

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

State of ALABAMA, *et al.*,

Plaintiffs,

v.

No. 7:24-cv-533-ACA

Miguel CARDONA, in his official
Capacity as U.S. Secretary of
Education, *et al.*,

Defendants.

**EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL
OR ADMINISTRATIVE INJUNCTION
(Relief needed by 12pm EST on July 31, 2024)**

Today, this Court denied Plaintiffs' motion for a stay of the effective date or a preliminary injunction of *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474 (Apr. 29, 2024). *See* Doc. 58. That rule's effective date is less than two days away, on August 1. 89 Fed. Reg. at 33,476.

To preserve the status quo ante, Plaintiffs now move for an injunction pending appeal, or at least an administrative injunction pending the Eleventh Circuit's decision on Plaintiffs' forthcoming emergency motion for an injunction pending appeal in that court. The Department opposes. Plaintiffs ask the Court to rule on these motions **as soon as possible or, at a minimum, by noon Eastern on July 31.**

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When a court “refuses ... an injunction,” it may still “grant an injunction” while “an appeal” from its order “is pending.” Fed. R. Civ. P. 62(d). The relevant considerations are essentially the same as the factors for a preliminary injunction. *See Ga. Republican Party, Inc. v. Sec’y of State for Ga.*, 2020 WL 7488181, at *1 (11th Cir. Dec. 21). Specifically, “[a]n appellant may secure an injunction pending appeal if it establishes a substantial likelihood of success on the merits, irreparable injury in the absence of an injunction, and that the balance of the equities and public interest weigh in favor of an injunction.” *Am. All. for Equal Rts. v. Fearless Fund Mgmt.*, 2023 WL 6520763, at *1 (11th Cir. Sept. 30).

For all the reasons given in Plaintiffs’ briefing on the preliminary injunction, which Plaintiffs incorporate here, the factors for an injunction pending appeal are satisfied. *See Docs. 7-1, 38.* The Court’s decision, at least, conflicts with *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022) (en banc), which held that Title IX allows sex-separate bathrooms for students based on their biological sex and that *Bostock* cannot be imported into Title IX, and *Speech First, Inc. v. Cartwright*, 32 F.4th 1110 (11th Cir. 2022), which held that, when public schools adopt the definition of “harassment” that the rule now requires, they violate the First Amendment. Plaintiffs also stress the six other district courts, and two appellate courts, that agree the whole rule should be preliminarily enjoined. *See Docs.*

50-51, 53-54, 57. But this Court already disagreed when it denied Plaintiffs' preliminary-injunction motion. Repeating those arguments would be futile, and Plaintiffs have just hours to get relief before August 1. Plaintiffs are seeking an injunction pending appeal here because the appellate rules "ordinarily" require them to move in the district court first. Fed. R. App. P. 8(a)(1). This Court should summarily rule on that request, without waiting for a response from Defendants.

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This Court should, however, enter an injunction pending disposition of Plaintiffs' forthcoming motion for an injunction pending appeal in the Eleventh Circuit. This Court can grant that "administrative" relief without "consideration of the merits," since that relief merely "freeze[s] legal proceedings until the court can rule on a party's request for expedited relief." *United States v. Texas*, 144 S.Ct. 797, 798 (2024) (Barrett, J., concurring); accord *Klay v. United Healthgroup*, 376 F.3d 1092, 1100 (11th Cir. 2004). This temporary administrative injunction is designed to "minimize harm while an appellate court deliberates." *Texas*, 144 S.Ct. at 798 (Barrett, J., concurring). It is appropriate "whenever it is calculated in the court's sound judgment to achieve the ends of justice." *Klay*, 376 F.3d at 1100.

Administrative relief is appropriate here. It will ensure that the Eleventh Circuit has time to consider these important issues before the rule goes into force and without forcing that court to rush to enter its own injunction before August 1. It will protect Plaintiffs from the substantial "costs" of having to scramble over the next

few days to figure out which schools must come into compliance with the rule and how. *Tennessee v. Cardona*, 2024 WL 3453880, at *4 (6th Cir. July 17). And making Defendants wait a few more weeks to enforce the rule, when they waited three years to promulgate it, will not meaningfully harm them. *La. ex rel. Murrill v. U.S. Dep't of Educ.*, 2024 WL 3452887, at *3 (5th Cir. July 17).

* * *

This Court should grant Plaintiffs' motion as soon as possible, but at least by noon on July 31.

Dated: July 30, 2024

Ashley Moody
Attorney General

s/ James H. Percival
James H. Percival (pro hac vice)
Chief of Staff
Office of the Attorney General
The Capitol, Pl-01
Tallahassee, Florida 32399-1050
(850) 414-3300
(850) 410-2672 (fax)
james.percival@myfloridalegal.com
Counsel for Florida

Christopher M. Carr
Attorney General

s/ Stephen J. Petrany
Stephen J. Petrany (pro hac vice)
Solicitor General
Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3408
spetrany@law.ga.gov
Counsel for Georgia

Alan Wilson
Attorney General

s/ Joseph D. Spate
Joseph D. Spate (pro hac vice)
Assistant Deputy Solicitor General
1000 Assembly Street
Columbia, SC 29201
(803) 734-3371
josephspate@scag.gov
Counsel for South Carolina

Respectfully submitted,

Steve Marshall
Attorney General

s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Solicitor General
Office of the Attorney General
State of Alabama
501 Washington Avenue
P.O. Box 300152
Montgomery, Alabama 36130-0152
Telephone: (334) 242-7300
Fax: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov
Counsel for Alabama

s/ Cameron T. Norris
Cameron T. Norris (pro hac vice)
Thomas S. Vaseliou (pro hac vice)
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
cam@consovoymccarthy.com
*Counsel for IWLC, IWN, PDE,
Speech First*

CERTIFICATE OF COMPLIANCE

This motion complies with this Court's orders because it is three pages (excluding the parts that can be excluded), double-spaced, and prepared in 14-point Times New Roman.

Dated: July 30, 2024

s/ Cameron T. Norris

CERTIFICATE OF SERVICE

I e-filed this brief with the Court, which will email everyone requiring service.

Dated: July 30, 2024

s/ Cameron T. Norris