Educ.*, Case No. 5:24-cv-4041-JWB, 2024 WL 3273285, at *12–13 (D. Kan. July 2, 2024); *Louisiana v. U.S. Dep’t of Educ.*, 737 F. Supp. 3d 377 (W.D. La. 2024). See Regina Lambert Hillman, *Boosted by Bostock: LGBTQ Title IX Protections*, 58 INLR 503, 555-578 (2025). For a comprehensive discussion of the contrasting approaches to Title IX under the Obama, first Trump and Biden Administrations, see *id.* at 511-519.

²³ The Court went on to explain:

True, the per curiam opinion stated that the Court unanimously ‘accept[ed]’ that preliminary injunctive relief was proper as to the provisions of the rule found unlawful by the district courts, including the provision barring transgender-based discrimination. *Id.* But the primary issue in front of the Supreme Court was whether ‘those provisions should be severed and ... the other provisions of the new rule should ... be permitted to take effect’ during the pendency of the Department’s appeals of the preliminary injunctions. *Id.* at 2510. Ultimately, the Court found ‘[i]n this emergency posture’ that the Department had not shown ‘a

2. Plaintiff’s federal preemption argument has the exact opposite effect as claimed since neither President Trump nor the Commissioner has the legal authority to redefine “sex” and unilaterally overrule the law as construed by the U.S. Supreme Court and the First Circuit.

Plaintiff’s argument that the definition of “sex” contained in the LBGTQ+ Regs. violates federal law is premised upon the belief that the J20 EO, which provided that the United States “recognize two sexes, male and female,” and “[s]ex is not a synonym for and does not include the concept of ‘gender identity,’” somehow has the force and effect of law. See Plaintiff’s Brief at 9; Complaint ¶¶ 22-27 at 5.²⁴ However, the Executive Order, like many of the 157 executive orders signed by President Trump in his second term in office, rather than having “the force and effect of law,” displays what amounts to contempt for the rule of law.

For one thing, the J20 EO directly conflicts with the holding in *Bostock* which, as noted, makes clear that “homosexuality and transgender status are inextricably bound up with sex.” (Discussed *supra* pp. 15-17). Thus, Plaintiff’s federal preemption argument has the opposite effect claimed by Plaintiff and in fact precludes the Commissioner from promulgating regulations based upon the unfounded claim made in the J20 EO, which under the circumstances is nothing more than a glorified press release.

likelihood of success on its severability argument [or] that the equities favor a stay,’ and thus that there was no ‘sufficient basis to disturb the lower courts’ interim conclusions that the ... provisions found likely to be unlawful are intertwined with and affect other provisions of the rule.’ *Id.* Read in context, the Court’s ‘accept[ance]’ of the propriety of preliminary relief can only be understood as accepting for argument’s sake that some measure of preliminary relief was proper in order to set the stage for the actual dispute in front of the Court: whether some portion of the preliminary injunction should be stayed pending appeal.

784 F.Supp.3d at 42.

²⁴ Although Plaintiff apparently believes otherwise, the mere existence of the J20 EO and the DCL -- or the fact that the Department of Justice’s Office for Civil Rights (the “OCR”) has launched an investigation against the State of Maine and that Plaintiff’s counsel has filed a complaint against the State of Rhode Island on behalf of a right-wing political group -- are of no relevance to the resolution of the material legal issues here.

Indeed, the J20 EO tramples upon the fundamental principle of judicial review established in *Marbury v. Madison*, 5 U.S. 137 (1803) (Marshall, C.J.), which long ago clarified that only courts have the power to strike down laws they find to be unconstitutional. *Id.* at 146-147. And nothing in the Constitution “authorizes the President to enact, to amend, or to repeal statutes,” in whole or in part. *See Clinton v. City of New York*, 524 U.S. 417, 438 (1998). As Chief Judge McConnell of the District of Rhode Island recently noted, “[f]ederal law specifies how the Executive should act if it believes that appropriations are inconsistent with the President's priorities-it must ask Congress, not act unilaterally.” *New York v. Trump*, No. 25-cv-39, 2025 WL 357368, slip op. at *2 (D.R.I. Jan. 31, 2025). And as another federal court recently emphasized:

‘In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.’ *Youngstown [Sheet & Tube Co. v. Sawyer]*, 343 U.S. 579, 587 (1952). Rather, as the Supreme Court has unequivocally stated: ‘[t]he Constitution limits [the President’s] functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.’ *Id.* The Executive Orders cannot, therefore, be properly sustained as an exercise of the President's power. The Constitution is ‘neither silent nor equivocal about who shall make laws which the President is to execute.’ *Id.* To accomplish what has been attempted by the Executive Orders in this case requires ‘action in conformity with the express procedures of the Constitution's prescription for legislative action,’ not unilateral action on the part of the President.

PFLAG, Inc. v. Trump, No. 8:25-cv-00337-BAH, slip op. at *43 (D. Md. March 4, 2025) (quoting *INS v. Chadha*, 462 U.S. 919, 958 (1983)).²⁵

In addition, executive orders are subject to the same vagueness standards as statutes, *see Humanitarian Law Project v. Dept. of Treasury*, 463 F.Supp.2d 1049, 1057-1064 (applying

²⁵ *See also* the amicus briefs filed by the conservative constitutional scholars, legal historians, public lawyers, retired federal appellate judges, a former United States Attorney General, and three former United States Senators, filed in *Learning Resources, Inc. v. Donald J. Trump*, Case 1:25-CV-01448-rc (D.C. Cir., filed May 7, 2025), EFC 23 and in *V.O.S. Selections, Inc. v. Donald J. Trump et al.*, C.A. No. 1:25-cv-00066-GSK-TMR-JAR (Ct. Int’l Trade, filed April 23, 2025) ECF 29-1 (arguing that “Congress, not the President, has the power to impose tariffs”).

statutory vagueness standard to executive order), and “[a] statute is void for vagueness when it does not sufficiently identify the conduct that is prohibited.” *United States v. Wunsch*, 84 F.3d 1110, 1119 (9th Cir. 1996); *see also United States v. Mincoff*, 574 F.3d 1186, 1201 (9th Cir. 2009) (“A law is unconstitutionally vague if it fails to provide a reasonable opportunity to know what conduct is prohibited, or is so indefinite as to allow arbitrary and discriminatory enforcement.”). Moreover, the federal Administrative Procedures Act precludes the enforcement of orders that are “arbitrary and capricious.” *See* 5 U.S.C.A. § 706(2)(A).

Yet, as noted, the claim in the J20 EO upon which Plaintiff relies that there are only “two sexes, male and female,” simply ignores the fact that there are “approximately 1.6 million people in the United States who identify as transgender,” a non-controversial fact that has been recognized by the U.S. Supreme Court. *See Skrametti, supra*, slip op. at 1.

Also, the J20 EO is belied by basic science. The EO defines “sex” as “an individual’s immutable biological classification as either male or female.” *Id.* at 2, §2(a). “Female” is then defined as “a person belonging, *at conception*, to the sex that produces the large reproductive cell,” *id.* at 2, §(2)(d) (emphasis added), and “Male” as “a person belonging, *at conception*, to the sex that produces the small reproductive cell.” *Id.* at 2, §2(e) (emphasis added). But, as was noted by the Attorney General for the State of Washington in a brief filed in support of his motion to enjoin the J20 EO, zygotes do not produce reproductive cells “at conception,” and thus the labels “male” and “female” “cannot be assigned at conception prior to the process of sex differentiation.” *See State of Washington v. Donald J. Trump*, Case 2:25-cv-0024 LK, Document 169 at page 20 (filed February 19, 2025). Standing alone, these inaccurate definitions render the J20 EO nonsensical, unconstitutionally vague, and “arbitrary and capricious.”

In addition, since “discrimination based on ... transgender status necessarily entails discrimination based on sex,” such discrimination triggers heightened scrutiny and “the government must show that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” See, e.g., *Doe v. Austin*, 2024 WL 4653290, slip op. at *12-*13 (D. Me., November 1, 2024) (statutory exclusion barring insurance coverage by United States military's health insurance program of medically necessary gender transition surgeries failed to withstand intermediate scrutiny and thus violated insureds’ equal protection rights under Fifth Amendment).

Yet, the J20 EO is self-evidently related to only one purpose: mandating gender conformity and preventing transgender people from expressing a gender identity different from their sex designated at birth. Like the zoning ordinance that excluded a group home for the developmentally disabled in *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448, 450 (1985), the J20 EO is the result of “negative attitudes,” “fear,” and “irrational prejudice,” rather than legitimate governmental interests. 473 U.S. at 448, 450.

Finally, the Tenth Amendment to the U.S. Constitution provides that “[t]he Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.” Thus, courts will not construe a statute to “alter the federal-state framework by permitting federal encroachment upon a traditional state power,” unless “Congress conveys its purpose clearly,”²⁶ and Congress has evidenced no intention to

²⁶ *United States v. Bass*, 404 U.S. 336, 349 (1971); see also *Gonzales*, 546 U.S. at 274 (“Just as the conventions of expression indicate that Congress is unlikely to alter a statute’s obvious scope and division of authority through muffled hints, the background principles of our federal system also belie the notion that Congress would use such an obscure grant of authority to regulate areas traditionally supervised by the States’ police power.”); *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng’rs*, 531 U.S. 159, 174 (2001) (invalidating agency interpretation of federal statute where it “would result in a significant impingement of the States’ traditional and primary power over land and water use”).

preempt state anti-discrimination statutes that provide *greater* protection to LGBTQ+ students. Cf. *Pimental v. Dep't of Transp.*, 561 A.2d 1348, 1350 (R.I. 1989) (“[A]bsent preemption, ‘a state constitution’ may provide ‘greater protection’ than that available under federal law.”).

Thus, it should not be surprising that several federal courts have granted injunctive relief enjoining the enforcement of the J20 EO and other related executive orders, or that motions for such relief are pending in several other federal actions.²⁷

3. Plaintiff’s claim that the LGBTQ+ Regs. violated her “fundamental liberty interest in the care, custody, and management of [her] children” was squarely rejected by the First Circuit weeks after the Executive Order relied upon by Plaintiff was signed by President Trump.

The First Circuit’s recent decision last February in *Foote v. Ludlow School Committee*, 128 F.4th 336 (1st Cir. 2025) is worth considering in some detail, both because of its factual similarity and because it was decided *after* the President signed the J20 EO. In *Foote*, the Circuit held that a school committee’s protocol that required its staff to use student’s requested name and gender pronouns within the school without notifying the parents of those requests involved legislative, rather than executive, conduct, and did not violate the parents’ substantive due

²⁷ See, e.g., *State of Washington et al. v. Donald J. Trump et al.*, C.A. No. 2:25-cv-00244, ECF 233 at 53 (February 28, 2025) (enjoining the enforcement of “Sections 3(e) or 3(g) of Executive Order 14168 to condition or withhold federal funding based on the fact that a health care entity or health professional provides gender-affirming care within the Plaintiff States”); *Doe v. McHenry*, C.A. No. 1:25-cv-00286-RCL, ECF 55 at 3 (D.D.C. February 24, 2025) (enjoining the enforcement of Sections 4(a) and 4(c) of Executive Order 14168 as it applied to incarcerated transgender women); *Jones v. Trump*, C.A. No. 1:25-cv-00401, ECF 28 at 3 (D.D.C. February 24, 2025) (following *Doe v. McHenry*, *supra*); *PFLAG, Inc. v. Trump* (D. Md.), C.A. No. 8:25-cv-00337-BAH, ECF 61 at 1-2 (D. Md. February 13, 2025) (enjoining “any steps to implement, give effect to, or reinstate under a different name the directives in Section 3(g) of Executive Order 14168 or Section 4 of Executive Order 14187 that condition or withhold federal funding based on the fact that a healthcare entity or health professional provides gender affirming medical care to a patient under the age of nineteen.”); *Nicolas Talbott, et al. v. Donald Trump, et al.*, C.A. No. 1:25-cv-00240 (D.D.C. , January 28, 2025) and *Shilling v. Trump*, C.A. No. 2:25-cv-00241 (W.D. Wash., February 6, 2025) (challenging executive order banning transgender individuals from serving in the military); *Orr v. Trump*, C.A. No. 1:25-cv-10313 (D. Mass February 7, 2025) (challenging the practice of halting the processing of passport applications of individuals seeking to change their sex designation, or who selected an “X” designation); and *Tirrel, supra*, slip op. at *20 (enjoining enforcement of state law precluding trans students from trying out for, practicing with, competing with, and playing on school sports teams designated for girls on the same terms and conditions as other girls).

process right to direct medical treatment for their child. See 128 F.4th at 356-357. At issue was guidance from the Massachusetts Department of Elementary and Secondary Education (“DESE”) regarding gender-identity issues. As explained by the Court, some of the guidance addressed:

potential conflict between parents and students. Noting that ‘[s]ome transgender and gender nonconforming students are not openly so at home for reasons such as safety concerns or lack of acceptance,’ the DESE Guidance suggests that ‘[s]chool personnel should speak with [a] student first before discussing [that] student's gender nonconformity or transgender status with the student's parent or guardian.’ Consistent with that suggested deference to the student, the document directs ‘school personnel [to] discuss with the student how the school should refer to the student, e.g., appropriate pronoun use, in written communication to the student's parent or guardian.’ These recommendations reflect the general Commonwealth philosophy stated in the DESE Guidance that ‘the person best situated to determine a student's gender identity is that student.’

128 F.4th at 342. In addressing the parent’s claim that the conduct of the school officials had “restricted their parental right to control the upbringing, custody, education, and medical treatment of their child,” the *Foote* Court explained that:

Our guiding light in this realm is a trio of Supreme Court parental right cases: *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042; *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070; and *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49. Those cases define the parental right broadly as a fundamental right to direct the care, custody, and upbringing of one's children. These rights are ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] Court.’ *Troxel*, 530 U.S. at 65, 120 S.Ct. 2054 (collecting cases). The Supreme Court made clear more than a century ago that the Due Process Clause gives parents the right to ‘bring up children’ and ‘to control the education of their own.’ *Meyer*, 262 U.S. at 399, 401, 43 S.Ct. 625 (invalidating a ban on foreign-language instruction).

Id. at 348. After concluding that the Parents had identified a fundamental right in their complaint with sufficient specificity, the Court went on to dismiss the Parents’ claims that the School had:

- (a) “violated the Parents’ fundamental right to direct medical treatment for their child,” affirming the conclusion reached by the trial court that “the Parents provided only “conclusory statements describing the use of preferred names and pronouns as mental health treatment.’ *Id.* at 349 (citation omitted);

- (b) restricted their parental rights “by ‘facilitating’ the Student's gender-affirming social transition,” noting that “[t]he Supreme Court has never suggested that parents have the right to control a school's curricular or administrative decisions. Rather, the Court's parental rights cases more essentially provide ‘that the state cannot prevent parents from choosing a specific educational program.’” *Id.* at 351 (citing *Parker v. Hurley*, 514 F.3d 87, 101 (1st Cir. 2008); or
- (c) restricted their right “to direct their child's upbringing in that it deceived them and, in doing so, deprived them of information about the Student,” reasoning that: (i) “providing educational resources about LGBTQ-related issues to a child who has shown interest imposes no more compulsion to identify as genderqueer than providing a book about brick laying could coerce a student into becoming a mason,” *id.* at 353, and (ii) “no allegation suggests that, when the Parents tried to speak with school officials about the Student, the officials misrepresented the name the Student had chosen for in-school use. Rather, the officials (beyond Manchester's communications with the Parents) just declined to discuss the Student's gender identity issues with the Parents.” *Id.* at 353-354.

In summary, in the wake of the J20 EO, the First Circuit held that the Due Process Clause did not give parents the right to veto curriculum and administrative decisions by teachers and school staff pursuant to protocol, did not violate parents’ substantive due process right to direct their child’s upbringing, and was rationally related to school’s interest in cultivating safe, inclusive, and educationally conducive environment for students. *See id.* at 355. Additionally, the Fourth, Seventh, and Ninth Circuits, have held that requiring students to use bathrooms based on their biological sex, or birth-assigned sex, and refusing to amend school records to reflect gender identity, violated the Equal Protection Clause,²⁸ and several courts have determined that

²⁸ *See Grimm, supra*, 972 F.3d at 611 (4th Cir. 2020) (School Board’s refusal to amend student’s records to reflect his male gender and policy requiring students to use bathrooms based on their biological sex unlawfully discriminated against student in violation of Title IX); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-1240 (9th Cir. 2020) (affirming dismissal of claim that high school's policy of allowing transgender students to use restrooms, locker rooms, and showers that matched their gender identity, rather than their biological sex assigned at birth, violated the Due Process Clause, Title IX, the First Amendment's Free Exercise Clause, and Oregon law); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034, 1055 (7th Cir. 2017) (Granting preliminary injunction in favor of transgender student who alleged that high school’s unwritten policy, which barred him from using the boys’ bathroom after he started his female-to-male transition, violated Title IX and the Equal Protection Clause of the Fourteenth Amendment).

laws prohibiting persons born biologically male from participating in girls’ or women’s sports based on transgender status violates the Equal Protection Clause and Title IX.²⁹

Finally, the Court’s recent holding in *Mahmoud*, *supra*, has no bearing on the legal issues relevant to the Plaintiff’s challenge to the LGBTQ+ Regs. here. In *Mahmoud*, the Court held that a School Board’s introduction of “LGBTQ+-inclusive’ storybooks, combined with its no-opt-out policy, burden[ed] the parents’ right to the free exercise of religion.” *See id.*, slip op. at 35. Here, Plaintiff has not claimed that the LGBTQ+ Regs. presents any such burden on their religious freedom.

IV. CONCLUSION

For all the above reasons, Plaintiff’s request for a declaratory judgment pursuant to R.I. Gen. Laws § 42-35-7 should be denied and the remaining Count I of her Complaint should be dismissed.

²⁹ *See B.P.J. by Jackson v. West Virginia State Board of Education*, 98 F.4th 542, 563-565 (4th Cir. 2024); *Hecox v. Little*, 104 F.4th 1061, 1071-72, 1077-78 (9th Cir. 2024); *Doe v. Horne*, 683 F. Supp. 3d 950, 955-56, 971-72 (D. Ariz. 2023), *aff’d*, 115 F.4th 1083 (9th Cir. Sept. 9, 2024); *L.E. ex rel. Esquivel v. Lee*, 728 F.Supp.3d 806, 838-39 (M.D. Tenn. Mar. 29, 2024); *Roe v. Utah High Sch. Activities Ass’n*, No. 220903262, 2022 WL 3907182, at *4-5 (Utah Dist. Ct. Aug. 19, 2022) (considering equal protection challenge under Utah Constitution); cf. *A.M. ex rel. E.M. v. Indianapolis Pub. Schs.*, 617 F. Supp. 3d 950, 960, 965-66 (S.D. Ind. 2022) (finding that a materially identical law discriminated on the basis of transgender status for purposes of Title IX claim).

Defendant,
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CERTIFICATION

I hereby certify that this document filed through the Odyssey File & Serve System will be sent electronically to Gregory P. Piccirilli, Esq., 2 Starline Way, #7, Cranston, RI 02921 at Gregory@splawri.com on this 30th day of June, 2025.

/s/ Andrew M. Lentz