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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION

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;
Laura Toenjes, in her official capacity as
Superintendent of the Kyrene School District;
Kyrene School District; The Gregory School;
and Arizona Interscholastic Association, Inc.,

Defendants.

Case No.: _____

**PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION AND
MEMORANDUM OF LAW IN SUPPORT
THEREOF**

ORAL ARGUMENT REQUESTED

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INTRODUCTION

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2 Plaintiffs Jane Doe and Megan Roe are transgender girls who want an equal
3 opportunity to try out for and participate on the girls' volleyball, soccer, basketball, and
4 cross-country teams at their schools. They are prohibited from doing so by Ariz. Rev.
5 Stat. § 15-120.02 (the "Ban"), which categorically bars transgender girls from playing on
6 girls' interscholastic or intramural sports teams, regardless of their individual
7 circumstances or qualifications for doing so. The Ban bars Plaintiffs from playing on
8 girls' teams because they are transgender even though Plaintiffs have not undergone male
9 puberty and do not have a competitive or physiological advantage over their non-
10 transgender peers.

11 Plaintiffs have filed suit in this Court alleging that, as applied to them, the Ban
12 violates their rights to equal treatment under the Equal Protection Clause of the
13 Fourteenth Amendment, Title IX, the ADA, and the Rehabilitation Act. Plaintiffs now
14 move for a preliminary injunction on their Title IX and Equal Protection claims so they
15 can have an equal opportunity to play school sports on girls' teams during the upcoming
16 school year while this case proceeds. Tryouts for the earliest sport start in mid-July of this
17 year.

18 The Ban singles out transgender girls and therefore impermissibly discriminates
19 "on the basis of sex" under Title IX. The Ban also violates the Equal Protection Clause
20 because it discriminates against Plaintiffs based on their transgender status and cannot
21 survive rational basis review, much less the heightened scrutiny required here. If enforced
22 against Plaintiffs, the Ban will cause Plaintiffs irreparable mental, physical, and
23 emotional harm, in addition to the violation of their constitutional rights. The public
24 interest and balance of equities favor a preliminary injunction. For these reasons and
25 those set forth below, the Court should preliminarily enjoin the Ban as to Plaintiffs.

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STATEMENT OF FACTS

I. PLAINTIFFS ARE TRANSGENDER GIRLS AND STUDENT ATHLETES

A. Medical Background on Transgender Youth and Treatment for Gender Dysphoria

A transgender person is one whose gender identity differs from the person's assigned sex at birth. (Budge Decl. ¶ 18.) "Gender identity" is the medical term for a person's internal, innate, deeply-held sense of their own gender. (Shumer Decl. ¶ 18.) Everyone has a gender identity. (*Id.*) There is a medical consensus that a person's gender identity is not subject to voluntary change and has a significant biological foundation. (*Id.* ¶ 23.)

When a child is born, a health care provider identifies the child's sex based on the child's observable anatomy. (*Id.* ¶ 27.) In medical terminology, this is often referred to as the person's "assigned sex." (*Id.*) In most cases, that initial designation turns out to be accurate. (*Id.*) Most children who are identified as female at birth grow up to be female, and most children who are identified as male at birth grow up to be male. (*Id.*) For a transgender person, however, that initial designation does not match the person's gender identity. (*Id.*)

Gender dysphoria is a serious medical condition characterized by intense and, in some cases, disabling distress due to the incongruence between a person's gender identity and assigned sex. (Budge Decl. ¶ 23.) The treatment for gender dysphoria is well-established and highly effective. (*Id.* ¶ 25; Shumer Decl. ¶ 28.) When individuals with gender dysphoria are diagnosed and receive appropriate medical care, they can thrive. (Shumer Decl. ¶ 29.) If untreated, however, gender dysphoria causes serious harms, including anxiety, depression, eating disorders, substance abuse, self-harm, and suicide. (Budge Decl. ¶ 33; Shumer Decl. ¶ 28.)

1 The major associations of medical and mental health providers in the United
2 States, including the American Medical Association, the American Academy of
3 Pediatrics, the American Psychiatric Association, the American Psychological
4 Association, and the Pediatric Endocrine Society, have adopted medical standards of care
5 for treating gender dysphoria in adolescents, which were developed by the World
6 Professional Association for Transgender Health and the Endocrine Society. (Shumer
7 Decl. ¶ 31.) The goal of treatment is to permit transgender adolescents to live consistent
8 with their gender identity in all aspects of their lives. (*Id.* ¶ 30.) In addition, when a child
9 begins puberty, doctors may prescribe puberty-blocking medication and, for older
10 adolescents, hormone therapy. (*Id.* ¶¶ 35–36.)

11 Before puberty, boys and girls do not differ significantly in athletic performance.
12 (*Id.* ¶ 38.) After puberty, adolescent boys begin to produce higher levels of testosterone,
13 which over time causes them to become, on average, stronger and faster than adolescent
14 girls. (*Id.* ¶¶ 38–39.) There is a scientific consensus that the biological driver of average
15 group differences in athletic performance between adolescent girls and boys is
16 differences in their respective levels of testosterone, which begin to diverge significantly
17 only after the onset of puberty. (*Id.* ¶ 39.)

18 Transgender girls who receive puberty-blocking medication do not have an
19 athletic advantage over other girls because they do not go through male puberty.
20 (*Id.* ¶¶ 40–42.) As a result, they do not experience the physiological changes caused by
21 the increased production of testosterone associated with male puberty. (*Id.* ¶ 35.) When
22 those girls subsequently receive hormone therapy, their bodies develop the skeletal
23 structure, fat distribution, and muscle and breast development typical of other girls.
24 (Budge Decl. ¶ 29; Shumer Decl. ¶¶ 35–36.) Transgender girls who receive these medical
25 treatments typically have testosterone levels in the same range as other girls. (Shumer
26 Decl. ¶ 36.)

1 For transgender youth, research has shown that being accepted and supported is
2 enormously beneficial to their health and well-being. (*Id.* ¶ 29; Budge Decl. ¶ 22.)
3 Conversely, being denied recognition and support can cause significant harm, exacerbate
4 gender dysphoria, and expose them to the risk of discrimination and harassment. (Shumer
5 Decl. ¶ 28.)

6 **B. Jane Doe**

7 Plaintiff Jane Doe is an 11-year-old transgender girl who will begin middle school
8 in the Kyrene School District in July. (J. Doe Decl. ¶ 1.) Jane was diagnosed with gender
9 dysphoria when she was seven years old and lives as a girl in all aspects of her life. Jane
10 has not yet started puberty. (H. Doe Decl. ¶¶ 7, 11.) Jane’s doctors are currently
11 monitoring her for signs for the onset of puberty as part of her medical treatment for
12 gender dysphoria. (*Id.* ¶ 11.) As a result, Jane has not experienced any of the
13 physiological changes that increased testosterone levels would cause in a pubescent boy.
14 (Shumer Decl. ¶ 45; Budge Decl. ¶ 28.)

15 Sports are a vital part of Jane’s life. (J. Doe Decl. ¶¶ 5–8.) Her family places a
16 high value on sports’ benefits. (H. Doe Decl. ¶¶ 12–13.) Jane particularly loves playing
17 soccer and has played soccer on girls’ club and recreational sports teams for nearly five
18 years. (J. Doe Decl. ¶¶ 6–8.) In addition to her passion for the sport, soccer has allowed
19 Jane to make new friends and establish a sense of community. (*Id.* ¶ 7.) The friendships
20 she has made through soccer are enriching and meaningful. (H. Doe Decl. ¶ 13.) Jane has
21 shared that she is a transgender girl with her coaches and soccer teammates, who are
22 highly supportive of her identity. (*Id.* ¶ 9.)

23 The Ban will apply to Jane when she enters Kyrene Aprende Middle School this
24 July. Jane intends to try out for the girls’ soccer team in the winter 2023-2024 athletic
25 season, the cross-country team in the 2023 summer season (which starts in mid-July), and
26 the girls’ basketball team in the spring 2024 season. (J. Doe Decl. ¶ 9.) Both soccer and
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1 basketball at Kyrene Aprende Middle School have separate teams for boys and girls. (*Id.*)
2 While the cross-country team practices co-educationally, the sexes compete separately.
3 (*Id.*) Jane is excited to play on the girls' teams with her friends and peers. (*Id.* ¶¶ 8–9.)
4 However, if the Ban applies to her, Jane will be banned from trying out for and playing
5 and competing on the girls' soccer, cross-country, and basketball teams.

6 Jane will not participate in sports at all if she is forced to be on a boys' team.
7 (*Id.* ¶¶ 10–11.) Her health depends on her ability to live her life fully as a girl, and
8 playing sports on a boys' team and competing with boys would contradict her medical
9 care and jeopardize her health. (H. Doe Decl. ¶¶ 15–16.) It would also be painful and
10 humiliating to Jane—who is accepted as a girl—to be forced to play on the boys' teams.
11 (J. Doe Decl. ¶¶ 11–12.)

12 C. Megan Roe

13 Megan Roe is a 15-year-old transgender girl who resides in Pima County, Arizona
14 and attends The Gregory School. (M. Roe Decl. ¶¶ 2, 5.) Megan was diagnosed with
15 gender dysphoria when she was 10 years old. (K. Roe Decl. ¶ 6.) Before starting at The
16 Gregory School, Megan's parents shared with administrators and teachers at the school
17 that Megan is a transgender girl, and The Gregory School is highly supportive of Megan
18 and her identity. (M. Roe Decl. ¶ 5.) As part of her medically-prescribed treatment for
19 gender dysphoria, Megan has been receiving puberty-blocking medication since she was
20 11 years old, after clinical documentation of the initial signs of puberty. (K. Roe
21 Decl. ¶ 6.) This medication has prevented her from undergoing male puberty. (*Id.*) Megan
22 also started to receive hormone therapy when she was 12 years old. (*Id.*) As a result of
23 these medical treatments, she has not experienced the physiological changes that
24 increased testosterone levels would cause in a pubescent boy. (*Id.*) Instead, the hormone
25 treatment she has received has caused her to develop physiological changes associated
26 with puberty in females. (Shumer Decl. ¶ 47; Budge Decl. ¶ 29.)

1 Megan enjoys playing volleyball and intends to try out for the girls' volleyball
2 team at The Gregory School for this year's fall season. (M. Roe Decl. ¶ 7.) Volleyball is
3 one of the most important sports in the school's social fabric—the matches are an
4 important social occasion, which are well-attended by the school community. (*Id.* ¶ 8; K.
5 Roe Decl. ¶ 8.) Her school friends are also on the girls' volleyball team. (M. Roe Decl.
6 ¶ 7.) Megan's teammates, coaches, and school are highly supportive of her and would
7 welcome her participation in the girls' volleyball team. (*Id.* ¶ 5; K. Roe Decl. ¶¶ 5, 12.)
8 However, if the Ban applies to Megan, she will not be able to play on the girls' volleyball
9 team and will be deprived of the opportunity to play school sports.

10 Megan will not compete on the boys' volleyball team, as her health and well-being
11 depend on her ability to live her life as a girl in all aspects. (M. Roe Decl. ¶ 9; K. Roe
12 Decl. ¶ 10.) Playing on the boys' team contradicts her medical care, and it would also be
13 painful and humiliating. (M. Roe Decl. ¶ 9; K. Roe Decl. ¶¶ 9–11.) The Ban will deny
14 Megan the opportunity to participate in school sports and enjoy the physical, emotional,
15 and social benefits of playing on a school sports team. She will lose her chance to be on
16 the volleyball team, maintain her friendships, and foster a sense of community at her
17 school.

18 **II. THE ARIZONA INTERSCHOLASTIC ASSOCIATION'S PRIOR POLICY** 19 **ON TRANSGENDER STUDENT PARTICIPATION**

20 Prior to the enactment of the Ban, transgender girls were permitted to play on
21 girls' sports teams. Each school or school district set its own rules on transgender
22 students' participation in intramural sports, and the Arizona Interscholastic Association,
23 Inc. (the "AIA") set rules for transgender students' participation in interscholastic sports.
24 (Compl. ¶ 19.) In October 2014, the AIA Executive Board for the first time approved a
25 transgender student athlete's request to participate on a team consistent with that
26 student's gender identity. (*Id.* ¶ 20.) By December 2018, the AIA formalized its policy to
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1 permit transgender students to play on teams consistent with their gender identity so long
2 as they had a letter of support from their parent or guardian explaining when their child
3 realized they were transgender. (*Id.* ¶ 21.) At that time, the AIA received only two or
4 three requests from transgender students. (*Id.* ¶ 22.)

5 **III. THE ARIZONA SPORTS BAN IS ENACTED**

6 Despite the AIA’s successful policies, Arizona enacted the “Save Women’s Sports
7 Act” (S.B. 1165) on March 30, 2022. *See* Ariz. Rev. Stat. § 15-120.02. The Ban requires
8 each public school team and private school team that competes against a public school
9 team to be designated as male, female, or co-ed based on “the biological sex of the
10 students who participate.” *Id.* § 15-120.02(A). The Ban’s Legislative Findings provide
11 that for purposes of school sports a student’s sex is determined at “fertilization and
12 revealed at birth or, increasingly, *in utero*.” S.B. 1165, 55th Leg., 2d Reg. Sess. (Ariz.
13 2022), § 2 (internal citation and brackets omitted). The Ban, therefore, defines Plaintiffs,
14 who are transgender girls, as male. The Ban requires that “athletic teams or sports
15 designated for ‘females,’ ‘women,’ or ‘girls,’ may not be open to students of the male
16 sex.” Ariz. Rev. Stat. § 15-120.02(B).

17 **IV. DIFFERENCES IN ATHLETIC ABILITY BETWEEN BOYS AND GIRLS 18 STEM FROM POST-PUBERTAL TESTOSTERONE LEVELS, NOT A 19 PERSON’S SEX AT BIRTH**

20 An individual’s genetic makeup and anatomy at birth are not reliable indicators of
21 athletic performance because sex chromosomes and genitals alone do not meaningfully
22 affect athletic performance. (Shumer Decl. ¶ 37.) Rather, the performance differences
23 between adolescent girls and boys in sports are due to differences in their levels of
24 testosterone, which do not diverge significantly until puberty. (*Id.* ¶¶ 38–39.)

25 Transgender girls who receive medical treatment, such as puberty-blocking
26 medication, do not undergo male puberty or experience physiological changes caused by

1 increased testosterone production. (*Id.* ¶¶ 35, 41.) There is no physiological reason that
2 transgender girls who have not undergone male puberty would have any athletic
3 advantage over other girls. (*Id.* ¶¶ 37, 42.) Simply knowing that a girl is transgender
4 reveals nothing about her athletic ability. (*Id.* ¶ 42.)

5 ARGUMENT

6 A preliminary injunction is warranted here because Plaintiffs can establish:
7 (1) they are likely to succeed on the merits of their claims; (2) they are likely to suffer
8 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in
9 their favor; and (4) an injunction is in the public interest. *See All. for the Wild Rockies v.*
10 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). When the government is a party, the third
11 and fourth factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Porretti v.*
12 *Dzurenda*, 11 F.4th 1037, 1050 (9th Cir. 2021). Where, as here, the burden to justify the
13 Ban under the Equal Protection Clause “rests entirely on the State,” *United States v.*
14 *Virginia*, 518 U.S. 515, 533 (1996), the burden to show a likelihood of success shifts to
15 Defendants at the preliminary injunction stage for the Equal Protection claim. *See*
16 *Gonzales v. O Centro Espirita Beneficente Uniao de Vegetal*, 546 U.S. 418, 429–30
17 (2006).

18 **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**

19 Courts across the country, including within this Circuit, have held that excluding
20 transgender girls from girls’ sports teams violates the Equal Protection Clause and Title
21 IX. *See, e.g., A.M. v. Indianapolis Pub. Sch.*, --- F. Supp. 3d ---, 2022 WL 2951430, at
22 *11 (S.D. Ind. July 26, 2022) (granting preliminary injunction to stop enforcement of a
23 similar law because it violates Title IX); *Hecox v. Little*, 479 F. Supp. 3d 930, 988
24 (D. Idaho 2020) (same under Equal Protection Clause); *see also Roe v. Utah High Sch.*
25 *Activities Ass’n*, 2022 WL 3907182, at *4 (Utah Dist. Ct. Aug. 19, 2022) (holding that
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1 transgender sports ban violated Utah’s “state-law counterpart to the federal Equal
2 Protection Clause”). The Court should find the same here.

3 **A. Applying the Ban to Plaintiffs Violates Title IX**

4 Title IX provides that no person “shall, on the basis of sex, be excluded from
5 participation in, be denied the benefits of, or be subjected to discrimination under any
6 educational program or activity receiving Federal financial assistance[.]” 20 U.S.C.
7 § 1681(a).¹ Because Defendants Kyrene School District (administered and overseen by
8 Defendant Toenjes), The Gregory School, and the AIA receive federal financial
9 assistance, and because Defendants Horne is a grant recipient of federal funds, they must
10 comply with Title IX’s requirements. *See* Compl. ¶¶ 9–13.²

11 Plaintiffs are likely to prevail on the merits of their Title IX claim because the Ban
12 discriminates against them based on their transgender status. As the Supreme Court held
13 in *Bostock v. Clayton County*, “it is impossible to discriminate against a person for
14 being . . . transgender without discriminating against that individual based on sex.” 140 S.
15 Ct. 1731, 1741 (2020). Applying that analysis, the Ninth Circuit has held that
16 discrimination based on transgender status also constitutes impermissible discrimination
17 under Title IX. *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022).

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20 ¹ Among other things, an institution covered by Title IX may not: (1) treat one person
21 differently from another in determining whether such person satisfies any requirement
22 or condition for the provision of such aid, benefit, or service; (2) provide different aid,
23 benefits, or services or provide aid, benefits, or services in a different manner;
24 (3) deny any person any such aid, benefit, or service; (4) subject any person to
separate or different rules of behavior, sanctions, or other treatment. 34 C.F.R.
§ 106.31(b).

25 ² Defendant AIA is bound by Title IX because it receives federal financial assistance
26 indirectly from its member schools. *See* 34 C.F.R. § 106.2(i).

1 That precedent is controlling here. The Ban discriminates against Plaintiffs based
2 on their status as transgender girls by providing that for purposes of school sports a
3 student’s sex is fixed “at birth.” S.B. 1165, 55th Leg., 2d Reg. Sess. (Ariz. 2002), § 2. By
4 design, the Ban classifies all transgender girls as male. Because the Ban prohibits
5 students who are “male” under this definition from playing on girls’ teams, Ariz. Stat.
6 § 15-120.02(B), it intentionally excludes all transgender girls, including Plaintiffs, from
7 participating on girls’ teams and deprives them of the benefits of sports programs and
8 activities that their non-transgender classmates enjoy. Under *Snyder*, this discrimination
9 violates Title IX. 28 F.4th at 114; *see also A.M.*, 2022 WL 2951430, at *11 (granting a
10 preliminary injunction of a similar Indiana law that banned transgender girls from playing
11 on girls’ sports teams based on Title IX).

12 **B. The Ban Also Violates Plaintiffs’ Rights Under the Equal Protection**
13 **Clause**

14 **1. The Ban Is Subject to Heightened Scrutiny**

15 The Ban also violates the Equal Protection Clause because it fails the applicable
16 heightened scrutiny review. The Ninth Circuit has held that laws that discriminate against
17 transgender people are sex-based classifications and, as such, warrant heightened
18 scrutiny. *See Karnoski v. Trump*, 926 F.3d 1180, 1200–01 (9th Cir. 2019) (analyzing a
19 policy barring transgender people from military service as sex-based discrimination and
20 applying heightened scrutiny); *see also D.T. v. Christ*, 552 F. Supp. 3d 888, 896 (D. Ariz.
21 2021) (“Discrimination against transgender people is discrimination based on sex; as
22 such, heightened scrutiny applies.”).

23 Under heightened scrutiny, the burden is on the government to show “an
24 exceedingly persuasive justification” for the discrimination, *Virginia*, 518 U.S. at 531,
25 which must not be based on “generalizations” or “stereotypes.” *Id.* at 549–50, 565.
26 Rather, “[t]he justification ‘must be genuine, not hypothesized or invented *post hoc* in
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1 response to litigation[.]” *Karnoski*, 926 F.3d at 1200 (quoting *Virginia*, 518 U.S. at 533).
2 The government cannot meet that burden here.

3 **2. The Ban Cannot Survive Heightened Scrutiny**

4 Categorically banning all transgender girls from all girls’ sports is not
5 substantially related to any important governmental interest. Proponents of the Ban claim
6 it is necessary to protect girls’ sports by barring girls who have a purportedly unfair
7 athletic advantage over other girls.³ But this is based on overbroad generalizations and
8 stereotypes that erroneously equate transgender status with athletic ability. *See Hecox*,
9 479 F. Supp. 3d at 982 (holding the asserted advantage between transgender and non-
10 transgender female athletes “is based on overbroad generalizations without factual
11 justification”). There is no rational basis, much less one that meets heightened scrutiny,
12 for treating a girls’ transgender status as an accurate proxy for athletic ability.

13 From a medical perspective, boys may have an athletic advantage over girls
14 because of the increased testosterone associated with male puberty, which results in
15 increased muscle mass and muscle strength. (Shumer Decl. ¶¶ 38–39.) Before male
16 puberty, boys have no significant athletic advantage over girls. (*Id.*) Here, Plaintiffs live
17 as girls in all aspects of their lives and are similarly situated to other girls their age. Jane
18 has not started male puberty and therefore has no competitive or physiological
19 advantages over her teammates or opponents. (*Id.* ¶ 45.) Megan has received hormone
20 blockers and hormone replacement therapy and therefore has never experienced male

21 ³ *See* Letter from Governor Douglas A. Ducey, State of Arizona, to J. Katie Hobbs,
22 Arizona Sec’y of State (Mar. 30, 2022),
23 https://azgovernor.gov/sites/default/files/sb1138_sb1165_signing_letter.pdf (“S.B.
24 1165 creates a statewide policy to ensure that biologically female athletes at Arizona
25 public schools, colleges, and universities have a level playing field to compete . . .
26 This legislation simply ensures that the girls and young women who have dedicated
themselves to their sport do not miss out on hard-earned opportunities . . . due to
unfair competition.”).

1 puberty. (*Id.* ¶ 47.) Accordingly, she has no competitive or physiological advantages over
2 her teammates or opponents. (*Id.*) Yet, purely because they are transgender, Plaintiffs are
3 treated differently than other girls; unlike all other girls, they are barred from playing on
4 girls’ teams.

5 Rather than advancing an “exceedingly persuasive justification” for
6 discrimination, *Virginia*, 518 U.S. at 524, the Ban’s “avowed purpose and practical effect
7 are to impose a disadvantage, a separate status, and so a stigma” upon transgender
8 athletes. *United States v. Windsor*, 570 U.S. 744, 770 (2013) (explaining that “[t]he
9 Constitution’s guarantee of equality must at the very least mean that a bare [legislative]
10 desire to harm a politically unpopular group cannot justify disparate treatment of that
11 group”) (internal quotation marks and citation omitted). Accordingly, the Ban cannot
12 survive rational basis review, much less heightened scrutiny.

13 **II. THE BAN IRREPARABLY HARMS PLAINTIFFS**

14 Plaintiffs face irreparable harm if this Court does not enjoin the Ban as to them.
15 First, enforcement of the Ban in violation of the Equal Protection Clause—in and of
16 itself—is sufficient to presume irreparable harm to justify a preliminary injunction.
17 *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (“It is well established that
18 the deprivation of constitutional rights unquestionably constitutes irreparable injury.”)
19 (internal quotation marks and citation omitted); *Hecox*, 479 F. Supp. 3d at 987 (noting
20 this “dispositive presumption”). A violation of Title IX also causes irreparable harm. *See*
21 *Anders v. Cal. State Univ., Fresno*, 2021 WL 1564448, at *18 (E.D. Cal. Apr. 21, 2021)
22 (finding irreparable harm under Title IX given the “presumption of irreparable injury
23 where plaintiff shows violation of a civil rights statute” and in light of “the insult that
24 comes from unequal treatment”); *Portz v. St. Cloud State Univ.*, 196 F. Supp. 3d 963, 973
25 (D. Minn. 2016) (“Plaintiffs have a fair chance of succeeding on their Title IX claim, and
26 Congress passed the Title IX pursuant to its power to enforce the Fourteenth Amendment.

1 Plaintiffs’ expectation that they may be treated unequally in violation of Title IX’s terms
2 is an irreparable harm.”) (footnote omitted).

3 Moreover, Plaintiffs will suffer severe and irreparable mental, physical, and
4 emotional harm if the Ban applies to them. Plaintiffs’ mental health is dependent on
5 living as girls in all aspects of their lives. (Budge Decl. ¶ 27; Shumer Decl. ¶ 24.) Playing
6 on a boys’ team would directly contradict Plaintiffs’ medical treatment for gender
7 dysphoria and would be painful and humiliating. (Budge Decl. ¶¶ 27, 39–41; Shumer
8 Decl. ¶ 51.) If Defendants are permitted to enforce the Ban against them, Plaintiffs will
9 be excluded from school sports and deprived of the social, educational, and physical and
10 emotional health benefits that come from school sports. (Budge Decl. ¶¶ 35–38.) They
11 will also suffer the shame and humiliation of being unable to participate in a school
12 activity simply because they are transgender—a personal characteristic over which they
13 have no control. (*Id.* ¶ 40.)

14 Plaintiffs will further suffer the stigmatic injury of exclusion. (*Id.*); *See Grimm v.*
15 *Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 625 (4th Cir. 2020) (explaining that the stigma
16 of exclusion “publicly brand[s] all transgender students with a scarlet ‘T’”) (internal
17 quotation marks and citation omitted). They will also suffer the cognizable and
18 irreparable “dignitary wounds” associated with the passage of a law expressly designed to
19 communicate the state’s moral disapproval of their identity, wounds that “cannot always
20 be healed with the stroke of a pen.” *Obergefell v. Hodges*, 576 U.S. 644, 678 (2015);
21 *Hecox*, 479 F. Supp. 3d at 987 (finding such wounds to constitute irreparable harm).

22 **III. THE PUBLIC INTEREST AND BALANCE OF EQUITIES FAVOR** 23 **INJUNCTIVE RELIEF**

24 When an injunction is sought against a governmental entity, the public interest and
25 balance-of-the-hardships factors merge. *Nken*, 556 U.S. at 435–36. As an initial matter,
26 “it is always in the public interest to prevent the violation of a party’s constitutional
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1 rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citation and
2 quotation marks omitted). Moreover, the balance of equities tips heavily in Plaintiffs’
3 favor. Defendants “cannot suffer harm from an injunction that merely ends an unlawful
4 practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Plaintiffs,
5 however, are continuing to face serious and current ongoing harm, as detailed above and
6 in the accompanying declarations. Accordingly, the public interest and balance of
7 equities favor a preliminary injunction.

8 **IV. PLAINTIFFS SHOULD NOT BE REQUIRED TO POST A BOND**

9 The District Court has discretion not to require the moving party to post a bond
10 before granting a preliminary injunction. *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir.
11 2011) (citing *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009)). The Court
12 should exercise that discretion here. Waiving this requirement is particularly appropriate
13 where “there is no realistic likelihood of harm to the defendant from enjoining his or her
14 conduct.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). As discussed above,
15 the requested injunction will not harm Defendants. Further, imposing a bond would
16 improperly burden Plaintiffs’ efforts to vindicate their constitutional rights.

17 **CONCLUSION**

18 For the foregoing reasons, Plaintiffs respectfully request the Court grant their
19 motion for a preliminary injunction.

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21 Respectfully submitted this 17th day of April, 2023.

22 *s/ Colin M. Proksel*

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**Pro hac vice application forthcoming*

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION**

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;
Laura Toenjes, in her official capacity as
Superintendent of the Kyrene School District
Kyrene School District; The Gregory School;
and Arizona Interscholastic Association, Inc.,

Defendants.

Case No. _____

**[Proposed] ORDER GRANTING
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

