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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

**Jane Doe, by her next friends and parents
Helen Doe and James Doe; and Megan Roe,
by her next friends and parents, Kate Roe
and Robert Roe,**

Plaintiffs,

v.

**Thomas C. Horne, in his official capacity as
State Superintendent of Public Instruction, et
al.,**

Defendants.

Case No. 4:23-cv-00185-JGZ

**DEFENDANT HORNE'S RESPONSE TO
PLAINTIFFS' OBJECTION TO EXPERT
DECLARATIONS AND MOTION TO
FILE SUPPLEMENTAL EXHIBITS AND
AMENDED PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

In Plaintiffs' latest attempt to prevent Defendants from presenting overwhelming scientific, statistical and observational evidence that puberty blockers do not eliminate the physical/athletic

1 advantages of biological boys over girls, they go so far as to ignore this Court’s Order setting June
2 29, 2023 as the deadline for submissions. Now, after strenuously objecting to any extension for
3 Defendants to prepare additional expert submissions, they now seek extra time for themselves
4 simply because they are concerned about the weakness of their case.

5 Plaintiffs seek to undermine a fair consideration of the fundamental question before the
6 Court—i.e., whether a prepubertal male, or a male who is taking medications to suppress male
7 puberty, has an unfair physical competitive advantage in sports over girls of the same age, or
8 whether the participation of such male-bodied students poses an increased risk of injury to girls
9 competing against them. Plaintiffs now seek to preclude Superintendent Horne from presenting
10 highly probative, extremely well-credentialed expert opinion on those crucial questions.
11 Plaintiffs’ efforts to suppress such valuable and necessary facts from the Court’s attention exposes
12 the weakness of Plaintiffs’ own contrary—and mistaken—factual contentions. The objection is
13 baseless and must be denied.

14 In his response to Plaintiffs’ Motion for Preliminary Injunction, Superintendent Horne
15 pointed out Plaintiffs had nearly a full year to identify and prepare expert witness declarations.
16 Superintendent Horne requested a few weeks to prepare his own expert declarations. Dkt. 40 at
17 3:3-18. Superintendent Horne subsequently repeated this request in a supplemental filing and
18 explained that he was diligently working to obtain expert declarations. Dkt. 72 at 2:1-3:4
19 (“Plaintiffs have had more than a year since the passage of the Save Women’s Sports Act to
20 research clinical studies, interview and vet scientific experts, and prepare lay and expert
21 declarations in support of their case. In the interest of fairness, Superintendent Horne is merely
22 asking for a brief continuance to have a few extra weeks to have the smallest fraction of the year-
23 long prep time Plaintiffs had before filing the lawsuit. . .”).

24 At a hearing conducted to re-schedule the preliminary injunction hearing (based on
25 Superintendent Horne’s counsel being scheduled to be in trial at the same time), the Court sided
26 with Plaintiffs and denied Superintendent Horne’s request to postpone the preliminary injunction
27 hearing until mid-August. Recognizing the time constraints, however, the Court also set a new
28 extended schedule allowing Superintendent Horne—or any other party—to submit expert

1 declarations by June 29, 2023 (Dkt. 80, the “Minute Entry”). At the hearing, counsel for
2 Superintendent Horne informed the Court that Superintendent Horne’s legal team was working in
3 good faith to quickly identify experts, provide them the information needed to come up to speed
4 on the litigation, and to prepare professional, thorough expert declarations to assist the Court in
5 understanding the relevant scientific facts. Although the Court declined to grant Horne’s
6 requested extension to July 5, 2023, the Court ordered that the parties could submit any **new**
7 declarations by June 29, 2023:

8 “In light of the parties’ decision to present declarations in lieu of witness testimony,
9 each party is directed to submit a statement identifying the documentary exhibits
10 and declarations that the party intends to rely on for purposes of the hearing by close
11 of business on June 29, 2023. If those documents are already in the record, they
12 need not be re-filed but the party must specifically identify where each document
13 may be found. ***Any exhibit or declaration that is not yet in the record must be filed
14 on or before June 29, 2023.***”

13 Dkt. 80 (emphasis added). Thus, Plaintiffs’ objection and motion must be denied because they
14 are contrary to this Court’s Minute Entry.

15 In addition to being contrary to this Court’s Minute Entry, the Objection and Motion are in
16 bad faith. Plaintiffs knew full-well that Horne intended to submit expert declarations as his
17 counsel had clearly informed the Court in writing and at the scheduling hearing, but Plaintiffs did
18 not object to Horne submitting those declarations during that hearing, nor did they request an
19 additional deadline for Plaintiffs to rebut such declarations. Instead, knowing that Horne intended
20 to submit expert declarations, Plaintiffs remained silent and allowed Horne to continue expending
21 time, resources, and funds to prepare and submit expert declarations, only to now object on the
22 basis that the declarations are untimely—an argument that Plaintiffs could and should have made
23 at the hearing if they intended to make it at all.

24 Horne has submitted two expert declarations (in addition to relying on the expert
25 declarations submitted by President Petersen and Speaker Toma). Emma Hilton is a highly-
26 credential Ph.D. with expertise in developmental biology. She has conducted extensive research
27 which is presented in detail in her expert declaration. Dr. Hilton directly addresses the core
28 scientific factual dispute in this matter with citations to numerous data sets and research papers,

1 as well as her own original research. Dr. Hilton has submitted declarations on related issues in
 2 several other lawsuits in federal courts. Linda Blades is a highly-credential Ph.D. with expertise
 3 in kinesiology. Dr. Blades also addresses the core scientific dispute with reference to multiple
 4 data sets and research papers. In addition, Dr. Blades has extensive and high-level expertise as a
 5 sports coach, including having coached prepubertal boys and girls for many years. Her experience
 6 as a Ph.D. and as a sports coach are the basis for her opinions presented to the Court.

7 It is not surprising that Plaintiffs seek to suppress these thorough, compelling opinions, but
 8 there is no basis for doing so, and it is in direct contravention to this Court's Minute Entry. The
 9 Court should not deprive itself, nor deprive Superintendent Horne, of the extremely valuable
 10 factual information and opinions in those expert declarations which will significantly aid the Court
 11 in understanding the relevant science—a goal all the parties should embrace. Nor should the
 12 Court grant Plaintiffs' request to file yet-another round of expert declarations after the passage of
 13 the June 29, 2023 deadline set in the Minute Entry. It would be manifestly unfair to permit
 14 Plaintiffs—and only Plaintiffs—to submit additional, new declarations after the clear deadline set
 15 by the Court, and indeed, a single business day before the hearing.

16 **RESPECTFULLY SUBMITTED** on July 3, 2023.

17 **WILENCHIK & BARTNESS, P.C.**

18 */s/ Dennis Wilenchik*

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants.

By: /s/ Hilary Myers