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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION

Jane Doe, *et al.*,

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

Motion to Intervene of Anna Van Hoek, Lisa Fink, Amber Zenczak, and Arizona Women of Action

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

FEDERAL RULES

STATE STATUTES

OTHER AUTHORITIES

Introduction

Proposed Intervenors Anna Van Hoek, Amber Zenczak, Lisa Fink, and USA Women of Action (d/b/a "Arizona Women of Action") move under Federal Rule of Civil Procedure 24 to intervene in this action. The proposed intervenors (collectively, the "Parent Representatives") have a strong protectable interest in defending Arizona's Save Women's Sports Act, A.R.S. § 15-120.02. They offer a critical and unique perspective as yet unrepresented in this action: that of Arizona parents and their student-athlete daughters who support the Save Women's Sports Act.

Counsel contacted counsel for all parties to this case and asked their position on this Motion. Superintendent Horne and the Intervenor Legislators support this Motion. The Arizona Interscholastic Association does not oppose intervention. The Gregory School takes no position. Defendants Kyrene School District and Superintendent Toenjes are unlikely to take a position on any proposed intervention. The Plaintiffs oppose intervention.

In other actions similar to this one, district courts have routinely allowed student-athletes to intervene, *E.g., B.P.J. v. W. Virginia State Bd. of Educ.*, No. 21-CV-00316, 2021 WL 5711547, at *3 (S.D.W. Va. Dec. 1, 2021); *Hecox v. Little*, 479 F. Supp. 3d 930, 951 (D. Idaho 2020), aff'd, 2023 WL 1097255 (9th Cir. Jan. 30, 2023). Moreover, the Ninth Circuit has consistently held that parents may intervene to defend their and their children's interests, even when public officials are already defending the case. *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977) (quoting *Hines v. Rapides Parish School Bd.*, 479 F.2d 762, 765 (5th Cir. 1973)); *see also, Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 853-64 (9th Cir. 2016) (reversing district court's denial of parent group's intervention motion and remanding); *Johnson v. San Francisco Unified Sch. Dist.*, 500 F.2d 349, 353–54 (9th Cir. 1974) (same).

This Court should do likewise and grant the Parent Representatives' motion.[1]

[1] In conformity with Rule 24(c), attached as Exhibit 1 is a proposed Motion to Dismiss.

Background

I. The Save Women's Sports Act

The Arizona legislature adopted the Save Women's Sports Act, S.B. 1165, in March 2022, and Governor Ducey signed it on March 30, 2022. Codified at A.R.S. § 15-120.02, the Save Women's Sports Act went into effect on September 24, 2022.

The Save Women's Sports Act is focused on protecting the students harmed by violations of the Act. It creates a private right of action for "[a]ny student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a school knowingly violating this section" or "who is subject to retaliation ... by a school or an athletic association or organization." A.R.S. § 15-120.02(E)-(F).

In the Senate Judiciary Committee, Senator Warren Peterson explained that his "yes" vote was because the Act's intent was protecting girls: "kids will be harmed if we don't prevent this.… This bill protects our daughters and our granddaughters."[2] Senator Nancy Barto explained to the Arizona House Judiciary Committee that the bill was in part prompted by policies of the Canyon Athletic Association and the Defendant Arizona Interscholastic Association that "opened the door to this type of unfair play by allowing biological males to play on girls and women's sports teams."[3]

II. This Lawsuit

On April 17, 2023, the Plaintiffs filed this suit to challenge the Act on Equal Protection, Title IX, and ADA grounds. (Doc. 1, ¶¶ 68-85.) The same day, the Plaintiffs also filed a motion for preliminary injunction alleging the Save Women's Sports Act will cause them to "suffer severe and irreparable mental, physical, and emotional harm," even though the law had already been in effect for almost seven months.

On May 1, 2023, Senator Warren Peterson and Representative Ben Toma (the

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[2] Daily Independent, *Proceedings of Ariz. Senate Judiciary Com.*, *Arizona Senate Committee Passes "Save Women's Sports Act,"* YouTube at 1:20:19-1:21:00, (Mar. 24, 2022), https://tinyurl.com/ezxkfye9.

[3] Arizona Senate Republicans, *Proceedings of Ariz. House Judiciary Com. After passing the Senate, the 'Save Women's Sports Act' just passes the House*, YouTube at 2:03-2:19, (Mar. 24, 2022), https://tinyurl.com/yt4k8du5.

"Legislators"), acting on behalf of the Arizona Legislature, filed a Motion to Intervene. (Doc. 19.) On June 12, 2023, this Court denied in part and granted in part their motion, "grant[ing] permissive intervention on a limited basis ... to present argument and evidence in opposition to [the] Motion for Preliminary Injunction." (Doc. 79 at 1.)

III. Proposed Intervenors

A. Anna Van Hoek, Lisa Fink, and Amber Zenczak

Anna Van Hoek is a resident of Gilbert, Arizona. She has one 13-year-old daughter who is still a minor and another daughter who is 18. Exh. 2, Decl. of Anna Van Hoek ("Van Hoek Decl.") ¶¶ 1-2, 6. This school year, her daughter will attend high school in the Chandler Unified School District and play softball on the school team, which participates in the Arizona Interscholastic Association (AIA). She attended middle school in the Higley Unified School District and played softball on a team that also participates in the AIA. She has played on girls' sports teams since she was nine years old and on school teams since seventh grade. *Id.* ¶ 3.

Lisa Fink is a resident of Glendale, Arizona and is the mother of five daughters. Exh. 3, Decl. of Lisa Fink ("Fink Decl.") ¶ 1. Her 17-year-old daughter plays volleyball on a girls' team at a publicly funded charter school in Phoenix, Arizona. *Id.* ¶ 2. Mrs. Fink is the coach of the team. *Id.* ¶ 4. Her daughter has played volleyball since she was 11. *Id.* ¶ 4. Mrs. Fink's daughter's school is "a member of the Canyon Athletic Association (CAA), which is an Arizona non-profit that organizes and facilitates interscholastic activities among its members. CAA member schools include charter schools [and] public schools." *Id.* ¶ 3.

Amber Zenczak is a resident of Maricopa, Arizona and is the mother of three daughters, two of whom are still minors. Exh. 4, Decl. of Amber Zenczak ("Zenczak Decl.") ¶¶ 1-2. Her "middle daughter is 14 years old and will enter ninth grade this school year. She has played on girls' sports teams in school since she was 11 years old. She plays on her school's teams for soccer and basketball and is also considering adding tennis and track this year." *Id.* ¶ 4. Her "youngest daughter is 13 years old and

will enter eighth grade this school year. She has played on girls' sports teams in school since she was nine years old.... She plays on her school's basketball, softball, and soccer teams and plans to do track and field in high school." *Id.* ¶ 5. The girls' school is a member of the CAA.

Kyrene School District's "open enrollment policy [] allows students from the City of Maricopa to enroll.... Kyrene … provides bus service for children who live in Maricopa and are enrolled in" certain Kyrene schools. *Id.* ¶ 3. "Kyrene maintains a bus stop in a subdivision" close to Ms. Zenczak's house. *Id.* "Kyrene School District covers kindergarten through eighth grade and then feeds students into Tempe Union School District for high school. It is possible that [Ms. Zenczak's] daughters could go to Kyrene School District or Tempe Union School District for better sports opportunities and improved prospects for college sports scholarship opportunities." *Id.*

All three mothers believe that "[p]articipating in girls' team sports has dramatically benefited [their] daughters' personal and social development. Their experiences have built their self-confidence and allowed them to experience a type of camaraderie and friendship that could not be replicated anywhere else. If their teams also included persons born as biological males, virtually all those benefits would evaporate." Zenczak Decl. ¶ 8; *see also* Van Hoek Decl. ¶ 4; Fink Decl. ¶ 5.

Ms. Van Hoek believes these benefits would disappear because "the presence of biological boys creates a significant obstacle to girls achieving their best performance." Van Hoek Decl. ¶ 5. Her two daughters have experienced these obstacles firsthand, and her "younger daughter would give up on softball if she were forced to play on a team with biological boys, or to compete against biological boys." *Id.* ¶¶ 5-7.

Mrs. Fink coaches her daughter's school volleyball team. Fink Decl. ¶ 2. Mrs. Fink "also played sports as a student." *Id.* ¶ 7. She and her daughter have had years of opportunities "to closely observe both pre- and post-pubescent biological males playing ... sport[s] ... and have been able to observe and compare biological males and females in athletic situations." *Id.* Ms. Van Hoek and Ms. Zenczak, and their daughters, have

had similar opportunities to observe the differences between the athletic performance of biological males and females. Van Hoek Decl. ¶ 8; Zenczak Decl. ¶ 13. All three mothers, and their daughters, believe that "biological boys have an innate athletic advantage that would give them an unfair advantage in girls' sports. Because of [their] daughters' longstanding participation in athletics, [they] have been able to observe and compare the athletic performance of biological girls and boys, and [their] observation is that boys enjoy an athletic advantage over girls at all ages, including before puberty." Van Hoek Decl. ¶ 8; *see also* Fink Decl. ¶ 9; Zenczak Decl. ¶ 13.

Mrs. Fink and her daughter "believe that a biological male on their team would have an unfair advantage to be able to get a starting position on the team and achieve other similar benefits and advantages. This would create an environment on the team of disunity and corrosive rivalry. Furthermore, if biological males were allowed to play on" competing teams, "those teams would have an unfair advantage. It would create a strong sense that the competition was not on a level playing field." Fink Decl. ¶ 7.

These threatened harms are not hypothetical for the daughters of Mrs. Fink and Ms. Zenczak. For Mrs. Fink's daughter, "in 2020, an opposing team had a player who very clearly appeared to be a biological male. The girls on the team came to [Mrs. Fink] as their coach and told [her] that they were very upset about having to compete against a biological male because they felt that this made the game unfair." Fink Decl. ¶ 7. Similarly, last school year, Ms. Zenczak's "youngest daughter's girls' basketball team played a game against another school's girls' team that had one player who was transgender—in other words, this player was a biological male. This transgender player played in a style very different from the norm for girls' basketball. The player was more aggressive than the other players and unnecessarily touched the other players all over the court." Zenczak Decl. ¶ 9. This transgender player violently fouled Ms. Zenczak's daughter, but "[t]he referees did not make any calls on this obvious foul," evidently "because of fear of accusations of discrimination and to avoid retaliation from trans activists." *Id.* ¶ 9. "The game was unfair because this player had an obvious inherent

advantage—the player ran considerably faster, was noticeably taller, and had a thicker build. All these intrinsic advantages made it hard even for this player's own teammates to keep up… The presence of this player caused noticeable distress and anguish to the biological girls on [Ms. Zenczak's] daughter's team, and even to the other members of the player's own team. It also caused considerable distress and anguish to [Ms. Zenczak] and the other parents at the game." *Id.*

The experience of Ms. Zencak's daughter "permanently changed [her] outlook and approach to sports. She has a persistent fear that she will one day have to compete against biological males for the limited number of spots on her girls' sports team or the limited number of college scholarship opportunities for female athletes." *Id.* ¶ 10. This experience has even affected Ms. Zenczak's older daughter, who has decided "she would refuse to ever play against a team with a biological male on it because of the much greater risk of suffering severe injury that may cause lifelong damage and chronic pain." *Id.* ¶ 11. Similarly, Ms. Van Hoek's 18-year-old daughter played on girls' soccer teams since she was three and "had realistic hopes that she would get a college soccer scholarship." Van Hoek Decl. ¶ 6. However, her local city league does not have girls-only teams for girls older than 15, and she was forced to play on co-ed teams. *Id*. "On her girls' teams, she had been a star player who scored most of the goals as a center striker. On the co-ed team, she was rarely ever even able to touch the ball because the boys dominated the games. She became so discouraged that she ended up quitting soccer.... Unfortunately, playing with the boys ruined her love for the game and ended her soccer career prematurely." *Id.*

Mrs. Fink and her daughter "believe that biological females have a right to have their own spaces for socialization and collaboration. Adolescence for biological females is a period of significant physical and mental change" that "can cause significant stress and anxiety for biological females. One of the most important ways that biological girls deal with that stress and anxiety is by supporting each other." Fink Decl. ¶ 8. "A biological male on the team would not be able to relate in the same way with the

biological females," however, because "[a] biological male who has been taking puberty blockers or hormones does not go through the exact same process of change and development as a biological female." *Id.* They thus support the Save Women's Sports Act because "[t]he presence of a biological male will destroy the value of the team as a female-only space for girls to socialize and support each other. It will eliminate much of the benefit of having girls-only sports teams." Fink Decl. ¶ 8.

Ms. Zenczak and her daughter believe that "allowing biological males to compete on female teams discriminates against biological females" because "when biological males participate in girls-only sports teams, they have obvious natural advantages that degrade the integrity of the sport and make a fair and level playing field for the biological females impossible." Zenczak Decl. ¶ 14. Thus, they see their support of the Save Women's Sports Act "as a fight against discrimination, the same fight women have been fighting since before President Nixon signed Title IX into law in 1972. Allowing biological males who identify as female to compete in girls' and women's sports will reverse more than 50 years' worth of progress." *Id*.

Additionally, for all three mothers, "the prospect of having biological males in female-only spaces, such as locker rooms, makes [their] daughters very uncomfortable. They would feel self-conscious and frustrated by having to change clothes or shower in the presence of a teammate having male genitalia in the locker room." Zenczak Decl. ¶ 15; Fink Decl. ¶ 6; Van Hoek Decl. ¶ 9.

All three mothers have long supported the Save Women's Sports Act. Fink Decl. ¶¶ 10-11; Zenczak Decl. ¶ 16; Van Hoek Decl. ¶ 10. For example, Mrs. Fink "believe[s] that it is very important for maintaining the integrity and value of girls' sports in our state." Fink Decl. ¶ 11. Mrs. Fink has "advocated for [the Act] since the Arizona Legislature first started considering it as a bill." *Id*. Her advocacy included seeking "witnesses to testify in support of the bill" and "coordinat[ing] support for the bill by, among other things, encouraging members of the community to ... submit comments in support of the bill and also to email and call legislators in support of the

bill." *Id.* Ms. Zenczak "gave a speech to an Arizona Senate committee in favor of the Act." Zenczak Decl. ¶ 16. Ms. Van Hoek has "spoken out in favor of [the Act] since the legislature first started considering it." Van Hoek Decl. ¶ 10.

All three mothers "know many parents in [their] communit[ies] who feel the same way" in supporting Act, "but are reluctant to come forward because they are scared of the potential backlash, both online and in the real world, from activists who oppose the law." Van Hoek Decl. ¶ 10; *see also* Fink Decl. ¶ 10; Zenczak Decl. ¶ 16.

B. Arizona Women of Action

Proposed intervenor USA Women of Action "started in October 2020 as a text chain of 8 action-oriented women with a shared love of America and a passion for reviving communities and protecting families. It formally organized a political action committee on March 24, 2021 and then formally incorporated as a domestic nonprofit corporation on November 8, 2021." Exh. 5, Decl. of Kimberly J. Miller (Miller Decl.) ¶ 2. It conducts business under the name Arizona Women of Action ("AZWOA"), which it has registered with the Arizona Secretary of State's Office as a trade name. *Id.* ¶¶ 3-4.

"AZWOA has grown into one of the largest and most effective grassroots organizations in the State of Arizona. AZWOA maintains an active email list with over 2,700 subscribers," who have a very high engagement level. *Id.* ¶ 5. "AZWOA also has about 13,700 followers across its social media platforms.... [T]he PAC and the 501(c)(4) have collectively received donations from 645 individuals and entities." *Id.*

AZWOA's "donors, subscribers, and followers ... view AZWOA as the public voice for their concerns" because they "feel unable to express their views in private discussions, let alone in public debates, because of the risk of online and real-world backlash, including the threat of violence" caused by "the contentious and polarized nature of modern public discourse." *Id.* ¶ 6. "As an organization that speaks for Arizona women and mothers, AZWOA has a particular focus on improving education and on helping children, and one of its three main purposes is to revive the American dream of

thriving kids." *Id.* ¶ 7. AZWOA established itself as "an important and prominent voice in challenging policies that it views as harmful to biological girls." *Id.* ¶ 8.

A recent survey of AZWOA email subscribers showed that 99.6% support the Save Women's Sports Act. *Id.* ¶ 9. Furthermore, "51% [of respondents] reported a daughter who played sports through school," "4% ... reported that their daughters had ever played on a sports team with a biological male," and "3% ... reported having a daughter forced to compete against a team with a member who was a biological male." *Id.* Seventy-two percent said they "would ... consider removing [their] daughter from an all-girls' sports team/league if a biological male participated." *Id.*

"AZWOA has always been a vocal supporter of the Save Women's Sports Act," using "email newsletter and social media platforms to encourage ... donors, subscribers, and followers to contact their legislators" and Governor Ducey to support it. *Id.* ¶ 12.

Argument

I. This Court Should Grant Intervention as of Right.

"An applicant seeking to intervene as of right under Rule 24 must demonstrate that four requirements are met: '(1) the intervention application is timely; (2) the applicant has a significant protectable interest ... ; (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest.'" *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (quoting *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir.2006)).

The Parent Representatives satisfy each of these requirements.

A. The Parent Representatives' Motion to Intervene Is Timely.

The "traditional features of a timely [intervention] motion" are 1) "[t]he motion to intervene was made at an early stage of the proceedings; 2) "the parties would not have suffered prejudice from the grant of intervention at that early stage," and 3) "intervention would not cause disruption or delay in the proceedings." *Id.* Thus, the Ninth Circuit has held that an intervention motion was timely when it was filed "less

than three months after the complaint was filed and less than two weeks after the [defendant] filed its answer to the complaint." *Id.*

The Parent Representatives meet the Ninth Circuit's timeliness standard by having filed their intervention motion less than eleven weeks after the complaint was filed on April 17 (Doc. 1), about six weeks after Defendant Superintendent Horne filed his answer to the complaint on May 18 (Doc. 18), about five weeks after Defendant AIA filed its May 25 answer (Doc. 50), and four-and-a-half weeks after Defendant Kyrene School District filed its May 30 stipulation in lieu of answer. (Doc. 59.)

The Parent Representatives do not seek to change or delay any case deadlines.

B. The Parent Representatives Have Significant Protectable Interests That Will Be Impaired Absent Intervention.

Protectable interest "is a practical, threshold inquiry, and no specific legal or equitable interest need be established. To demonstrate a significant protectable interest, an applicant must establish that the interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue." *Citizens for Balanced Use*, 647 F.3d at 897 (cleaned up) (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir.1996)).

As a threshold matter, Ms. Van Hoek, Mrs. Fink, and Ms. Zenczak have standing under federal and Arizona law to sue to protect their daughters' interests. "[T]he interest of parents in the care, custody, and control of their children ... is perhaps the oldest of the fundamental liberty interests...." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Federal Rule of Civil Procedure 17(c)(1) states "a general guardian" "may sue or defend on behalf of a minor." Furthermore, Rule 17(b)(3) establishes that "[c]apacity to sue or be sued is determined ... by the law of the state where the court is located." Under Arizona law, they have the "fundamental right" "to direct the upbringing, education, health care and mental health of [her] children." A.R.S. § 1-601(A).

Similarly, AZWOA has standing to sue to defend the interests of the parents it represents. The Supreme Court has held that a parent's group with "members whose elementary and middle school children may be" affected has standing where "the

members ... can validly claim [injury] on behalf of their children." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718–19 (2007); *see also, Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 285 (2015) (Scalia, J., dissenting) ("[t]he organization of parents in [*Parents Involved in Community Schools*] had established organizational standing in the lower court by showing that it had members with children who would be subject to the school district's" actions).

Thus, "[t]he proper course for parental groups seeking to question current deficiencies ... is for the group to petition the district court to allow it to intervene." *Spangler*, 552 F.2d at 1329 (quoting *Hines*, 479 F.2d at 765; *see also, Smith*, 830 F.3d at 853-64 (reversing district court's denial of parent group's intervention motion and remanding); *Johnson*, 500 F.2d at 353–54 (same). The rule in the Ninth Circuit thus "allow[s] intervention by parents as a matter of right where the issues that emerge during the litigation are such that intervention is warranted." *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

The Parent Representatives are aware of only one other case in this circuit analogous to this one, in which a transgender plaintiff challenged a state law that regulates the sex of participants on sports teams. In that case, *Hecox v. Little*, several student-athletes who were biological females moved to intervene, and the court granted them intervention as of right. 479 F. Supp. 3d 930, 951 (D. Idaho 2020), aff'd, No. 20-35813, 2023 WL 1097255 (9th Cir. Jan. 30, 2023). The *Hecox* court noted that, while "the Ninth Circuit has held cisgender students do not have a legally protectable interest in excluding transgender students from single-sex spaces,… the Ninth Circuit has also held that redressing past discrimination against women in athletics and promoting equality of athletic opportunity between the sexes is unquestionably a legitimate and important interest, which is served by precluding males from playing on teams devoted to female athletes." *Id.* at 951–52 (citing *Parents for Privacy v. Barr*, 949 F.3d 1210, 1228 (9th Cir. 2020) and *Clark, ex rel. Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126, 1131 (9th Cir. 1982)). Thus, the court explained, "[r]egardless of how the

Proposed Intervenors' interest is characterized—either as a right to a level playing field or as a more invidious desire to exclude transgender athletes—they do claim a protectable interest in ensuring equality of athletic opportunity." *Id.* at 952. Just so here.

"The importance of this interest [in ensuring equality of athletic opportunity] is the basic premise of almost fifty years of Title IX law as it applies to athletics, and, as recognized by the Ninth Circuit, is unquestionably a legitimate and important interest." *Id.* Just like the Parent Representatives here, the intervenors in *Hecox* argued that "the only way to protect equality in sports is through sex segregation without regard to gender identity. Whether this argument is accurate or constitutional is not dispositive of the issue of whether the Proposed Intervenors have an interest in this suit." *Id.*

Like the *Hecox* intervenors, the Parent Representatives' interest in protecting equality of athletic opportunity through sex segregation is a protectable interest. "[T]o find the Proposed Intervenors are without a protectable interest in the subject matter of this litigation would be to hold that no party has an interest in this litigation." *Id.*

C. The Parent Representatives' Interests Will Be Impaired If Plaintiffs' Requested Relief is Granted.

Ms. Van Hoek has a daughter who plays on teams that participate in the AIA, and thus she may be forced to play against Plaintiff Jane Doe. Van Hoek Decl. ¶ 3. Ms. Zenczak has two daughters for whom attending a Kyrene school (or the corresponding high school district, Tempe Union) is a realistic possibility, thus raising the prospect they may have to play against or with Plaintiff Jane Doe. Zenczak Decl. ¶ 3. Therefore, their interest in maintaining athletic competition only between biological females would be directly impaired if relief is granted in this case.

Furthermore, if relief is granted in this case, the inevitable decision on appeal will establish precedent in this Circuit that will impair the interests of *all* the Parent Representatives. For this reason, the Ninth Circuit has held that a case's prospective *stare decisis* effect was sufficient to establish that the intervenors' interests would be impaired. "Such determinations [of the district court] when upheld by an appellate ruling will have a persuasive *stare decisis* effect in any parallel or subsequent litigation.

We have said that such a *stare decisis* effect is an important consideration in determining the extent to which an applicant's interest may be impaired." *United States v. State of Oregon*, 839 F.2d 635, 638 (9th Cir. 1988) (reversing district court's denial of intervention); *see also U.S. ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1396 (9th Cir. 1992) (reversing district court's denial of intervention motion and noting that there was "not serious[] dispute" that the proposed intervenor's "interest may be impaired or impeded if intervention is not granted" because the proposed intervenor's "claims could be impaired if the doctrine of *stare decisis* were applied"); *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997) (reversing district court's denial of intervention and holding that "potential *stare decisis* effects can be a sufficient basis for finding an impairment of interest"); *Linton v. Commissioner of Health & Env't*, 973 F.2d 1311, 1319 (6th Cir.1992) (same).

Furthermore, "[i]f not made a party to this action, [the proposed intervenors] would have no legal means to challenge ... an injunction while it remains in effect, and their interests would be impaired as a consequence of the fact that parties to the litigation are bound by the Court's judgment." *Ctr. for Biological Diversity v. Kempthorne*, No. CV08-8117-PCT-NVW, 2009 WL 10673068, at *4 (D. Ariz. Jan. 16, 2009) (granting intervention).

D. The Parent Representatives' Interests Are Not Adequately Represented.

The Ninth Circuit "considers three factors in determining the adequacy of representation: (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1153 (9th Cir. 2010) (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir.2003)) (reversing district court's denial of intervention motion). Intervention as of right "requires only a 'minimal' showing that existing parties' representation 'may be' inadequate." *Smith v.*

Los Angeles Unified Sch. Dist., 830 F.3d 843, 864 (9th Cir. 2016) (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)).

The Parent Representatives easily satisfy this lenient standard.

1. Defendants Will Not Undoubtedly Make the Same Arguments as the Parent Representatives.

As this Court has acknowledged, Superintendent Horne is the only Defendant in this action who is "vigorously defending" the Save Women's Sports Act. (Doc. 79 at 7.) Superintendent Horne has the statutory duty to "[s]uperintend the schools of" Arizona and to "[e]xecute ... the policies that have been decided on by the state board" of education. A.R.S. § 15-251(1), (5). His statutory duties, and hence his interests in defending this suit, are far broader than those of the Parent Representatives, which focus solely on the interests of biological girls on sports teams.

When the defendant in an action is a public official or agency, intervention as of right by private parties is appropriate if the intervenor's interests are "potentially more narrow and parochial than the interests of the public at large" because in such cases "the representation of [the intervenor's] interests by the [public agency defendant] may have been inadequate." *Californians For Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998) (affirming grant of intervention). Thus, the Ninth Circuit has held that parents of students in a school district could intervene even though the school district was already a defendant in the case because "we cannot agree with the district court's conclusion that the school district, which is charged with the representation of all parents within the district ... adequately represents appellants." *Johnson v. San Francisco Unified Sch. Dist.*, 500 F.2d 349, 353–54 (9th Cir. 1974).

Superintendent Horne "represent[s] broader public and institutional interests, not shared by Intervenors, that will factor into how [he] respond to this action." *Greene v. Raffensperger*, No. 22-CV-1294-AT, 2022 WL 1045967, at *4 (N.D. Ga. Apr. 7, 2022) (quoting party's brief) (granting intervention). Superintendent Horne's interests are far broader because they cover all students, including the interests of biological males,

transgender students, and students who do not play sports, as well as institutional concerns and interests of schools and school districts. None of those interests overlap with those of the Parent Representatives, whose interests are "more narrow and parochial" and thus will not be adequately represented. *Mendonca*, 152 F.3d at 1190.

2. Superintendent Horne Is not Capable of Making the Parent Representatives' Arguments.

Even if Superintendent Horne's interests were precisely coterminous with the Parent Representatives (which they are not), the Parent Representatives' interests will not be adequately represented because Superintendent Horne is not capable of making the Parent Representatives' arguments because he lacks the resources to do so.

No party has disputed Superintendent Horne's statement that "the Arizona Attorney General has both refused to defend him, despite being her client, and has refused to pay for his independent counsel." (Doc. 40 at 3; *see also* Doc. 20 at 2 ("counsel for Superintendent Horne was only retained and only became aware of the Motion for Preliminary Injunction ... after the Attorney General informed Superintendent Horne her office would not represent him in the lawsuit").) Superintendent Horne's resources are so limited that he "need[ed] at least 90 days to fully develop more evidence in support of the scientific evidence" submitted by Plaintiffs. (*Id.*) Superintendent Horne's lack of resources has forced him to rely on the Legislators' resources to defend this case (*e.g.*, Doc 73 (Superintendent Horne's adoption by reference of Legislator's submitted expert declaration).) Indeed, this Court granted limited permissive intervention to the Legislators precisely *because* Superintendent Horne was forced "to rely on the expert declarations submitted by the Legislators in opposition to the motion for preliminary injunction." (Doc. 79 at 9.)

When defendants have "limited financial resources," this alone suffices to make the minimal required showing of inadequacy of representation. *Teague v. Bakker*, 931 F.2d 259, 262 (4th Cir. 1991) (reversing district court's denial of intervention). A party's lack of resources is enough, by itself, to show inadequacy of representation

because "[g]iven the financial constraints on the [parties'] ability to defend the present action, there is a significant chance that they might be less vigorous than the [proposed intervenors] in defending their claim." *Id.*; *see also Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 181 (2d Cir. 2001) ("an existing party's proven lack of financial resources to continue litigation may signify inadequate representation").

Thus, even when an intervenor's interests are precisely identical with those of an existing party, and which thus creates a presumption of adequacy of representation, "[t]he presumption may be overcome by evidence of ... lack of financial resources." *Miller v. Ghirardelli Chocolate Co.*, No. C 12-04936 LB, 2013 WL 6776191, at *8 (N.D. Cal. Dec. 20, 2013); *see also California v. EPA*, No. 18-CV-03237-HSG, 2018 WL 6069943, at *3 (N.D. Cal. Nov. 20, 2018) (same (quoting *Miller*)). That presumption is easily overcome here, and intervention should thus be granted.

3. The Parent Representatives Will Offer Necessary Elements Other Parties Would Neglect

The Parent Representatives will offer "necessary elements to the proceeding that other parties would neglect." *Aerojet Gen. Corp.*, 606 F.3d at 1153. In an analogous transgender sports case in the Southern District of West Virginia, the court allowed permissive intervention specifically because biological female athletes "add a perspective not represented by any of the current defendants." *B.P.J. v. W. Virginia State Bd. of Educ.*, No. 2:21-CV-00316, 2021 WL 5711547, at *3 (S.D.W. Va. Dec. 1, 2021). The same is true here. The Parent Representatives will bring to this case the vital perspective of biological females, who are the very class of persons whom the Save Women's Sports is designed to protect.

II. Permissive Intervention Is Warranted.

Even if the Court declines to grant the Parent Representatives' motion to intervene as of right, this is precisely the type of case where permissive intervention is warranted. Rule 24(b) allows courts to grant permissive intervention to anyone who "has a claim or defense that shares with the main action a common question of law or

fact." A court's discretion in granting permissive intervention may be guided by factors such as "the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case." *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). Courts "may also consider ... whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Id.*

There are six reasons this Court should grant permissive intervention, most of which are also discussed above in the context of intervention as of right.

First, the Parent Representatives' defenses to the Save Women's Sports Act share common questions of law and fact with the main action here, and the legal position that they seek to advance—that the Act does not violate the Equal Protection Clause, Title IX, the ADA, or the Rehabilitation Act, and is vital to the well-being of biological girls—is closely related to the merits of this case.

Second, the Parent Representatives have a significant interest in defending the Act.

Third, the Parent Representatives have standing to protect their unique interests.

Fourth, the Parent Representatives' interests are not adequately represented.

Fifth, the Parent Representatives' motion to intervene is timely and will not delay this litigation, which is only in its initial stages.

Sixth, the Parent Representatives will bring to this case the unique perspective of the biological girls who will be harmed by the enjoining of the Save Women's Sports Act. Their participation in this case will contribute significantly to the full development of the underlying factual and legal issues in the suit and to the just and equitable adjudication of the legal questions presented.

Conclusion

Accordingly, Parent Representatives' motion to intervene should be granted.

Respectfully submitted this 30th of June, 2023.

America First Legal Foundation

By: /s/ *James K. Rogers*

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Arizona using the CM/ECF filing system. Counsel for all Defendants who have appeared are registered CM/ECF users and will be served by the CM/ECF system pursuant to the notice of electronic filing.

/s/ *James K. Rogers*
Attorney for Proposed Defendant-Intervenors Anna Van Hoek, Lisa Fink, Amber Zenczak, and Arizona Women of Action

Exhibit 1

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION

Jane Doe, *et al.*,

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

[Proposed] Motion to Dismiss of Anna Van Hoek, Lisa Fink, Amber Zenczak, and Arizona Women of Action

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

US CONSTITUTIONAL PROVISIONS

FEDERAL STATUTES

FEDERAL RULES

FEDERAL REGULATIONS

STATE STATUTES

OTHER AUTHORITIES

Introduction

Neither the U.S. Constitution nor any statute confers on biological males the right to play on girls' sports teams. Arizona's Save Women's Sports Act, A.R.S. § 15-120.02, is constitutional, and it is lawful. The Complaint (Doc. 1) should be dismissed.

The Plaintiffs assert three claims for relief, all of which fail as a matter of law. Count I alleges a violation of the Equal Protection Clause of the Fourteenth Amendment, but under well-established precedent, States may restrict membership in athletic teams based on biological sex. Count II alleges a violation of Title IX, but Title IX and its implementing regulations expressly permit facilities and sports teams to be separated based on sex. Count III alleges a violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, but both statutes specifically except trans persons from their ambit.

Accordingly, Proposed Intervenors Anna Van Hoek, Amber Zenczak, Lisa Fink, and USA Women of Action (d/b/a "Arizona Women of Action") (collectively, the "Parent Representatives") move that the Plaintiffs' Complaint be dismissed under Federal Rule of Civil Procedure 12(b)(6).

Legal Standard

A complaint should be dismissed under Rule 12(b)(6) if it fails "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988) (internal citation omitted). "Conclusory allegations of law . . . are insufficient to defeat a motion to dismiss." *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). "On a motion to dismiss, the court accepts the facts alleged in the complaint as true." *Balistreri*, 901 F.2d at 699.

Argument

I. The Save Women's Sports Act Complies with the Equal Protection Clause.

The Equal Protection Clause of the Fourteenth Amendment states that "[n]o State shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. The Save Women's Sports Act does not violate the Equal Protection Clause. Rather, the Act upholds the principles of the Fourteenth Amendment by ensuring that all students in Arizona are treated equally based on their biological sex. The Plaintiffs' Equal Protection Clause claim should be dismissed.

A. The Save Women's Sports Act Is Subject to Rational Basis Review

Plaintiffs argue that the Save Women's Sports Act "is subject to heightened scrutiny because it discriminates against transgender individuals." (Doc. 65 at 4.) However, while the Supreme Court has held that "[s]tatutory classifications that distinguish between males and females are subject to heightened scrutiny," it has never held that this standard also applies to transgender individuals. *Nevada Dep't of Hum. Res. v. Hibbs*, 538 U.S. 721, 722 (2003).

Heightened scrutiny does not apply simply because individuals affected by a law are disproportionately (or even uniformly) members of a suspect class. *Vacco v. Quill*, 521 U.S. 793, 800 (1997). Furthermore, individuals who identify as transgender do not constitute a suspect class that receives heightened scrutiny. Aside from the obvious—race, sex, national origin, religion, etc.—the Supreme Court rarely designates suspect or quasi-suspect classes. *See, e.g.*, *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 442-46 (1985). Indeed, the Court has rejected suspect classification for disability, age, and poverty. *Id.*; *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976); *San Antonio Ind. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). The fact that so few classifications rise to the level of "suspect" itself casts "grave doubt" on the assertion that transgender identity does. *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 803 n.5 (11th Cir. 2022) (en banc).

Precedent explains why. Classifications are suspect when they single out "distinguishing characteristics" that have been historically divorced from "the interests the State has the authority to implement." *Cleburne*, 473 U.S. at 441 (noting that classifications attain suspect status when they have historically "provided no sensible ground for differential treatment"). Sex classifications, for example, are suspect because they often "reflect outmoded notions of the relative capabilities of men and women," rather than real differences. *Id.* at 441. Same for racial classifications. *Murgia*, 427 U.S. at 313-14. Thus, to rise to the level of suspect, a classification must single out a so-called "immutable characteristic" that has historically been the basis for deep discrimination. *See Lyng v. Castillo*, 477 U.S. 635, 638 (1986) (looking for (1) immutable characteristics that define (2) a discrete group, (3) historical discrimination, and (4) political powerlessness).

Transgender identity does not check these boxes. For one, it is not "an immutable characteristic determined solely by the accident of birth." *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). To the contrary, according to the Plaintiffs, individuals identify as transgender when their internal perception of who they are departs from the immutable characteristic that is their biological sex at birth. (Doc. 1 ¶¶ 31-33.) That necessarily takes place sometime *after* birth. And the DSM-V, which the Plaintiffs have incorporated by reference into their complaint (Doc. 1 ¶ 32 n.7), acknowledges that many individuals who identify as transgender are "gender fluid," or alternate between gender identifications. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* at 511 (DSM-5-TR) (2022). Fluidity is the exact opposite of immutability. That fluidity means that transgender identity cannot form a protected class.

Transgender identity falls short on the other suspect-classification factors too. Individuals identifying as transgender as a class look quite "unlike" those individuals who were long denied equal protection because of their race, national origin, or gender. *Murgia*, 427 U.S. at 313-14 (rejecting age as a suspect class because the elderly have

not faced discrimination "akin to [suspect] classifications"). States enshrined purposeful race and sex discrimination into their laws for decades; conversely, as the Supreme Court has explained, transgender individuals have been protected by a "major piece of federal civil rights legislation" for nearly a half-century. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1753 (2020).

Because the Save Women's Sports Act is thus subject to rational-basis review, it "is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993). Because the Plaintiffs have not met their "burden to negative every conceivable basis which might support it, their Equal Protection Claim must be dismissed.

B. The Save Women's Sports Act Also Survives Under Heightened Scrutiny Review.

Even if the Save Women's Sports Act is subject to heightened scrutiny, there is still no equal protection problem. The Equal Protection Clause commands that "all persons *similarly situated* . . . be treated alike." *Cleburne*, 473 U.S. at 439 (emphasis added). Thus, "[t]he equal protection clause ... is implicated only when a classification treats persons similarly situated in different ways." *Clark, By & Through Clark v. AIA* ("*Clark I*"), 695 F.2d 1126, 1128-29 (9th Cir. 1982). Biological males and females are not similarly situated. Thus, State legislatures do not have to ignore those biological realities, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2245-46 (2022), nor does the Constitution require them to. To the contrary, "fail[ing] to acknowledge ... basic biological differences ... risks making the guarantee of equal protection superficial, and so disserving it." *Nguyen v. INS*, 533 U.S. 53, 73 (2001); *Ballard v. United States*, 329 U.S. 187, 193 (1946).

Biological differences are "the driving force behind the Supreme Court's sex-discrimination jurisprudence." *Adams*, 57 F.4th at 803 n.6. Indeed, "the biological differences between males and females are the reasons intermediate scrutiny," not

strict, "applies in sex-discrimination cases in the first place." *Id.* at 809. Thus, "due to average physiological differences [between the sexes].... there is no question that the Supreme Court allows for these average real differences between the sexes to be recognized or that they allow gender to be used as a proxy." *Clark I*, 695 F.2d at 1131. In adopting the Save Women's Sports Act, the Arizona Legislature was "simply recognizing the physiological fact that males would have an undue advantage competing against women for positions on" sports teams. *Id.*

Biological "males would displace females to a substantial extent if they were allowed to compete for positions on [a sports] team," and "athletic opportunities for women would be diminished." *Id.*; *see also Adams*, 57 F.4th at 819 (Lagoa, J., concurring) ("[A] commingling of the biological sexes in the female athletics arena would significantly undermine the benefits afforded to female student-athletes under Title IX[]."). Thus, "[t]here is no question that" "redressing past discrimination against women in athletics and promoting equality of athletic opportunity between the sexes ... is a legitimate and important governmental interest." *Clark I*, 695 F.2d at 1131.

The Arizona Legislature's intent in adopting the Save Women's Sports Act was to "further[] efforts to promote sex equality by providing opportunities for [biological] female athletes to demonstrate their skill, strength and athletic abilities while also providing them with opportunities to obtain recognition, accolades, college scholarships and the numerous other long-term benefits that flow from success in athletic endeavor." S.B. 1165, § 2(14) (2022). This purpose is laudable, and lawful. It easily passes heightened scrutiny review.

Intermediate scrutiny prevents States from legislating based on "overbroad generalizations about the different talents, capacities, or preferences or males or females"—generalizations with no basis in biology. *United States v. Virginia*, 518 U.S. 515, 533 (1996). For instance, States cannot presume that women do not like competition, that they have less skill in managing or distributing property, or that they mature faster. *See, e.g.*, *id.* at 541; *Kirchberg v. Feenstra*, 450 U.S. 455, 459-60 (1981);

Reed v. Reed, 404 U.S. 71, 74 (1971); *Craig v. Boren*, 429 U.S. 190, 192 (1976); *Stanton v. Stanton*, 421 U.S. 7, 14 (1975). *Adams*, 57 F.4th at 812-15.

But applying intermediate scrutiny, rather than strict, ensures that distinctions based on "enduring" and "[i]nherent differences" between the sexes survive. *Virginia*, 518 U.S. at 533 (internal quotation marks omitted). Indeed, such distinctions are, by their nature, substantially related to the relevant governmental interest and have thus been upheld time and time again. Thus, a statutory-rape statute that only prohibited sex with a minor female was constitutional because "young men and young women are not similarly situated with respect to the problems and the risks of sexual intercourse. Only women may become pregnant." *Michael M. v. Superior Court*. 450 U.S. 464, 466, 471 (1981). *accord Nguyen*, 533 U.S. at 58.

In short, biology matters, and legislatures are not required to ignore differences rooted in biology. Rather, when preventing harms unique to one sex, legislatures can and should take sex differences into account.

Thus, in *B.P.J. v. West Virginia Board of Education*, a district court upheld West Virginia's law prohibiting biological males from playing girls' sports, even if they identify as transgender. --- F.Supp. 3d ----, 2023 WL 111875 at *7 (S.D.W. Va. Jan. 5, 2023). This was because "[w]hether a person has male or female sex chromosomes," not what gender he or she identifies as, "determines many of the physical characteristics relevant to athletic performance." *Id.* And "males [generally] outperform females because of inherent physical differences between the sexes." *Id.* To further its "interest in providing equal athletic opportunities for females," the State could "legislate sports rules" based on biological sex. *Id.* at *7-8. So too can Arizona.

Because the Save Women's Sports Act passes rational basis and heightened scrutiny review under the Equal Protection Clause, Count I of the Plaintiffs' Complaint should be dismissed.

II. Title IX Permits Separating School Sports Teams By Biological Sex

The Plaintiffs' Title IX claim must be dismissed because Title IX specifically authorizes separating students based on biological sex. Because Title IX specifically contemplates sex-based treatment, it is not a violation of Title IX for schools to act accordingly. In other words, if Title IX allows schools to separate sports, living facilities, and bathrooms based on biological sex, then it could not simultaneously make it unlawful to exclude opposite-sex individuals, no matter how they identify.

As an initial matter, and dispositive here, the Ninth Circuit has held that "Title IX authorizes sex-segregated facilities." *Parents for Priv. v. Barr*, 949 F.3d 1210, 1227 (9th Cir. 2020). Indeed, Congress was crystal clear in its intent that Title IX not be used to force schools to mix students of different sexes: "[n]otwithstanding anything to the contrary contained in [Title IX], nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes." 20 U.S.C. § 1686 (West)

The federal government's Title IX regulations make this even clearer: schools "may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex." 34 C.F.R. § 106.33. And with specific regard to sports teams, schools "may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." 34 C.F.R. § 106.41.

Shortly after enacting Title IX, Congress passed the Javits Amendment, instructing the Secretary of Health, Education, and Welfare to publish regulations implementing the provisions of Title IX, "which shall include with respect to intercollegiate activities reasonable provisions considering the nature of the particular sports." Public Law 93–380 (HR 69), § 844, 88 Stat 484, 612 (Aug. 21, 1974). Congress reserved the right to review the regulations following publication to determine whether they were "inconsistent with the Act from which they derive their

authority." *Id.* (cleaned up). The Secretary of Health, Education, and Welfare subsequently published the Title IX regulations, including regulatory text identical to the current text of the Department's athletics regulations. *Compare Nondiscrimination on the Basis of Sex Under Federally Assisted Education Programs and Activities*, 40 Fed. Reg. 24,128, 21,142–43 (June 4, 1975) with 34 C.F.R. § 106.41. After Congressional review, including over six days of hearings, Congress allowed the regulations to go into effect. *See McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 287 (2d Cir. 2004) (laying out the history of the Javits Amendment and the response from Congress to the regulations promulgated thereunder).

Congress thus confirmed that the Title IX regulations were "consistent with the law and with the intent of the Congress in enacting the law." *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 532 (1982) (citation omitted). Those regulations have stood for nearly 50 years without substantive change. Indeed, "[w]here an agency's statutory construction has been fully brought to the attention of the public and the Congress, and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned." *Id.* at 535 (cleaned up).

The meaning of "sex" under Title IX and its regulations is not left up to the Plaintiffs. Instead, what matters is the word's "ordinary public meaning" at the time of Title IX's enactment. *Bostock*, 140 S. Ct. at 1738. And no one can dispute that Title IX's reference to sex means biological sex, just as *Bostock* did not deny—indeed, based its decision on—the premise that Title VII's reference to sex means biological sex. *See B.P.J.*, 2023 WL 111875, at *9 ("There is no serious debate that Title IX's endorsement of sex separation . . . refers to biological sex.").

Consequently, current Title IX regulations validly and authoritatively clarify Congress's view of a recipient's non-discrimination duties under Title IX in the case of sex-specific athletic teams, prohibiting discriminating based on sex with respect to

providing athletic programs or activities, permitting sex-segregated teams for competitive activities or contact sports, and obligating provision of equal athletic opportunity for members of both biological sexes, male and female. 34 C.F.R. § 106.41. Statutory text and regulatory history make it clear that if a school chooses to provide "separate teams for members of each sex" under 34 C.F.R. § 106.41(b), then it must separate those teams solely based on biological sex and not based on gender identity.

At the time of Title IX's adoption, "sex" meant biological sex. *See Adams*, 57 F.4th at 811–12; *see* 20 U.S.C. § 1681(a)(2) (referring to "both sexes"); *id.* § 1681(a)(6)(B) (referring to "men's" and "women's" associations as well as organizations for "boys" and "girls" in the context of organizations "the membership of which has traditionally been limited to persons of one sex"); *id.* § 1681(a)(8) (referring to "students of one sex" and "students of the other sex"); *see also Bostock*, 140 S. Ct. at 1738–39 ("we proceed on the assumption that 'sex' [in Title VII] signified ... biological distinctions between male and female").

The Supreme Court emphasized in *Bostock* that "the same judicial humility that requires [courts] to refrain from adding to statutes requires [courts] to refrain from diminishing them." 140 S. Ct. at 1753. Title IX and federal regulation explicitly approve of sex-segregated school facilities and sports teams. *Bostock* requires that these statutes and regulations not be "diminish[ed]." Plaintiffs ask the Court to diminish Title IX when even the *Bostock* court itself explained that doing so would be improper. Here, Congress and the Department of Education have expressly addressed Plaintiffs' situation in the plain terms of the statute and regulation. And that "should be the end of the analysis." *Id.* at 1743 (citation omitted).

Sex is real. It "is not a stereotype." *Adams*, 57 F.4th at 813. *Bostock* itself "proceed[ed] on the assumption" that the term "sex," as used in Title VII, "refer[ed] only to biological distinctions between male and female." 140 S. Ct. at 1739. Not only did *Bostock* proceed on that assumption, it *depends* on the understanding that gender identity is a "distinct concept[] from sex." *Id.* at 1746–47. *Bostock* provided the

hypothetical of "an employer who fires a transgender person" who is biologically male, explaining that "[i]f the employer retains an otherwise identical employee who" is biologically female, "the employer intentionally penalizes a [male] person . . . for traits or actions that it tolerates in a[female] employee" and thus engages in sex discrimination. *Id.* at 1741. This hypothetical in *Bostock* only makes sense if the meaning of "sex" under Title VII refers to biological sex and not gender identity.

As the Eleventh Circuit recently explained, if "sex" includes gender identity, then "the various carveouts" for sex-separated activities like living facilities and sports teams "would be rendered meaningless." *Adams*, 57 F.4th at 813. "[R]eading 'sex' to include 'gender identity'" "would result in situations where an entity would be prohibited from installing or enforcing the otherwise permissible sex-based carve-outs when the carve-outs come into conflict with a transgender person's gender identity"—even though the text of the statute permits *sex*-based carveouts, not "gender identity"-based ones. *Id.* at 814. Living facilities, locker rooms, bathrooms, and sports teams could no longer be separated based on sex; instead, men could enter women's locker rooms, men could compete against women in sports, and men could take women's scholarships. *See Meriwether v. Hartop*, 992 F.3d 492, 510 n.4 (6th Cir. 2021) ("under Title IX, universities must consider sex in allocating athletic scholarships, 34 C.F.R. § 106.37(c)").

Among other things, Congress enacted Title IX to provide and protect athletic opportunities for women and girls by allowing sex-segregated athletics. *See* 34 C.F.R. § 106.41(b); *accord Virginia*, 518 U.S. at 551 n.19 (emphasizing "physiological differences between male and female individuals"); *B.P.J.*, 2023 WL 111875, at *9 ("[B]iological males are not similarly situated to biological females for purposes of athletics."). "It takes little imagination to realize that were play and competition not separated by sex, the great bulk of the females would quickly be eliminated from participation and denied any meaningful opportunity for athletic involvement." *Cape v. Tennessee Secondary Sch. Athletic Ass'n*, 563 F.2d 793, 795 (6th Cir. 1977).

The Supreme Court's precedents confirm the point and emphasize the relevance of sex to Title IX issues. As these precedents explain, sex is an immutable characteristic that implicates enduring, often relevant differences between males and females. *See Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality opinion) ("[S]ex, like race and national origin, is an immutable characteristic determined solely by the accident of birth."); *United States v. Virginia*, 518 U.S. 515, 533 (1996) (Ginsburg, J.) ("Physical differences between men and women, however, are enduring: The two sexes are not fungible; a community made up exclusively of one [sex] is different from a community composed of both." (cleaned up)); *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 73 (2001) ("The difference between men and women in relation to the birth process is a real one."). [1]

The Supreme Court has likewise recognized that governmental policies can and often should recognize the inherent differences between the sexes. "To fail to acknowledge even our most basic biological differences—such as the fact that a mother must be present at birth but the father need not be—risks making the guarantee of equal protection superficial, and so disserving it." *Id.*; *see also, e.g.*, *Virginia*, 518 U.S. at 550 n.19 (explaining that admitting women to VMI "would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements, and to adjust aspects of the physical training programs"); *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 468–69 (1985) (Marshall, J., concurring in the judgment in part and dissenting in part) ("A sign that says 'men only' looks very different on a bathroom door than a courthouse door.").

Where sex provides an appropriate basis for the government to make a distinction—like sports, facilities, and single-sex groups expressly protected by Title

[1]Additional evidence that the federal government historically considered the term "sex" and human biology inextricably linked may be found in the Department of Education's regulations expressly prohibiting discrimination related to pregnancy. 34 C.F.R. § 106.40(b)(1). Discrimination on the basis of pregnancy is necessarily unlawful discrimination on the basis of female physiology and therefore prohibited under Title IX. *See Conley v. Nw. Fla. State College*, 145 F. Supp. 3d 1073, 1077 (N.D. Fl. 2015). Biological males, regardless of their "gender identity" or surgical procedures, forever have one X and one Y chromosome and cannot ovulate or carry and bear children.

IX—a person is not excluded "because of" or "based on" gender identity. Instead, a person is excluded based on sex. Biological males excluded from a girls' sports team are excluded for one reason: because of their biological sex. Their gender identity matters no more than the color of their shoes.

Under both general equal protection and Title IX principles, a plaintiff alleging discrimination must show that he "was treated differently than a similarly situated" person. *Kuhn v. Washtenaw Cnty.*, 709 F.3d 612, 624 (6th Cir. 2013); *see Cleburne*, 473 U.S. at 439 ("The Equal Protection Clause" is "essentially a direction that all persons similarly situated should be treated alike."). Anti-discrimination laws "keep[] governmental decisionmakers from treating differently persons who are in all relevant respects alike." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992); *cf. Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) ("[W]hether two activities are comparable . . . must be judged against the asserted government interest that justifies the regulation at issue."). Thus, biological males are similarly situated to each other for purposes of these policies. Prohibiting a biological male from participating in girls' sports does not treat similarly situated people differently.

Nor does *Doe v. Snyder* compel a different result. 28 F.4th 103, 114 (9th Cir. 2022). In *Doe*, the Ninth Circuit stated that *Bostock*'s holding about Title VII applied to Title IX. *Doe*, however, is not controlling here for three reasons.

First, *Doe* was not about participation in sports, or even about schools at all. Rather, it was about "coverage for gender reassignment surgeries" under "the Arizona Health Care Cost Containment System (AHCCCS), Arizona's Medicaid program." *Id.* at 106. The only reason Title IX even came up in *Doe* was because the Affordable Care Act (ACA) incorporates Title IX's standards related to discrimination. *Id.* at 114 (quoting "Section 1557 of the ACA," which "provides that 'an individual shall not, on the ground prohibited under ... title IX of the Education Amendments of 1972 ... be excluded from ... any health program of activity"). Title IX and its implementing

regulations specifically allow for sex-segregated sports teams and facilities, while the ACA does not. *Doe* thus has no applicability here,

Second, *Doe* is not controlling precedent. Rather, *Doe* was an interlocutory appeal of a preliminary injunction, and it was decided by a motions panel. The Ninth Circuit was thus only making a preliminary analysis of the plaintiff's likelihood of success, not elucidating controlling precedent.

The Supreme Court has warned that courts should not "improperly equate[] 'likelihood of success' with 'success.'" *Univ. of Texas v. Camenisch*, 451 U.S. 390, 394 (1981). For this reason, in the Ninth Circuit, a motions panel's analysis of the likelihood of success is only a "predictive analysis" that "should not, and does not, forever decide the merits." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 661 (9th Cir. 2021). "Put differently, the motions panel is forecasting how the merits panel might rule, and its reasoning is 'an additional step removed from the underlying merits.'" *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1177 n.4 (9th Cir. 2021) (quoting *E. Bay*, 993 F.3d at 660-1). Thus, "to the extent that any language in [a] motions-panel's decision could be read as an assessment of the actual merits of the plaintiff's claim, as opposed to his likelihood of success on the merits, such language [is] dicta." *Fish v. Schwab*, 957 F.3d 1105, 1140 (10th Cir. 2020) (cleaned up) (quoting *Homans v. City of Albuquerque*, 366 F.3d 900, 904 n.5 (10th Cir. 2004); *see also United States v. Henderson*, 536 F.3d 776, 778 (7th Cir. 2008) ("Often a motions panel must decide an issue 'on a scanty record,' and its ruling is 'not entitled to the weight of a decision made after plenary submission.'" (quoting *Johnson v. Burken*, 930 F.2d 1202, 1205 (7th Cir.1991)). For this reason, Chief Judge Sutton of the Sixth Circuit recently warned that an appellate decision about a party's likelihood of success on the merits "should be taken with a grain of adjudicative salt. Imperatives of speed in decisionmaking ... do not always translate into accuracy in decisionmaking." *Arizona v. Biden*, 31 F.4th 469, 483 (6th Cir. 2022) (Sutton, C.J., concurring).

Third, even on its face, the *Doe* court's statements about Title IX were not necessary to resolve the case. Those statements were therefore dicta and would not have been controlling even if *Doe* had been a controlling final decision on the merits.

Title IX does not prohibit excluding biological males from girls' sports teams. Rather, it specifically authorizes this practice. The Plaintiffs' Title IX claim must therefore be dismissed.

III. Congress Specifically Excluded Gender Dysphoria from the Protections of the ADA and the Rehabilitation Act

In their third claim, the Plaintiffs claim that gender dysphoria qualifies as a disability under the ADA and the Rehabilitation Act. (Doc. 1 ¶¶ 32-33, 37, 45-46, 52, 57, 59, 81-85.)

But the ADA and the Rehabilitation Act specifically exclude (the "Trans Exclusion") from their definitions of "disability" "transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders." 42 U.S.C. § 12211(b)(1); 29 U.S.C. § 705(20)(F)(i).

The Trans Exclusion originated in a floor amendment proposed by Senators William Armstrong and Orrin Hatch and adopted by consent. 135 Cong. Rec. S10765-01, S10785 (Sep. 7, 1989). When he presented the floor amendment, Senator Armstrong explained it was "a product of a [bipartisan] compromise which we have been working on through the evening." 135 Cong. Rec. at S10785. Senator Armstrong further explained that the Trans Exclusion was meant to be interpreted broadly: "no one should assume that because we have failed to mention something that it is necessarily covered by this admittedly broad bill." *Id.* The original amendment contained a limitation that stated that the exclusions were "as defined by DSM-III-R which are not the result of medical treatment." *Id.*; 135 Cong. Rec. S10954-01, S10961 (Sep. 12, 1989) (ADA as passed by Senate, including "as defined by DSM-III-R").

The House version of the bill did not include the reference to the DSM-III, and the final version adopted by Congress also omitted it. *E.g.,* H.R. Rep. 101-558 ¶ 79 (1990) (Conf. Rep.) (conference report removing DSM-III language); H.R. Rep. 101-596 at 88 (1990) (Conf. Rep.); 136 Cong. Rec. H4582-02, H4605-6 (Jul. 12, 1990); 136 Cong. Rec. H4169-04, H4192 (June 26, 1990).

The Plaintiffs' Complaint and other briefing in this case focus on the definitions of gender identity disorders contained in the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM" or "DSM-5-TR"). (*E.g.,* Doc. 1 ¶ 32; Doc. 64 at 10.) But such discussion of the DSM obfuscates more than it illuminates and is, in the end, irrelevant, as Congress specifically chose *not* to incorporate the DSM's criteria in the Trans Exclusion. Rather, Congress adopted an intentionally broad definition that includes the Plaintiffs' condition.

Statutory interpretation begins with the text, *Ross v. Blake*, 578 U.S. 632, 638 (2016), and plain text should be enforced "according to its terms." *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010); *see also Bostock*, 140 S. Ct. at 1738. Because the DSM does not form a basis for construing the meaning of the Trans Exclusion, this Court must look to the actual meaning of the words Congress wrote in the Trans Exclusion and not to the DSM.

Much ink has been spilled in recent years analyzing whether a diagnosis of gender dysphoria under the DSM-V-TR fits within the meaning of "gender identity disorders" as stated in the Trans Exclusion. Such analysis is unnecessary, however, because the Trans Exclusion also lists "transsexualism," and that term, as it was understood at the time, is synonymous with "gender dysphoria."

The terms "transsexualism" and "gender identity disorder" are two different terms that were commonly in use in 1990 that both refer to the same thing: gender dysphoria. In "1980 ... the APA, in DSM–III, recognized two main psychiatric diagnoses related to [gender gysphoria], 'Gender Identity Disorder of Childhood' and

'Transsexualism' in adolescents and adults. *Bostock*, 140 S. Ct. 1731, 1773 (2020) (Alito, J., dissenting); *see also Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 661 (9th Cir. 1977) (using "transsexual" to refer to a biological male who was "receiv[ing] female hormone treatments" and had not yet had "anatomical sex change surgery").

This same usage persisted for decades. In 2000, the Ninth Circuit used the term "transsexualism" as a synonym for "gender dysphoria" in no less than three opinions: "gender dysphoria [is] the technical diagnosis for transsexuality," *Schwenk v. Hartford*, 204 F.3d 1187, 1193 (9th Cir. 2000); "gender dysphoria" is "more commonly known as transsexualism," *South v. Gomez*, 211 F.3d 1275 (9th Cir. 2000); and, in referring to a plaintiff who was "a biologically male employee who suffered from gender dysphoria (transsexualism)," *Schumacher v. Gen. Sec. Servs. Corp.*, 230 F.3d 1367 (9th Cir. 2000); *see also Meriwether v. Faulkner*, 821 F.2d 408, 410 (7th Cir. 1987) (referring to the plaintiff as "a pre-operative transsexual suffering from gender dysphoria, a medically recognized psychological disorder," explaining that the plaintiff "has been chemically (although not surgically) castrated as a result of approximately nine years of estrogen therapy"); *Maggert v. Hanks*, 131 F.3d 670, 670 (7th Cir. 1997) (rejecting prisoner's claim that "prison's failure to give him estrogen therapy for a psychiatric condition known technically as gender dysphoria and more popularly as transsexualism is a form of cruel and unusual punishment")

Indeed, that same usage continues to the present. As recently as January of this year, the Ninth Circuit used the terms as synonyms, explaining that a plaintiff "was diagnosed with 'severe and persistent gender dysphoria/transsexualism' in 2012." *Hundley v. Aranas*, No. 21-15757, 2023 WL 166421, at *1 (9th Cir. Jan. 12, 2023).

Furthermore, the Ninth Circuit has already held that the DSM-V's diagnosis of "gender dysphoria" is equivalent to and "replaces the now-obsolete "gender identity disorder" used in the previous edition." *Edmo v. Corizon, Inc.*, 949 F.3d 489, 491 n.2 (9th Cir. 2020).

Circuit precedent binding on this Court has thus already established two times over that the Trans Exclusion applies: first, by making clear that "gender dysphoria" and "transsexualism" are synonyms, and second, by holding that a diagnosis of "gender dysphoria" is equivalent to "gender identity disorder." The Trans Exclusion therefore applies, and the Plaintiffs' third claim for relief must therefore be dismissed.

Conclusion

Accordingly, for the foregoing reasons, the Parent Representatives' motion to dismiss should be granted.

Respectfully submitted this 30th of June, 2023.

America First Legal Foundation

By: /s/ *James K. Rogers*

James K. Rogers (No. 027287)
611 Pennsylvania Ave., SE #231
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Attorney for Proposed Defendant-Intervenors Anna Van Hoek, Lisa Fink, Amber Zenczak, and Arizona Women of Action

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Arizona using the CM/ECF filing system. Counsel for all Defendants who have appeared are registered CM/ECF users and will be served by the CM/ECF system pursuant to the notice of electronic filing.

/s/ *James K. Rogers*
Attorney for Proposed Defendant-Intervenors Anna Van Hoek, Lisa Fink, Amber Zenczak, and Arizona Women of Action

Exhibit 2

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION

Jane Doe, *et al.*,

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

Declaration of Anna Van Hoek

I, Anna Van Hoek, declare as follows:

1. I am a resident of Gilbert, Arizona.

2. I have one daughter who is still a minor. She is 13 years old.

3. This school year, my daughter will attend high school in the Chandler Unified School District. Before that, she attended middle school in the Higley Unified School District. My daughter played softball in middle school on a team that participates in the Arizona Interscholastic Association (AIA). My daughter plans to continue playing softball in high school. Her high school also participates in the AIA. She has played on girls' sports teams since she was 9 years old and on school teams

since seventh grade.

4. Participating in girls' team sports has dramatically benefited my daughter's personal and social development. Her experience has built her self-confidence and allowed her to experience a type of camaraderie and friendship that could not be replicated anywhere else. If her team also included persons born as biological males, virtually all those benefits would evaporate. There are three reasons for this.

5. First, the presence of biological boys creates a significant obstacle to girls achieving their best performance. My daughter has experienced this firsthand in co-educational physical education classes. For example, the students in the class had to do PACER fitness testing. The biological girls were embarrassed to perform at their greatest capacity in front of the biological boys because the boys would make fun of them or make comments about their bodies.

6. I also have an 18-year-old daughter who started playing soccer in our local city league at age 3. The league had all-girls teams for players up to age 15. She played on these teams until she turned 16, when her only viable option became joining a co-ed team. On her girls' teams, she had been a star player who scored most of the goals as a center striker. On the co-ed team, she was rarely ever even able to touch the ball because the boys dominated the games. She became so discouraged that she ended up quitting soccer. Before she joined the co-ed team, we had realistic hopes that she would get a college soccer scholarship. Unfortunately, playing with the boys ruined her love for the game and ended her soccer career prematurely.

7. My younger daughter saw what happened to her older sister. Because of those negative experiences, coupled with her own negative experiences participating in athletics with biological boys in physical education class, my younger daughter would give up on softball if she were forced to play on a team with biological boys, or to compete against biological boys.

8. Second, biological boys have an innate athletic advantage that would give

them an unfair advantage in girls' sports. Because of my daughters' longstanding participation in athletics, we have been able to observe and compare the athletic performance of biological girls and boys, and our observation is that boys enjoy an athletic advantage over girls at all ages, including before puberty.

9. Third, the prospect of having biological males in female-only spaces, such as locker rooms, makes my daughter very uncomfortable. She would feel self-conscious and frustrated by having to change clothes or shower in the presence of a teammate having male genitalia in the locker room.

10. I strongly support the Save Women's Sports Act and have spoken out in favor of it since the legislature first started considering it. I know many parents in our community who feel the same way but are reluctant to come forward because they are scared of the potential backlash, both online and in the real world, from activists who oppose the law.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was issued on June 23, 2021, in Gilbert, Arizona.

A Van Hoek

Anna Van Hoek

Exhibit 3

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION

Jane Doe, *et al.*,

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

Declaration of Lisa Fink

I, Lisa Fink, declare as follows:

1. I am a resident of Glendale, Arizona. I have five daughters.

2. My seventeen-year-old daughter attends a publicly funded charter school in Phoenix, Arizona. She is a member of the school's varsity volleyball team. I am the coach of her team.

3. Her school is a member of the Canyon Athletic Association (CAA), which is an Arizona non-profit that organizes and facilitates interscholastic activities among its members. CAA member schools include charter schools, public schools, private schools, and home school organizations.

4. My daughter has played volleyball since she was 11 years old. Her volleyball team has thirteen regularly scheduled games this upcoming school season.

5. Participating in girls' team sports has been a great benefit to my daughter's personal and social development. Her experience on the team has built her self-confidence and allowed her to experience a type of camaraderie and friendship that could not be replicated anywhere else. If her team also included persons who were born as biological males, virtually all of those benefits would evaporate. I have talked to her about this, and there are several reasons why the participation of biological males would be a major concern.

6. First, she would feel self-conscious, uncomfortable, and frustrated by having to change clothes or shower in the presence of a teammate having male genitalia in the locker room. My daughter has told me that her teammates have told her they feel the same way—they would be very uncomfortable having a person with male genitalia in the locker room.

7. Second, because she and I both believe that males—even pre-pubsecent males—have an inherent athletic advantage that would make competition unfair if biological males were allowed to participate, even if they had been taking puberty blockers or female hormones. Because my daughter has played volleyball since she was 11 years old, she has been able to closely observe both pre- and post-pubescent biological males playing the sport. I also played sports as a student and have coached my daughters' teams and have been able to observe and compare biological males and females in athletic situations. Our observations are that even pre-pubescent biological males have significant advantages over biological females in terms of height, speed, strength, and power. My daughter and I believe that a biological male on their team would have an unfair advantage to be able to get a starting position on the team and achieve other similar benefits and advantages. This would create an environment on the team of disunity and corrosive rivalry. Furthermore, if biological males were allowed to play on teams my daughter's team was competing against, we believe that those teams

would have an unfair advantage. It would create a strong sense that the competition was not on a level playing field. My daughter's volleyball team has already had to deal with this situation—in 2020, an opposing team had a player who very clearly appeared to be a biological male. The girls on the team came to me as their coach and told me that they were very upset about having to compete against a biological male because they felt that this made the game unfair.

8. Third, my daughter and I believe that biological females have a right to have their own spaces for socialization and collaboration. Adolescence for biological females is a period of significant physical and mental change. These changes can cause significant stress and anxiety for biological females. One of the most important ways that biological girls deal with that stress and anxiety is by supporting each other. A biological male who has been taking puberty blockers or hormones does not go through the exact same process of change and development as a biological female. A biological male on the team would not be able to relate in the same way with the biological females. The presence of a biological male will destroy the value of the team as a female-only space for girls to socialize and support each other. It will eliminate much of the benefit of having girls-only sports teams.

9. In my many years of experience as an athlete myself, as a volleyball coach, and as a parent of girls who play sports, my observations confirm that in athletics, even pre-pubescent boys have a significant competitive advantage over biological girls and that the presence of biological males will destroy most of the positive aspects of girls-only sports.

10. As a mother, I strongly support Arizona's Save Women's Sports Act, A.R.S. § 15-120.02. I believe that it is very important for maintaining the integrity and value of girls' sports in our state. I have talked to many parents of girls at the school, and they feel exactly the same way, but are reluctant to come forward because they are scared of the potential backlash, both online and in the real world, from activists who oppose the law.

11. *My support for the Save Women's Sports Act is longstanding.* I have advocated for it since the Arizona Legislature first started considering it as a bill. For example, I sought witnesses to testify in support of the bill. I also coordinated support for the bill by, among other things, encouraging members of the community to use the Arizona Legislature's Request to Speak system to submit comments in support of the bill and also to email and call legislators in support of the bill.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was issued on June 10, 2021, in Glendale, Arizona.

Lisa Fink

Exhibit 4

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION

Jane Doe, *et al.*,

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

Declaration of Amber Zenczak

I, Amber Zenczak, declare as follows:

1. I am a resident of Maricopa, Arizona.

2. I have three daughters, two of whom are still minors. I am the legal guardian of both of my minor daughters. They both attend the same publicly funded charter school.

3. Kyrene School District has an open enrollment policy that allows students from the City of Maricopa to enroll in the school district. Kyrene School District provides bus service for children who live in Maricopa and are enrolled in the following Kyrene schools: Akimel Middle School, Kyrene de los Lagos, Kyrene del Milenio, and

Kyrene de la Estrella. Attached as Exhibit A is a true and correct copy of the Kyrene School District's "Open Enrollment Bus Stop Information" webpage, which confirms that Kyrene School District provides bus service to the City of Maricopa. Kyrene maintains a bus stop in a subdivision that neighbors my own, and I consistently see children's bikes locked up there during the school day. Kyrene School District covers kindergarten through eighth grade and then feeds students into Tempe Union School District for high school. It is possible that my daughters could go to Kyrene School District or Tempe Union School District for better sports opportunities and improved prospects for college sports scholarship opportunities.

4. My middle daughter is 14 years old and will enter ninth grade this school year. She has played on girls' sports teams in school since she was 11 years old. She plays on her school's teams for soccer and basketball and is also considering adding tennis and track this year.

5. My youngest daughter is 13 years old and will enter eighth grade this school year. She has played on girls' sports teams in school since she was nine years old, starting on intramural elementary school teams and then moving into interscholastic teams. She plays on her school's basketball, softball, and soccer teams and plans to do track and field in high school.

6. My girls are working hard academically and physically to improve their chances of receiving scholarships for an opportunity to attend college.

7. Their school is a member of the Canyon Athletic Association (CAA), an Arizona non-profit that organizes and facilitates interscholastic activities among its members. CAA member schools include charter, public, and private schools, and home school organizations.

8. Participating in girls' team sports has dramatically benefited my daughters' personal and social development. Their experiences have built their self-confidence and allowed them to experience a type of camaraderie and friendship that could not be replicated anywhere else. If their teams also included persons born as

biological males, virtually all those benefits would evaporate. There are three reasons for this.

9. First, biological males have innate physical advantages that start before puberty. We have experienced this firsthand. Last school year, my youngest daughter's girls' basketball team played a game against another school's girls' team that had one player who was transgender—in other words, this player was a biological male. This transgender player played in a style very different from the norm for girls' basketball. The player was more aggressive than the other players and unnecessarily touched the other players all over the court. This player even shoved my daughter with both hands on a pass-in. The referees did not make any calls on this obvious foul, and it was evident to me that the referees decided to ignore this foul because of fear of accusations of discrimination and to avoid retaliation from trans activists. The game was unfair because this player had an obvious inherent advantage—the player ran considerably faster, was noticeably taller, and had a thicker build. All these intrinsic advantages made it hard even for this player's own teammates to keep up. Because of this, the transgender player rarely passed the ball to teammates and scored every point for the team, with hardly any assists. The presence of this player caused noticeable distress and anguish to the biological girls on my daughter's team, and even to the other members of the player's own team. It also caused considerable distress and anguish to me and the other parents at the game.

10. This experience has permanently changed my daughter's outlook and approach to sports. She has a persistent fear that she will one day have to compete against biological males for the limited number of spots on her girls' sports team or for the limited number of college scholarship opportunities for female athletes. She now feels compelled to take every opportunity she can to play in co-ed leagues to improve her skills, and even to compete in other sports like track and field to improve her speed.

11. This experience has profoundly affected my older daughter as well. She has told me she would refuse to ever play against a team with a biological male on it

because of the much greater risk of suffering severe injury that may cause lifelong damage and chronic pain.

12. The threat of having to compete against boys is a very real one for my daughters. CAA recently confirmed that a biological male was cleared to play on a girls' team. However, CAA has attempted to keep that information secret. Thus, making this information more publicly known has been virtually impossible.

13. Because my daughters have competed in team sports from a young age, my daughters and I have had the opportunity to observe the difference in athletic performance between boys and girls. We have observed that even pre-pubescent males have physical advantages over girls in terms of athletic performance. Thus, even allowing pre-pubescent boys to compete on girls' teams would be unfair.

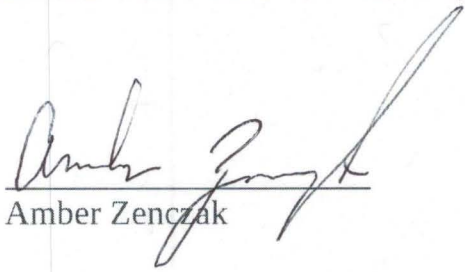
14. Second, allowing biological males to compete on female teams discriminates against biological females. My daughters and I believe that when biological males participate in girls-only sports teams, they have obvious natural advantages that degrade the integrity of the sport and make a fair and level playing field for the biological females impossible. We see this as a fight against discrimination, the same fight women have been fighting since before President Nixon signed Title IX into law in 1972. Allowing biological males who identify as female to compete in girls' and women's sports will reverse more than 50 years' worth of progress. I have extreme compassion for the struggles of trans students. I encourage them to find other opportunities to pursue what they enjoy, without infringing the rights of others.

15. Third, the prospect of having biological males in female-only spaces, such as locker rooms, makes my daughters very uncomfortable. They would feel self-conscious and frustrated by having to change clothes or shower in the presence of a teammate having male genitalia in the locker room.

16. I have been an outspoken public proponent of the Save Women's Sports Act since its inception. For example, I gave a speech to an Arizona Senate committee in favor of the Act. I have talked to many parents of other girls. They feel the same way

but are reluctant to come forward because they are scared of the potential backlash, both online and in the real world, from activists who oppose the law.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was issued on June 23, 2021, in Maricopa, Arizona.



Amber Zenczak

Exhibit A

Open Enrollment Bus Stop Information

Welcome to the Bus Stop Information page for parents with Open Enrollment students, who attend school in the Kyrene School District and live in Maricopa and South Phoenix. Here, you have the ability to look up your student's bus route information. Please follow the instructions below and use the designated link for access to our e-link portal.

For students already placed:

Login with the link below with the following info:
User Name: Your Student's School ID Number
Password: Your Student's Date of Birth (Month 00, Day 00, Year 0000; ex: 01291999)
NOTE: This bus information is for students who have already been placed on a bus by the transportation department. Information for students on the waiting list will be unavailable.

BUS STOP INFORMATION

Please view the brief User Guide on how to use the parent e-link portal.
Disclaimer: Bus route information is subject to change based on the needs of the route. Please be sure to review your student's bus route information a of couple days before August 3rd.

Open Enrollment Transportation Requests:

How It Works

- **NOTE: Students are assigned to a bus based on availability of space *and* on a first come, first served basis. Once a bus is at capacity, the remaining requests will be placed on a wait-list.**
- Open Enrollment transportation is only available to students who live in either Maricopa or South Phoenix, and are enrolled at one of the schools below:
  - Maricopa:
    - **Middle School:** Akimel
    - **Elementary Schools:** Lagos, Milenio & Estrella
  - South Phoenix:
    - **Middle Schools:** CMS & KMS
    - **Elementary Schools:** Lomas, Ninos, Norte & Manitas
- The parent / guardian will be notified once the student is assigned to the requested bus.

Use the link below to request Open Enrollment Transportation for the 2023/24 school year

Open Enrollment Transportation Request Form

NOW AVAILABLE! Get the Versatrans My Stop App. Learn More

Last Modified on May 23, 2023

Exhibit 5

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION

Jane Doe, *et al.*, 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 **Declaration of Kimberly J. Miller**

I, Kimberly J. Miller, declare as follows:

1. I am the President and Chairwoman of USA Women of Action, an Arizona nonprofit corporation that operates under the trade name of "Arizona Women of Action" ("AZWOA"),

2. AZWOA started in October 2020 as a text chain of 8 action-oriented women with a shared love of America and a passion for reviving communities and protecting families. It formally organized a political action committee on March 24, 2021 and then formally incorporated as a domestic nonprofit corporation on November 8, 2021. AZWOA qualifies as tax-exempt under Section 501(c)(4) of the Internal Revenue Code.

3. Attached as **Exhibit A** is a true and correct copy of AZWOA's November 8, 2021 Certificate of Disclosure and Articles of Incorporation filed with the Arizona Corporation Commission under the name of USA Women of Action.

4. Attached as **Exhibit B** is a true and correct copy of the Arizona Secretary of State's online record of the October 12, 2022 registration of Arizona Women of Action as a trade name for USA Women of Action.

5. Since its humble beginnings in October 2020, AZWOA has grown into one of the largest and most effective grassroots organizations in the State of Arizona. AZWOA maintains an active email list with over 2,700 subscribers. Our subscribers are particularly engaged and interested. Recipients of our emails open them 58% of the time, which is almost three times higher than the average 21% open rate for email newsletters.[1] AZWOA also has about 13,700 followers across its social media platforms on Twitter, Instagram, Facebook, and Telegram. Since launching the AZWOA PAC in March 2021, the PAC and the 501(c)(4) have collectively received donations from 645 individuals and entities.

6. Because of the contentious and polarized nature of modern public discourse, many of our donors, subscribers, and followers feel unable to express their views in private discussions, let alone in public debates, because of the risk of online and real-world backlash, including the threat of violence. Therefore, many of our donors, subscribers, and followers view AZWOA as the public voice for their concerns.

7. As an organization that speaks for Arizona women and mothers, AZWOA has a particular focus on improving education and on helping children, and one of its three main purposes is to revive the American dream of thriving kids. AZWOA explains in our promotional materials that our purpose is "reviving the American dream of strong families, safe cities, and thriving kids." Our Mission is "Positive, Effective Action - On Your Schedule." The end goal of AZWOA is to inspire, inform, engage &

[1] MAILCHIMP, *Email Marketing Statistics and Benchmarks by Industry*, (accessed on June 9, 2023), https://tinyurl.com/2tuwyayr.

connect people—men as well as women (we are BY women, FOR Arizona)—to revive freedom and the American dream.

8. AZWOA has been an important and prominent voice in challenging policies it views as harmful to biological girls. For example, on March 21, 2023, I wrote an editorial published on our website criticizing that in Arizona, "girls in schools are stripped of their privacy, dignity and safety in the name of progressive 'inclusion'. A Tucson school board 'wouldn't reconsider their unwritten policy on boys who claim to be transgender — a policy which also doesn't require parents to be notified when males use their daughters' locker rooms and restrooms, and directs girls to use another facility if they're upset that males use female-designated private spaces.'"[2] Additionally, in a recent weekly call to action, we urged our subscribers to contact Mesa Public Schools to voice their concerns that "district leadership [had] quietly developed a Transgender Support Plan for children. This includes choosing which facilities the child wants to use, along with a new name & new pronouns. This plan involves no parental consent or parental notification."[3]

9. AZWOA conducted a survey of its email subscribers from June 1 through June 8 to assess respondents' opinions about Arizona's Save Women's Sports Act, A.R.S. § 15-120.02, and about the participation of biological males in girls' sports. Out of the 272 persons who completed the survey, 91% had children, and 30% had at least some children still under the age of 18. Sixty-five percent of respondents reported having a child who had played or does play sports through school, and 51% reported a daughter who played sports through school. Twelve individuals, or 4% of respondents, reported that their daughters had ever played on a sports team with a biological male, and nine respondents, or 3% of respondents, reported having a daughter forced to compete against a team with a member who was a biological male. When asked, "Have

[2] Kim Miller, *Who Truly Celebrates Women*, AZWOA, (Mar. 21, 2023), https://www.azwomenofaction.com/blog/who-truly-celebrates-women.

[3] AZWOA, *Weekly Call to Action*, (accessed on June 9, 2023), https://www.azwomenofaction.com/weekly-call-to-action.

you considered or would you consider removing your daughter from an all-girls' sports team/league if a biological male participated?", 196 respondents, or 72%, answered "yes." In response to the statement, "Currently, Arizona law prohibits biological males from participating in school sports teams for girls. Do you support this law?", 271 respondents, or 99.6%, answered "yes," and one respondent answered "not sure."

10. The survey also allowed respondents to write additional comments and to express their "thoughts about biological males participating in girls' sports." The following are a representative selection of some of their responses:

- "This will be the downfall of womens sports. Not only is it insanely dangerous, it takes away the girls ability to compete at a collegiate level. We have fought so hard to get the girls to have these opportunities and allowing boys to compete will obliterate these efforts."
- "Girls sports should be for girls (XX) and boys(XY)sports should be for boys."
- "I believe males are created differently than women. Men do not need to compete against women period."
- "Biological males have an unfair advantage. Also, allowing biological males to compete as girls is discriminatory towards girls in terms of competition, scholarships, playing time, and enjoyment of sport."
- "Achieving excellence through competition is foundational to sports. The biological advantages boys have over girls erodes that foundation. Worse, allowing boys to participate in girls' sports reinforces the fallacy that there's nothing unique or special about either gender, and that both are interchangeable. Even worse, pitting boys against girls, even in the seemingly innocent context of sports, counteracts the natural instinct of men to protect and care for women."
- "It's dangerous for the girls and unfair. it should not be allowed. My daughter got a cross country scholarship to college. It wouldn't have happened if boys were also allowed in her sport."

- "Biological males should not be allowed to participate in biological female sports. We need to protect the ability for girls to compete in sports."
- "It is ridiculous. Women have had to work hard for decades to establish rights for girls sports to now having those rights erased. Girls will stop participating in sports entirely if this continues."
- "It's not safe or fair for the biological girls to compete against biological males in sports."
- "It is completely unfair for girl's/women's sports. Biological males are stronger, have more lung capacity, and therefore, more endurance. It would completely wipe out all girl's/women's opportunities to compete. This would set back women's equality several decades!"
- "Biological males should participate in boys sports only. Biological females should participate in girls sports only. Spaces should be kept private and separate."
- "Biological males do NOT and SHOULD NOT be allowed to compete on a women's sports team or league."
- "It's unfair and potentially dangerous. It's a huge liability for districts."
- "I do not believe that there should ever be a situation where a biological male completes in any type of women/girls sports. There are physical differences between men and woman that would create an unfair 'playing field'. I would never support a law promoting this and I will never support any league, professional or amateur, club team or school team that promotes this concept. It is just wrong."
- "I have a transgender young adult. He never had the gender change. He did take female hormones. He never desired to race against female athletes. He knew he physically was built bigger and stronger than a female of his ages growing up. He/She would have been thrilled that the races had a transgender categories."

- "Absolutely NO! Not fair or safe. I would not let my daughter play with a male on a girls only team."
- "I struggle with my daughter competing against biological males."
- "I was in high school when Title 9 was passed. This feels like a huge step backwards in what we gained."
- "It is egregious and will be the end of girls sports. Title 9 enabled me and my daughters to play sports in high school and college. Stop the insanity."
- "As a parent and also public high school teacher, I am against this."
- "Girls already drop out of sports in their early teens at a higher rate than boys. They are recruited to college earlier to keep them going in the sport. I think many girls will be demoralized and drop out instead of continuing if competing against boys. The sport has prepared my daughter for life and the work force so much, by supporting others on a team to performing under stress. One big step backward for women's rights!"
- "I have a 12 year old son who is already as strong if not stronger than me -- and I work out. It won't be much longer before he surpasses me significantly in strength and power. It is not fair competition when boys compete against girls. Period."
- "[T]here is no circumstance where male genitalia should ever be present in a locker room, bathroom/restroom, spa or massage area."
- "There are certain things that should only be for biological females OR biological males....like competitive sports teams and sororities/fraternitis. If you want to play a co-ed intramural sport in college, go for it."
- "Breaks my heart to think my daughter won't be given the same opportunities I was as a biological female to compete and learn from sports with males being allowed to compete."

11. As President of AZWOA, I interact frequently with our donors, subscribers, and social media followers online, and also at in-person events. Based on

my personal experience and observation, the preceding comments are a representative sample of the beliefs and concerns of those whom we represent.

12. AZWOA has always been a vocal supporter of the Save Women's Sports Act. We used our email newsletter and social media platforms to encourage our donors, subscribers, and followers to contact their legislators and ask them to adopt the bill. We also used email and social media to encourage our donors, subscribers, and followers to contact Governor Ducey and ask him to support the bill.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was issued on June 23, 2021, in Phoenix, Arizona.

Kimberly J. Miller

Exhibit A

Arizona Corporation Commission - RECEIVED: 11/8/2021
Arizona Corporation Commission - FILED: 11/8/2021
21110816532364

CERTIFICATE OF DISCLOSURE

ENTITY INFORMATION

ENTITY NAME: USA Women of Action
ENTITY ID: 23293980
ENTITY TYPE: Domestic Nonprofit Corporation
EFFECTIVE DATE/TIME: 11/08/2021

FELONY JUDGEMENT QUESTIONS

Has any person (a) who is currently an officer, director, trustee, or incorporator, or (b) who controls or holds over ten per cent of the issued and outstanding common shares or ten percent of any other proprietary, beneficial or membership interest in the corporation been:

Convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven-year period immediately preceding the signing of this certificate? NO

Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the seven-year period immediately preceding the signing of this certificate? NO

Subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven-year period immediately preceding the signing of this certificate, involving any of the following: NO

- The violation of fraud or registration provisions of the securities laws of that jurisdiction;
- The violation of the consumer fraud laws of that jurisdiction;
- The violation of the antitrust or restraint of trade laws of that jurisdiction?

BANKRUPTCY QUESTION

Has any person (a) who is currently an officer, director, trustee, incorporator, or (b) who controls or holds over twenty per cent of the issued and outstanding common shares or twenty per cent of any other proprietary, beneficial or membership interest in the corporation, served in any such capacity or held a twenty per cent interest in *any other corporation* (not the one filing this Certificate) on the bankruptcy or receivership *of the other corporation*? NO

SIGNATURE

By typing or entering my name and checking the box marked "I accept" below, I acknowledge under penalty of perjury that this document together with any attachments is submitted in compliance with Arizona law.

Incorporator: Kimberly J. Miller - 11/08/2021

Arizona Corporation Commission - RECEIVED: 11/8/2021
Arizona Corporation Commission - PENDING: 11/8/2021
21110816532364

ARTICLES OF INCORPORATION

OF

USA WOMEN OF ACTION

an Arizona Nonprofit Corporation

The undersigned, acting as incorporator of a nonprofit corporation pursuant to the laws of the State of Arizona, hereby adopts these Articles of Incorporation:

ARTICLE I

NAME

The name of the corporation is: USA Women of Action.

ARTICLE II

STATUTORY AGENT

The name and address of the corporation's statutory agent are: Statecraft PLLC, 649 North Fourth Avenue, First Floor, Phoenix, Arizona 85003.

ARTICLE III

PRINCIPAL PLACE OF BUSINESS

The address of the corporation's principal place of business is: 3104 East Camelback Road, Suite 1179, Phoenix, Arizona 85016.

ARTICLE IV

INCORPORATOR

The name and address of the incorporator are: Kimberly J. Miller, 3104 East Camelback Road, Suite 1179, Phoenix, Arizona 85016.

ARTICLE V

MEMBERS

The corporation will not have members. The entire voting power for all purposes shall rest in the Board of Directors. The corporation shall have no capital stock or stockholders.

ARTICLE VI

DURATION

The corporation shall have a perpetual existence.

ARTICLE VII

OBJECT, PURPOSES, AND INITIAL ACTIVITIES

The corporation is formed and shall be operated exclusively for the promotion of social welfare within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"). Its primary purpose as well as its initial activities shall be to promote social welfare by advocating the revival of American values in education, culture & the public square.

ARTICLE VIII

POWERS

In furtherance of the foregoing purposes and objectives (but not otherwise) and subject to the restrictions in Article IX and elsewhere in these Articles, the corporation shall have and may exercise all such powers as are lawful for nonprofit corporations organized under the laws of the State of Arizona, including any powers expressly or impliedly conferred upon nonprofit corporations pursuant to Section 10-3302 of the Arizona Revised Statutes.

ARTICLE IX

RESTRICTIONS UPON THE POWERS

Notwithstanding any other provision of these Articles of Incorporation:

A. No part of the net earnings of the corporation shall inure to the benefit of any director or officer of the corporation or any other private individual whatsoever (except that the corporation may pay reasonable compensation for services actually performed, and that reasonable payments may be paid for expenses incurred on behalf of the corporation, in the conduct of one or more of its purposes), and no director or officer of the corporation, or any other private individual whatsoever, shall be entitled to share in any distribution of any of the corporate assets on dissolution of the corporation or otherwise. Any and all property, both real and personal, that may be owned by the corporation at any time, is and shall always be exclusively and irrevocably dedicated to the social welfare purposes of the corporation.

B. No part of the assets of the corporation shall be contributed to any organizations whose net earnings or any part thereof inure to the benefit of any private individual.

C. The corporation shall not conduct or carry on any activities not permitted to be carried on or conducted by a corporation exempt from federal income taxation under Section 501(c)(4) of the Code (or the corresponding provision of any future United States Internal Revenue Code).

D. The corporation's primary activity and purpose shall not be participation or intervention in any political campaign on behalf of any candidate for public office.

ARTICLE X

BOARD OF DIRECTORS

A. The control and management of the affairs of the corporation and of the disposition of its funds and property shall be vested in the Board of Directors. The number of directors (which shall not be fewer than one), the term of office, manner of selection and election, and qualifications and rights shall be determined in accordance with the Bylaws of the corporation from time to time in force.

B. The initial directors of the corporation, until successors are elected and qualified, shall be:

Name	Address	Title(s)
Kimberly J. Miller	3104 East Camelback Road Suite 1179 Phoenix, Arizona 85016	Chairman of the Board of Directors
Blaise Hazelwood	3104 East Camelback Road Suite 1179 Phoenix, Arizona 85016	Director
Allison Barkley	3104 East Camelback Road Suite 1179 Phoenix, Arizona 85016	Director

ARTICLE XI

BYLAWS

The Board of Directors shall have the power to alter, amend or repeal the Bylaws to the extent provided therein. Such Bylaws may contain any provisions for the regulation or management of the affairs of the corporation that are not inconsistent with the law or these Articles of Incorporation as the same may, from time to time, be amended. However, no bylaw at any time in effect shall have the effect of giving any director or officer of this corporation any propriety interest in its property or assets, whether during the term of its existence or as an incident to its dissolution.

ARTICLE XII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

A. The corporation shall, subject to the provisions of the Bylaws of the corporation, indemnify any and all of its directors and officers to the fullest extent provided by the laws of the State of Arizona.

B. The personal liability of the directors to the corporation for monetary damages for any action taken or any failure to take any action as a director is eliminated to the fullest extent permitted by the laws of the State of Arizona, except that a director may be held liable for (1) an intentional infliction of harm on the corporation, (2) the amount of a financial benefit received by a director to which the director is not entitled, (3) a violation of Section 10-3833 of the Arizona Revised Statutes, or (4) an intentional violation of criminal law.

ARTICLE XIII

DISSOLUTION

Upon any liquidation, dissolution, or winding up of the corporation, after the liabilities of the corporation have been discharged or provided for, the corporation's remaining assets shall be distributed exclusively to or for the benefit of an organization or organizations that are then qualified as exempt from taxation under Section 501(c)(3) or 501(c)(4) of the Code or its successor provision, which are described in Section 170(c)(2) of the Code, and each of which has been in existence and so described for a continuous period of at least sixty (60) calendar months. The selection of such organization or organizations shall be made by the then acting Board of Directors. If such determination cannot be made for any reason by the Board of Directors, then such determination shall be instead made by the Superior Court for the County of Maricopa, State of Arizona.

[*The remainder of this page has intentionally been left blank.*]

Approval of Incorporator

IN WITNESS WHEREOF, the undersigned has subscribed her name to these Articles of Incorporation, as Incorporator, this 8th day of November, 2021.

Kimberly J. Miller
Incorporator

Approval of Statutory Agent

I, having been designated to act as statutory agent for USA Women of Action hereby consent to act in that capacity until removal or my resignation is submitted in accordance with applicable law, this 8th day of November, 2021.

STATECRAFT PLLC, Statutory Agent
By: Thomas Basile, authorized agent of Statecraft PLLC

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

CERTIFICATE OF DISCLOSURE

Read the Instructions C003i

1. **ENTITY NAME** – give the exact name of the corporation in Arizona:

   USA Women of Action

2. FELONY/JUDGMENT QUESTIONS:

Has any person (a) who is currently an officer, director, trustee, or incorporator, or (b) who controls or holds over ten percent of the issued and outstanding common shares or ten percent of any other proprietary, beneficial or membership interest in the corporation been:

2.1	Convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the five-year period immediately preceding the signing of this certificate?	☐ Yes	☒ No
2.2	Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the five-year period immediately preceding the signing of this certificate?	☐ Yes	☒ No
2.3	Subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the five-year period immediately preceding the signing of this certificate, involving any of the following: a. The violation of fraud or registration provisions of the securities laws of that jurisdiction; b. The violation of the consumer fraud laws of that jurisdiction; c. The violation of the antitrust or restraint of trade laws of that jurisdiction?	☐ Yes	☒ No
2.4	If any of the answers to numbers 2.1, 2.2, or 2.3 are **YES**, you **MUST** complete and attach a Certificate of Disclosure Felony/Judgment Attachment form C004.		

3. BANKRUPTCY QUESTION:

3.1	Has any person (a) who is currently an officer, director, trustee, incorporator, or (b) who controls or holds over twenty percent of the issued and outstanding common shares or twenty percent of any other proprietary, beneficial or membership interest in the corporation, served in any such capacity or held a twenty percent interest in **any other corporation** (not the one filing this Certificate) on the bankruptcy or receivership **of the other corporation** ?	☐ Yes	☒ No
3.2	If the answer to number 3.1 is **YES**, you **MUST** complete and attach a Certificate of Disclosure Bankruptcy Attachment form C005.		

21110816532364

IMPORTANT: If within 60 days of the delivery of this Certificate to the A.C.C. any person not included in this Certificate becomes an officer, director, trustee or person controlling or holding over ten percent of the issued and outstanding shares or ten percent of any other proprietary, beneficial or membership interest in the corporation, the corporation must submit a SUPPLEMENTAL Certificate providing information about that person, signed by all incorporators or by a duly elected and authorized officer.

SIGNATURE REQUIREMENTS:	
Initial Certificate of Disclosure:	This Certificate must be signed by all incorporators. If more space is needed, complete and attach an Incorporator Attachment form C084.
Foreign corporations:	This Certificate may be signed by a duly authorized officer or by the Chairman of the Board of Directors.
Credit Unions and Loan Companies:	This Certificate must be signed by any 2 officers or directors.

USA Women of Action
Name

3104 East Camelback Road
Address 1

Suite 1179
Address 2

Phoenix | AZ | 85016
City | State | Zip

UNITED STATES
Country

SIGNATURE – *see Instructions C003i:*

By typing or entering my name and checking the box marked "I accept" below, I acknowledge *under penalty of law* that this document together with any attachments is submitted in compliance with Arizona law.

☒ I ACCEPT

K J Miller
Signature

Kimberly J. Miller | 11/08/2021
Printed Name | Date

REQUIRED – check only one:

- ☒ **Incorporator -** I am an incorporator of the corporation submitting this Certificate.
- ☐ **Officer -** I am an officer of the corporation submitting this Certificate
- ☐ **Chairman of the Board of Directors -** I am the Chairman of the Board of Directors of the corporation submitting this Certificate.
- ☐ **Director** – I am a Director of the credit union or loan company submitting this Certificate.

Name

Address 1

Address 2

City | State | Zip

Country

SIGNATURE – *see Instructions C003i:*

By typing or entering my name and checking the box marked "I accept" below, I acknowledge *under penalty of law* that this document together with any attachments is submitted in compliance with Arizona law.

☐ I ACCEPT

Signature

Printed Name | Date

REQUIRED – check only one:

- ☐ **Incorporator -** I am an incorporator of the corporation submitting this Certificate.
- ☐ **Officer -** I am an officer of the corporation submitting this Certificate
- ☐ **Chairman of the Board of Directors -** I am the Chairman of the Board of Directors of the corporation submitting this Certificate.
- ☐ **Director** – I am a Director of the credit union or loan company submitting this Certificate.

Expedited or Same Day/Next Day services are available for an additional fee – see Instructions or Cover sheet for prices.

Filing Fee: None All fees are nonrefundable - see Instructions.	Mail: Arizona Corporation Commission - Examination Section 1300 W. Washington St., Phoenix, Arizona 85007 Fax (for Regular or Expedite Service ONLY): 602-542-4100 Fax (for Same Day/Next Day Service ONLY): 602-542-0900

Please be advised that A.C.C. forms reflect only the **minimum** provisions required by statute. You should seek private legal counsel for those matters that may pertain to the individual needs of your business. All documents filed with the Arizona Corporation Commission are **public record** and are open for public inspection. If you have questions after reading the Instructions, please call 602-542-3026 or (within Arizona only) 800-345-5819.

Exhibit B

Result Detail

Back

File ID: 9303039

Name: Arizona Women of Action

Business Address:
3104 East Camelback Road
Suite 1179
Phoenix, Arizona
85016

Mailing Address:
3104 East Camelback Road
Suite 1179
Phoenix, Arizona
85016

Nature of Business: Social welfare activities

Date of First Use: November 10, 2021

Date Registered: October 12, 2022

Expiration Date: October 12, 2027

Applicants:

USA Women of Action	Arizona Corporation

Registration Information:

Registration Received:	October 12, 2022	Expires:	October 12, 2027

Correspondence History:

Trade Name Application:	Filed:	October 12, 2022	

Back

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION

Jane Doe, *et al.*,

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

[Proposed] Order

Having considered the Parent Representatives' Motion to Intervene, **IT IS HEREBY ORDERED** that the motion is **GRANTED**.

IT IS FURTHER ORDERED that the Parent Representatives are directed to file a clean copy of their Motion to Dismiss.

DATED this ____ day of _____, 20_____ .

_____

Honorable Jennifer G. Zipps
United States District Judge