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

10 Jane Doe, by her next friend and parents  
 Helen Doe and James Doe; and Megan Roe,  
 11 by her next friend and parents, Kate Roe and  
 12 Robert Roe,  
 Plaintiffs,

13 v.

14 Thomas C. Horne in his official capacity as  
 State Superintendent of Public Instruction;  
 15 Laura Toenjes, in her official capacity as  
 16 Superintendent of the Kyrene School  
 District; Kyrene School District; The  
 17 Gregory School; and Arizona Interscholastic  
 18 Association Inc.,  
 19 Defendants.

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

**PLAINTIFFS' OBJECTION TO  
 DEFENDANT HORNE'S AND  
 PERMISSIVE INTERVENORS' NEW  
 EXPERT DECLARATIONS AND MOTION  
 FOR LEAVE TO FILE SUPPLEMENTAL  
 EXHIBITS AND AMENDED PROPOSED  
 FINDINGS OF FACT AND CONCLUSIONS  
 OF LAW**

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1 Plaintiffs object to Defendant Horne’s and Permissive Intervenors’ new expert  
2 declarations filed yesterday as exhibits related to Plaintiffs’ Motion for Preliminary  
3 Injunction. (Dkts. 87-4, 87-5, 87-6, 92-8, 92-9). In light of this objection, Plaintiffs  
4 respectfully move this Court for leave to file supplemental exhibits in support of  
5 Plaintiffs’ Motion for a Preliminary Injunction as well as any related amendments to  
6 their Proposed Findings of Fact and Conclusions of Law in advance of the preliminary  
7 injunction hearing scheduled in this matter on July 10, 2023.

8 On June 29, 2023, Defendant Horne filed two new declarations from Emma  
9 Hilton and Linda Blade. (Dkts. 92-8, 92-9). Neither Dr. Hilton nor Dr. Blade have  
10 submitted declarations in this case previously, and Plaintiffs have thus had no  
11 opportunity to consider or respond to their testimony. The Hilton and Blade  
12 Declarations should have been filed by May 18, 2023, in accordance with the briefing  
13 schedule that Defendant Horne stipulated to and which this Court so ordered. (Dkts.  
14 20, 25). In the six weeks since that deadline, Defendant Horne did not seek leave of  
15 this Court to file expert declarations after the agreed-upon deadline.

16 Also on June 29, 2023, Permissive Intervenors filed two “rebuttal” expert  
17 declarations and one “supplemental” expert declaration. (Dkts. 87-4, 87-5, 87-6.) All  
18 three declarants had already submitted declarations on May 18, 2023. (Dkts. 38-3, 38-  
19 4, 38-5). Permissive Intervenors are not entitled to a sur-reply on Plaintiffs’ Motion  
20 for a Preliminary Injunction under either the Local Rules or the Federal Rules of Civil  
21 Procedure, nor did they seek leave of this Court to do so. *See* LRCiv. 7.2(b)-(d).  
22 Permissive Intervenors had four weeks to request such leave.

23 Defendant Horne’s and Permissive Intervenors’ submission of these new expert  
24 declarations at the eleventh hour, without seeking leave of this Court, is improper.  
25 Given the extent of new information presented in these five declarations and in light of  
26 the prejudice that Plaintiffs would suffer in the absence of an opportunity to respond,  
27 Plaintiffs respectfully move the Court for leave to file supplemental expert  
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1 declarations and any related amendments to Plaintiffs' Proposed Findings of Fact and  
2 Conclusions of Law not later than July 7, 2023.

3 Respectfully submitted this 30<sup>th</sup> day of June,  
4 2023.

5 /s/ Colin M. Proksel  
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**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR LEAVE TO  
FILE SUPPLEMENTAL EXHIBITS AND  
AMENDED PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

