

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

THE STATE OF TENNESSEE, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	Case No. 3:21-cv-308
v.)	
)	Judge Atchley
)	
UNITED STATES DEPARTMENT OF)	Magistrate Judge Poplin
EDUCATION, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

MEMORANDUM OPINION AND ORDER

Before the Court is the Motion for Preliminary Injunction [Doc. 10] filed by Plaintiff States¹ and the Motion to Dismiss [Doc. 49] filed by Defendants United States Department of Education and Miguel Cardona, in his official capacity as Secretary of Education; Equal Employment Opportunity Commission and Charlotte Burrows, in her official capacity as the Chair of the Equal Employment Opportunity Commission; and United States Department of Justice, Merrick Garland, in his official capacity as Attorney General of the United States, and Kristen Clarke, in her official capacity as the Assistant Attorney General for Civil Rights. The relevant issues have been fully briefed, and the Court heard oral argument. These motions are now ripe for review.

For the reasons below, Plaintiffs’ Motion for Preliminary Injunction [Doc. 10] is **GRANTED** and Defendants’ Motion to Dismiss [Doc. 49] is **DENIED**.

¹ Plaintiff States consist of Tennessee, Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, and West Virginia.

I. BACKGROUND

A. *Bostock v. Clayton County*

In *Bostock v. Clayton County*, the Supreme Court of the United States was asked to resolve a discrete legal issue: whether Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination “because of...sex,” bars an employer from firing someone simply for being homosexual or transgender. 140 S. Ct. 1731, 1738-39 (2020). The Court answered this question affirmatively.

The Court explained that Title VII’s “because of...sex” language incorporates a “but-for” causation standard; so long as “sex” was one “but-for” cause of an employee’s termination, that is sufficient to trigger Title VII. *Id.* at 1739. The Court further explained that “sex” refers to the biological distinctions between males and females. *Id.* Taken together, the Court clarified that “[a]n employer violates Title VII when it intentionally fires an individual employee based in part on sex.” *Id.* at 1741.

The Court then reasoned that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Id.* “[H]omosexuality and transgender status are inextricably bound up with sex” because “to discriminate on these grounds requires an employer to intentionally treat individual employees differently because of their sex.” *Id.* at 1742. The Court held that, under Title VII, “employers are prohibited from firing employees on the basis of homosexuality or transgender status.” *Id.* at 1753.

The Court was careful to narrow the scope of its holding. *Id.* That is, its holding did not “sweep beyond Title VII to other federal or state laws that prohibit sex discrimination.” *Id.* Nor did the Court’s decision “purport to address bathrooms, locker rooms, [dress codes] or anything

else of the kind.” *Id.* The Court expressly declined to “prejudge” any laws or issues not before it, observing instead that “[w]hether policies and practices might or might not qualify as unlawful discrimination or find justifications under other provisions of Title VII are questions for future cases.” *Id.*

B. Executive Order

On January 20, 2021, the President of the United States signed an “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.” Exec. Order. No. 13988, 86 Fed. Reg. 7023-25 (Jan. 20, 2021) (herein “President’s Executive Order”). Under the Supreme Court’s reasoning in *Bostock*, the Executive Order declared that “laws that prohibit sex discrimination...prohibit discrimination on the basis of gender identity or sexual orientation.” *Id.* (citing *Bostock*, 140 S. Ct. 1731). The President directed federal agencies to “fully implement statutes that prohibit sex discrimination” consistent with the Administration’s interpretation. *Id.*

C. Agency Response to Executive Order

In response to the President’s Executive Order, the Department of Education (“Department”) and Equal Employment Opportunity Commission (“EEOC”) issued guidance documents providing their interpretations of Title IX of the Education Amendments Act of 1972 (“Title IX”) and Title VII of the Civil Rights Act of 1964 (“Title VII”), respectively.

1. Department of Education

Defendant United States Department of Education is an executive agency of the federal government responsible for the enforcement and administration of Title IX. [Doc. 1 at ¶ 17] (citing 20 U.S.C. §§ 3411, 3441).

On June 22, 2021, the Department published in the Federal Register an “Interpretation” of Title IX. [Doc. 1-2] (“Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*.” 86 Fed. Reg. 32637 (June 22, 2021)). The Interpretation took effect upon publication. [*Id.*]. The Department recognized that the Interpretation represented a change in position, explaining the purpose of the Interpretation was “to make clear that the Department interprets Title IX’s prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity” in light of the *Bostock* decision. [*Id.*]. The Interpretation states that the Department “will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department” and that the Interpretation “will guide the Department in processing complaints and conducting investigations.” [*Id.*]. The Interpretation “supersedes and replaces any prior inconsistent statements made by the Department regarding the scope of Title IX’s jurisdiction over discrimination based on sexual orientation and gender identity.” [*Id.*].

Subsequently, on June 23, 2021, the Department issued a “Dear Educator” letter to directly notify those subject to Title IX of the Department’s Interpretation. [Doc. 1-4] (“Letter to Educators on Title IX’s 49th Anniversary” (June 23, 2021)).² The “Dear Educator” letter reiterates that “Title IX’s protection against sex discrimination encompasses discrimination based on sexual orientation and gender identity” and explains that the Department “will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity.” [*Id.*].

² <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf> (last visited July 15, 2022).

The “Dear Educator” letter references an accompanying “Fact Sheet” that expounds on the Department’s interpretation of Title IX. [Doc. 1-4] (“U.S. Dep’t of Justice & U.S. Dep’t of Educ., Confronting Anti-LGBTQI+ Harassment in Schools” (June 2021)).³ The Fact Sheet explains that “discrimination against students based on their sexual orientation or gender identity is a form of discrimination prohibited by federal law.” [*Id.*]. The Fact Sheet also notes that regulated entities “have a responsibility to investigate and address sex discrimination, including sexual harassment, against students because of their perceived or actual sexual orientation or gender identity.” [*Id.*]. The Fact Sheet states that the Department “can [] provide information to assist schools in meeting their legal obligations,” and offers examples of specific conduct related to sexual orientation and gender identity that the Department can investigate as incidents of discrimination under Title IX. [*Id.*].

2. *Equal Employment Opportunity Commission*

Defendant Equal Employment Opportunity Commission is a federal agency charged with limited enforcement of, among other things, Title VII. [Doc. 1 at ¶ 19] (citing 42 U.S.C. § 2000e-6).

On June 15, 2021, the EEOC issued a “Technical Assistance Document.” [Doc. 1-5] (“Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity” (June 15, 2021)).⁴ The Technical Assistance Document “explains what the *Bostock* decision means for LGBTQ+ workers (and all covered workers) and for employers across the country” and “explains the [EEOC’s] established legal positions on LGBTQ+ related matters.” *Id.*

³ <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf> (last visited July 15, 2022).

⁴ <https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender> (last visited July 15, 2022).

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