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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**  
13 **TUCSON DIVISION**

14 Jane Doe, by her next friend and parents  
15 Helen Doe and James Doe; and Megan Roe,  
16 by her next friend and parents, Kate Roe and  
17 Robert Roe,

18 Plaintiffs,

19 v.

20 Thomas C. Horne in his official capacity as  
21 State Superintendent of Public Instruction;  
22 Laura Toenjes, in her official capacity as  
23 Superintendent of the Kyrene School  
24 District; Kyrene School District; The  
25 Gregory School; and Arizona Interscholastic  
26 Association Inc.,

27 Defendants,

28 Warren Petersen, in his official capacity as  
President of the Arizona State Senate, and  
Ben Toma, in his official capacity as  
Speaker of the Arizona House of  
Representatives,

Intervenor-Defendants.

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

**PLAINTIFFS' MOTION TO STRIKE  
DEFENDANT HORNE'S DEMAND FOR  
JURY TRIAL**

1 Pursuant to Federal Rule of Civil Procedure 39(a)(2), Plaintiffs respectfully  
2 request that the Court strike Defendant Thomas C. Horne’s Demand for a Jury Trial  
3 (Dkt. 56). The parties have met and conferred to attempt to resolve this issue, but  
4 Defendant Horne has declined to withdraw his jury trial demand.

5 None of Plaintiffs’ claims present an issue that is “triable of right by a jury”  
6 pursuant to Rule 38(b) because neither a federal statute nor the Seventh Amendment  
7 authorizes one. First, no federal statute provides the right to a jury trial here. *See City of*  
8 *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 707 (1999) (explaining  
9 that 42 U.S.C. § 1983 “does not itself confer the jury right” and that generally a statute  
10 must provide for a legal remedy beyond just an “action at law” to bestow a right to a jury  
11 trial); *Doe v. Bd. of Regents of Univ. of Nebraska*, No. 4:21CV3049, 2023 WL 2351687,  
12 at \*2 (D. Neb. Mar. 3, 2023) (“[T]he provisions of Title IX do not contain explicit textual  
13 authorization for a jury trial.”); *Alvarado v. Cajun Operating Co.*, 588 F.3d 1261, 1270  
14 (9th Cir. 2009) (where ADA claims seek only equitable relief, “no jury trial is  
15 available”); *see also Israelitt v. Enter. Servs. LLC*, No. 22-1382, 2023 WL 5249614, at \*8  
16 (4th Cir. Aug. 16, 2023) (“the ADA itself provides no right to a jury trial.”); *Lutz v.*  
17 *Glendale Union High Sch.*, 403 F.3d 1061, 1069 (9th Cir. 2005) (as with the ADA, the  
18 Rehabilitation Act does not provide for a right to a jury trial on equitable claims).

19 Second, Plaintiffs’ claims are equitable rather than legal in nature; therefore, the  
20 Seventh Amendment does not apply. *City of Monterey*, 526 U.S. at 719 (citing *Parsons*  
21 *v. Bedford, Breedlove & Robeson*, 28 U.S. 433, 446 (1830)). Plaintiffs seek equitable  
22 relief under 42 U.S.C. § 1983 “to redress the deprivation under color of state law of rights  
23 secured by the Fourteenth Amendment to the United States Constitution and under Title  
24 IX, the ADA, and the Rehabilitation Act.” Compl. ¶ 14. Specifically, Plaintiffs ask the  
25 Court to declare that “the enforcement by Defendants of Ariz. Rev. Stat. § 15-120.02  
26 violates Plaintiffs’ rights” and “[p]reliminarily and permanently enjoin[ ] enforcement or  
27 any threat of enforcement” of Ariz. Rev. Stat. § 15-120.02 as to the Plaintiffs, thus  
28 “requiring Defendants . . . to permit Plaintiffs to try out for and play on the school sports’

1 teams consistent with their gender identity.” Compl. at 20. “It goes without saying that  
2 an injunction is an equitable remedy.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305,  
3 311 (1982). Plaintiffs do not request monetary damages or common law remedies.

4 The Ninth Circuit has affirmed that “no right to a jury exists for equitable claims.”  
5 *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 962 (9th Cir. 2001) (citing *Dollar Sys., Inc. v.*  
6 *Avcar Leasing Sys., Inc.*, 890 F.2d 165, 170 (9th Cir. 1989); *see also* Jury Instructions  
7 Committee of the Ninth Circuit, A MANUAL ON JURY TRIAL PROCEDURES (2013 ed.),  
8 pp. 4–5 (“Generally speaking, when the remedy sought is equitable in nature, there is no  
9 right to a jury trial.”). And the Supreme Court has explicitly noted that where a party  
10 seeks only injunctive relief, “the Seventh Amendment does not apply.” *City of Monterey*,  
11 526 U.S. at 719 (citing *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470  
12 (1987)); *see also Gilman v. Perez*, 2006 WL 2091970, at \*2 (E.D. Cal. July 26, 2006)  
13 (“Generally, parties are not entitled to a jury trial of issues of fact that arise in a  
14 proceeding to obtain an injunction.”).

15 Neither do Plaintiffs’ ancillary requests for a declaratory judgment and an award  
16 of attorneys’ fees entitle Defendant Horne to a jury trial because Plaintiffs’ claims remain  
17 “equitable in nature.” *Hynix Semiconductor Inc. v. Rambus, Inc.*, 527 F. Supp. 2d 1084,  
18 1103 (N.D. Cal. 2007); *see also Hope Med. Enterps., Inc. v. Fagron Compounding*  
19 *Servs.*, 2021 WL 2941546, at \*5 (C.D. Cal. July 12, 2021) (“[B]ecause the nature of each  
20 claim is equitable . . . [Plaintiff’s] request for declaratory judgment does not entitle  
21 defendants to a jury trial.”). That Plaintiffs have simply “add[ed] a claim for a  
22 declaratory judgment to [their] other . . . claims for relief . . . does not create a right to a  
23 jury trial.” *Marseilles Hydro Power, LLC v. Marseilles Land and Water Co.*, 299 F.3d at  
24 643, 649 (7th Cir. 2002).

25 Similarly, a claim for attorneys’ fees “is an equitable claim that does not carry a  
26 Seventh Amendment right to a jury trial.” *Finato v. Fink*, 803 Fed. App’x. 84, 89 (9th  
27 Cir. 2020) (citing *Hale v. U.S. Tr.*, 509 F.3d 1139, 1147 (9th Cir. 2007)). Moreover, it is  
28

1 for the Court to decide how to apportion costs and attorneys' fees, not a jury. *See* Fed. R.  
2 Civ. P. 54(d)(2)(C).

3 **CONCLUSION**

4 For the foregoing reasons, the Court should strike Defendant Horne's demand for  
5 a jury trial.

6 Respectfully submitted this 3rd day of  
7 October, 2023.

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**UNITED STATES DISTRICT COURT  
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TUCSON DIVISION**

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

Plaintiffs,

v.

Thomas C. Horne in his official capacity as  
State Superintendent of Public Instruction;  
Laura Toenjies, in her official capacity as  
Superintendent of the Kyrene School  
District; Kyrene School District; The  
Gregory School; and Arizona Interscholastic  
Association Inc.,

Defendants,

Warren Petersen, in his official capacity as  
President of the Arizona State Senate, and  
Ben Toma, in his official capacity as  
Speaker of the Arizona House of  
Representatives,

Intervenor-Defendants.

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

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION TO STRIKE  
DEFENDANT HORNE'S DEMAND FOR  
JURY TRIAL**

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The Court having considered Plaintiffs’ Motion to Strike Defendant Horne’s Demand for Jury Trial, and good cause appearing,

**IT IS HEREBY ORDERED** that Plaintiffs’ Motion to Strike Defendant Horne’s Demand for Jury Trial is **GRANTED**.