

1 D. John Sauer, Mo. Bar No. 58721\*  
2 Justin D. Smith, Mo. Bar No. 63253\*  
3 James Otis Law Group, LLC  
4 13321 North Outer Forty Road, Suite 300  
5 St. Louis, Missouri 63017  
6 Telephone: (314) 562-0031  
7 John.Sauer@james-otis.com

8 *Attorneys for Intervenor-Defendants President Petersen and Speaker Toma*

9 **IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

10  
11 Jane Doe, *et al.*,

12 Plaintiffs,

13  
14 v.

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

15  
16 Thomas C. Horne, in his official capacity  
17 as State Superintendent of Public  
18 Instruction, *et al.*,

**Intervenor-Defendants President  
Petersen's and Speaker Toma's  
Opposition to Plaintiffs' Motion for a  
Protective Order**

19  
20 Defendants.  
21

22 Plaintiffs demand a double standard in which they can depose high-ranking  
23 government officials who intervened (despite relevance and privilege barriers), but those  
24 officials cannot depose them, the individuals who initiated this lawsuit (and who lack  
25 relevance and privilege objections). This Court should treat these deposition requests  
26 consistently. If the Court denies the Plaintiffs' motion to compel the Legislative Leaders'  
27 depositions, the Plaintiffs will not be deposed. And if the Court orders the depositions of  
28 the Legislative Leaders, Plaintiffs must be deposed as well.

**FACTUAL BACKGROUND**

1  
2 Plaintiffs Jane Doe and Megan Roe filed this action. Doc. 1. Doe raised allegations  
3 relating to medical treatment (*id.* at ¶ 51), interactions with teammates and coaches (*id.* at  
4 ¶ 47), and playing on different sports teams (*id.* at ¶¶ 52-53, 55). Roe raised similar  
5 allegations. *See id.* at ¶¶ 60-62, 65-67.

6 Doe and Roe also signed declarations containing factual assertions. Docs. 6, 8. The  
7 mothers of Doe and Roe submitted separate declarations. Docs. 7, 9. Plaintiffs’ Motion  
8 for Preliminary Injunction repeatedly cited the declarations of Doe and Roe. *See* Doc. 3,  
9 pp. 4-6.

10 Both Doe and Roe also filed a claim alleging discrimination under the Americans  
11 with Disability Act and Section 504 of the Rehabilitation Act. Doc. 1, Count III. As part  
12 of this claim, Doe and Roe alleged they had a disability “based on their gender dysphoria,  
13 which results from physical impairments.” *Id.* at ¶ 84. When asked in an interrogatory to  
14 identify all major life activities they claim their gender dysphoria substantially limits, Doe  
15 and Roe provided identical answers: “gender dysphoria substantially limits her from caring  
16 for herself, eating, sleeping, learning, reading, concentrating, thinking, and  
17 communicating, as well as the major bodily functions of neurological and brain  
18 functioning.” Smith Decl., Ex. 1, at 11.

19 In their initial disclosures, Plaintiffs identified Doe and Roe as witnesses likely to  
20 have discoverable information. Doc. 198-1, Ex. E, at 2. According to Plaintiffs, Doe and  
21 Roe possess discoverable information, including “[t]hat she is a girl who is transgender  
22 and has gender dysphoria; that she wishes to compete in and experience the benefits of  
23 school sports like other girls; that the ban is stigmatizing, isolating, humiliating, and  
24 deprives her of the well-known physical, mental, emotional, and developmental benefits of  
25 sports.” *Id.* The Legislative Leaders, Superintendent Horne, and the AIA also identified  
26 Doe and Roe as individuals likely to have discoverable information. Smith Decl., ¶ 3.

27 The Legislative Leaders asked for Plaintiffs’ depositions only if the depositions of  
28 the Legislative Leaders are ordered. Doc. 196-1, Ex. A, at 4-5 (PDF pp. 9-10).

1 ARGUMENT

2 **I. Support for Depositions of Plaintiffs.**

3 If the Legislative Leaders are deposed, Plaintiffs also should be deposed under the  
4 discovery rules and the facts of this case. Under Rule 26:

5 Parties may obtain discovery regarding any nonprivileged  
6 matter that is relevant to any party’s claim or defense and  
7 proportional to the needs of the case, considering the  
8 importance of the issues at stake in the action, the amount in  
9 controversy, the parties’ relative access to relevant  
10 information, the parties’ resources, the importance of the  
11 discovery in resolving the issues, and whether the burden or  
12 expense of the proposed discovery outweighs its likely  
13 benefit.

14 Fed. R. Civ. P. 26(b)(1).

15 Plaintiffs do not argue that the depositions of Doe and Roe are privileged or not  
16 relevant. *See* Doc. 196. Plaintiffs mention only in passing that the depositions are not  
17 proportional to the needs of this litigation. *Id.* at 2. Plaintiffs do not provide support for  
18 this fleeting statement or argue any of the Rule 26(b)(1) factors to establish that the  
19 depositions are not proportional.

20 The Legislative Leaders should not be deposed for the many well-founded reasons  
21 set forth in their opposition. *See* Doc. 198. But in the event that the Legislative Leaders  
22 are ordered to be deposed, Doe and Roe, too, must be deposed because the basis for their  
23 depositions is far stronger than the basis for the Legislative Leaders’ depositions.

24 1. Parties. Plaintiffs Doe and Roe chose to file this lawsuit. Plaintiffs make the  
25 unsupported assertion that the “filing of this lawsuit . . . does not automatically entitle  
26 Intervenor-Defendants to depose them.” Doc. 196, at 5. But it does. It is well-settled that  
27 a defendant has the right to depose the plaintiff. *Susilo v. Robertson*, No. CV 12-9796,  
28 2013 WL 12151377, at \*1 (C.D. Cal. Aug. 30, 2013) (“Defendants have a right to depose

1 Plaintiff”); *Diaz v. Vigil*, No. 1:03-CV-05108, 2007 WL 427122, at \*1 (E.D. Cal. Feb. 6,  
2 2007) (“Defendant has a right to depose plaintiff”). In contrast, the Legislative Leaders  
3 intervened to defend the constitutionality of a state statute after the attorney general  
4 declined to defend it. *See* Docs. 19, 19-1.

5 2. Privilege. Plaintiffs Doe and Roe do not claim that any privilege bars their  
6 depositions. *See* Doc. 196. In contrast, the Legislative Leaders are protected from  
7 depositions by the legislative privilege. *See* Doc. 198, at 3-12.

8 3. Factual allegations. Plaintiffs Doe and Roe filed a complaint containing  
9 numerous factual allegations about themselves. *See* Doc. 1, ¶¶ 51-53, 55, 60-62, 65-67,  
10 84. Although Plaintiffs contend that the mothers of Doe and Roe “are well-positioned to  
11 answer any questions Intervenor-Defendants may direct toward Megan and Jane,” Doc.  
12 196, at 4, Plaintiffs submitted separate declarations for Doe and Roe and their mothers.  
13 Docs. 6, 8. It thus appears that Plaintiffs believed that Doe and Roe offered relevant factual  
14 information that their mothers could not provide. And in interrogatory responses, Doe and  
15 Roe also have identified alleged substantial limitations on major life activities that can be  
16 explored fully only with them and not their mothers, such as concentrating, thinking, and  
17 major bodily functions of neurological and brain functioning.<sup>1</sup> Smith Decl., Ex. 1, at 11;  
18 *cf. M.M. v. United States*, No. CV 19-631, 2020 WL 4037165, at \*3 (C.D. Cal. June 30,  
19 2020) (“[The minor plaintiff] is the only named plaintiff or percipient witness who can  
20 provide first-hand testimony”). In contrast, the Legislative Leaders have not filed an  
21 answer or made any factual assertions. Doc. 198, at 8.

22 4. Deposition purpose. The Legislative Leaders seek to depose Doe and Roe  
23 about their claims and their factual allegations. Doc. 196-1, Ex. A, at 1 (PDF p. 6). In  
24 contrast, Plaintiffs appear to seek to depose the Legislative Leaders only to “uncover”  
25 legislative motives, which is impermissible. Doc. 198, at 4-5.

---

26  
27 <sup>1</sup> Even Plaintiffs’ Motion for a Protective Order identifies factual information possessed by  
28 Doe and Roe: “Living openly as the girls that they are, including playing on girls’ sports  
teams and receiving essential medical care, has required them to navigate many legal,  
administrative, and medical issues.” Doc. 196, at 4.

1           5.     Witnesses. In their initial disclosures, Doe and Roe identified themselves as  
2 witnesses that possess discoverable information. Doc. 198-1, Ex. E, at 2 (PDF p. 42).  
3 Three other parties identified Doe and Roe as witnesses as well. Smith Decl., ¶ 3.  
4 According to a district court in the Ninth Circuit, “parties should, generally, be allowed to  
5 depose witnesses listed in Initial Disclosures.” *Sawla v. B.E. Aerospace Inc.*, No. 2:16-  
6 CV-04661, 2017 WL 11635761, at \*2 (C.D. Cal. May 3, 2017). In addition, Plaintiffs have  
7 not stated that they will not testify at any trial in this matter. Smith Decl., at ¶ 4. “One of  
8 the purposes in deposing a witness, particularly a party, is to size her up to determine how  
9 she will be perceived by the jury.” *Susilo*, 2013 WL 12151377, at \*1. In contrast, no party  
10 identified the Legislative Leaders as witnesses in initial disclosures, Doc. 198-1, ¶ 13, and  
11 the Legislative Leaders will not testify in this matter. Doc. 191-2, Ex. 7, at 13 (PDF p. 81).

12           6.     Individual Characteristics. Plaintiffs argue that they should not be deposed  
13 because they are minors for whom depositions will be “emotionally harmful.” Doc. 196,  
14 at 1. Plaintiffs’ argument relies on a single court decision, *id.* at 4, but even that decision  
15 recognized that “[i]t is certainly the case that a minor can be deposed and even testify at  
16 trial.” *Najera-Aguirre v. Riverside*, No. CV 18-762, 2019 WL 3249613, at \*4 (C.D. Cal.  
17 Apr. 16, 2019). Unlike here, the issue before the *Najera-Aguirre* court was whether to  
18 permit Defendants to take 27 depositions more than the ten-deposition limit. *Id.* at \*1.  
19 Because the minor plaintiffs were not expected to be trial witnesses and the defendants  
20 failed to show any “need to depose them for any other particular reason,” the court declined  
21 to allow the minor depositions to exceed the ten-deposition limit. *Id.* at \*4.

22           Many courts have rejected arguments like those made by Plaintiffs and allowed  
23 depositions of minors to proceed. *See, e.g., Askew v. City of Plantation*, No. 15-62154-  
24 CIV, 2017 WL 11678312, at \*1–2 (S.D. Fla. Feb. 6, 2017) (citing cases); *Smith v. State*  
25 *Farm Mut. Auto. Ins. Co.*, No. 2:14-CV-79, 2015 WL 13908102, at \*2 (N.D. W. Va. June  
26 29, 2015) (“Other District Courts have not barred a minor from testifying at a deposition  
27 simply because he or she is a minor.”). As one court in the Ninth Circuit explained, “While  
28 the Court is sympathetic that these depositions are emotional for the minors involved, the

1 minors brought the claims in this action and Defendants are entitled to depose them.” *A.G. I*  
2 *v. City of Fresno*, No. 1:16-CV-01914, 2018 WL 2045092, at \*1 (E.D. Cal. Apr. 30, 2018);  
3 *see also M.M. v. United States*, No. CV 19-631, 2020 WL 4037165, at \*3 (C.D. Cal. June  
4 30, 2020).

5 In contrast, the Legislative Leaders are high-ranking government officials who are  
6 protected from deposition by the *Morgan* and apex doctrines. Doc. 198, at 12-15.

7 As these differences demonstrate, Plaintiffs’ objections to the depositions of Doe  
8 and Roe reinforce why Plaintiffs should not be permitted to depose the Legislative Leaders.  
9 But in the event that the Legislative Leaders’ depositions are ordered, the Legislative  
10 Leaders have a right to depose Doe and Roe because they filed this lawsuit, raised factual  
11 allegations in their complaint and declarations, and identified themselves as witnesses.

## 12 **II. No Specific Examples or Evidence for Protective Order.**

13 Plaintiffs’ primary basis for blocking the depositions of Doe and Roe is their claim  
14 that the depositions will cause embarrassment, oppression, or undue burden. Doc. 196, at  
15 3-5. Plaintiffs recognize that they have the burden to show “specific prejudice or harm will  
16 result if no protective order is granted.” *Id.* at 3 (quoting *Phillips ex rel. Ests. of Byrd v.*  
17 *Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002)). In this Circuit, “[b]road  
18 allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not  
19 satisfy the Rule 26(c) test.” *In re Roman Cath. Archbishop of Portland in Oregon*, 661  
20 F.3d 417, 424 (9th Cir. 2011) (quoting *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470,  
21 476 (9th Cir. 1992)).

22 The Ninth Circuit has signaled that affidavits or specific evidence should be  
23 submitted in support of a protective order motion. The Ninth Circuit has approvingly  
24 quoted a federal district court decision “requiring party requesting a protective order to  
25 provide ‘specific demonstrations of fact, supported where possible by affidavits and  
26 concrete examples, rather than broad, conclusory allegations of potential harm.’” *Foltz v.*  
27 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130–31 (9th Cir. 2003) (quoting *Deford*  
28 *v. Schmid Prods. Co.*, 120 F.R.D. 648, 653 (D. Md. 1987)). District courts have rejected

1 protective orders seeking to block minor depositions when they were not properly  
2 supported by evidence. *See Askew v. City of Plantation*, No. 15-62154-CIV, 2017 WL  
3 11678312, at \*2 (S.D. Fla. Feb. 6, 2017) (allowing minor’s deposition “in light of the  
4 absence of any evidence supporting the Plaintiff’s assertion that the child would be  
5 traumatized by being deposed”); *Graham v. City of New York*, No. 08-CV-3518, 2010 WL  
6 3034618, at \*5 (E.D.N.Y. Aug. 3, 2010) (“plaintiff provides no support for his claim that  
7 he would become ‘unnecessarily upset.’ In the absence of any such documentary or other  
8 supporting evidence, the asserted concern that J.G. would be unnecessarily upset by  
9 defendants’ questions is merely speculative.”) (internal citation omitted).

10 Plaintiffs have provided no expert opinion, affidavits, or other evidence that  
11 depositions will cause “significant harm” to Doe and Roe. *See* Doc. 198, at 4. Without  
12 any evidence, Plaintiffs are merely speculating that the depositions will be “emotionally  
13 harmful.” *Id.* at 1. Plaintiffs’ motion for protective order thus fails because it lacks the  
14 “specific examples” and “specific prejudice” required by the Ninth Circuit. *In re Roman*  
15 *Cath. Archbishop of Portland in Oregon*, 661 F.3d at 424; *Phillips*, 307 F.3d at 1210–11.

### 16 **III. The Legislative Leaders Have Preserved Their Privilege.**

17 Plaintiffs fault the Legislative Leaders for “not even seek[ing] to depose Plaintiffs  
18 unless the Court grants Plaintiffs’ motion to compel the depositions of Intervenor-  
19 Defendants.” Doc. 196, at 4 n.4. In Plaintiffs’ view, “[i]f Jane and Megan truly had  
20 information that was necessary to Intervenor-Defendants’ defenses, they would not have  
21 made their request ‘conditional.’” *Id.*

22 Not so. In their motion to compel the depositions of the Legislative Leaders, the  
23 case Plaintiffs believe is “squarely on point” relied heavily on a Third Circuit decision. *See*  
24 *Mi Familia Vota v. Fontes*, No. CV-22-00509, 2023 WL 8183557, at \*2 (D. Ariz. Sept. 14,  
25 2023) (discussing *Powell v. Ridge*, 247 F.3d 520 (3d Cir. 2001)). Plaintiffs also have cited  
26 *Powell*. Doc. 191, at 6. The *Powell* court repeatedly emphasized that the state legislators  
27 in that case were seeking the ability to “take depositions, but not be deposed.” *Powell*, 247  
28 F.3d at 522, 525. The court believed that the legislators were using legislative immunity

1 as both a sword and shield. *Id.* at 525. Another case cited by Plaintiffs reached the same  
2 conclusion. *Singleton v. Merrill*, 576 F. Supp. 3d 931, 940 (N.D. Ala. 2021) (“The  
3 Legislators here have the same sword/shield problem.”).

4 By not deposing Plaintiffs or any other party, the Legislative Leaders have avoided  
5 the sword and shield issue that concerned the courts in *Powell* and *Singleton*. As Plaintiffs  
6 acknowledged in their initial disclosures, Doe and Roe have discoverable information that  
7 is relevant to the claims in this litigation. Though that information could be helpful to  
8 defending this case, the Legislative Leaders value the legislative privilege and the  
9 institutional interests surrounding it slightly more. Thus, the Legislative Leaders have not  
10 deposed Doe and Roe and will not do so if the Legislative Leaders are not deposed.

11 But if the reason for not taking the depositions of Doe and Roe—protecting the  
12 legislative privilege—no longer exists, then the Legislative Leaders seek discovery to  
13 which they are entitled. *See Graham*, 2010 WL 3034618, at \*6 (“the court respectfully  
14 finds that granting plaintiffs a protective order unfairly prevents defendants from mounting  
15 a vigorous defense to the claims against them”).

#### 16 **IV. Plaintiffs’ Proposed Deposition Limitations Should Be Rejected.**

17 In the event Doe and Roe are deposed, Plaintiffs seek to prevent the Legislative  
18 Leaders from deposing them on three topics relating to treatment, medical records, and  
19 misconduct. Doc. 196, at 6-7. Plaintiffs provide no legal authority supporting their request  
20 to substantively narrow the depositions on these topics. *Id.*

21 Courts have rejected protective order requests like Plaintiffs. A district court in the  
22 Ninth Circuit denied a plaintiff’s request to prevent deposition questions about medical  
23 records and mental health. *Hollis v. Bal*, No. 2:13-CV-02145, 2022 WL 1478927, at \*3  
24 (E.D. Cal. Apr. 27, 2022), *report and recommendation adopted*, No. 2:13-CV-02145, 2022  
25 WL 3142372 (E.D. Cal. Aug. 5, 2022). Like in *Hollis*, the Plaintiffs “placed [their] medical  
26 records and mental health at issue,” *id.*, by alleging a disability from gender dysphoria and  
27 issues relating to their diagnosis and “medically-prescribed treatment.” Doc. 1, ¶¶ 32-33,  
28 45-46, 51-52, 55, 57, 67, 84. “Accordingly, [their] medical records and evidence of [their]

1 mental health are relevant and within the scope of discovery, . . .” *Hollis*, 2022 WL  
2 1478927, at \*3; *see also Cooley v. Kasich*, No. 2:04-CV-1156, 2011 WL 13302226, at \*1  
3 (S.D. Ohio Sept. 20, 2011) (denying protective order and allowing deposition inquiry into  
4 an individual’s health condition and related treatment). Another court in this Circuit  
5 rejected the request, like Plaintiffs make here, Doc. 196, at 6, to block deposition questions  
6 that are “inappropriate.” *Mills v. Jones*, No. 1:21-CV-01193, 2022 WL 14751447, at \*1  
7 (E.D. Cal. Oct. 25, 2022) (“Plaintiff fails to meet his burden as established by the Ninth  
8 Circuit in *Phillips*.”).

9 Discovery is permitted on “any nonprivileged matter that is relevant to any party’s  
10 claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).  
11 Plaintiffs do not argue that any of the three topics are privileged or not proportional to the  
12 needs of this case. Doc. 196, at 6-7. Plaintiffs also do not argue that the first two topics  
13 are not relevant. *Id.* at 6.

14 Plaintiffs’ only relevance objection is to the third topic, questions about sexual  
15 abuse, assault, or misconduct. Plaintiffs admit that the Legislative Leaders agreed to the  
16 limitation that Plaintiffs initially hoped to achieve. Doc. 196, at 6-7. Not satisfied,  
17 Plaintiffs now claim, without explanation, that any deposition questions are irrelevant  
18 about “inappropriate actions the minor Plaintiffs may have engaged in, such as in locker  
19 rooms or other areas.” *Id.* at 7. But a governmental interest advanced by the law at issue  
20 is providing safety for women in athletics. Doc. 198-1, Ex. B, at 10 (PDF p. 15). Any  
21 knowledge that Plaintiffs have, for example, of a biological boy injuring a biological girl  
22 during an athletic event or taking any inappropriate action in a sports team’s locker room,  
23 is relevant to the Legislative Leaders’ defense of the law. “Defendants are entitled to seek  
24 relevant information from the minors as named Plaintiffs here, and it is not the Court’s role  
25 to micromanage how Defendants do so by limiting exactly what topics may be discussed  
26 at the depositions of three percipient witnesses.” *Tate v. City of Chicago*, No. 18-C-7439,  
27 2020 WL 5800817, at \*3 (N.D. Ill. Sept. 29, 2020). “As the Court has explained, the  
28 primary goal of this protective order is to limit the emotional strain on the minor Plaintiffs,

1 not provide Plaintiffs a strategic or tactical advantage by limiting Defendants to only those  
2 subjects that Plaintiffs feel are appropriate or helpful to their own case.” *Id.*<sup>2</sup>

3 Because each topic is not privileged, is relevant, and is proportional to the needs of  
4 the case, deposition questioning of Doe and Roe should be permitted without the subject  
5 matter limitations demanded by Plaintiffs.

6 **CONCLUSION**

7 The Court should deny Plaintiffs’ Motion to Compel, which will render Plaintiffs’  
8 Motion for a Protective Order moot. But if it reaches this motion, the Court should deny  
9 Plaintiffs’ Motion for a Protective Order.

10  
11 Dated: March 22, 2024

Respectfully submitted,

JAMES OTIS LAW GROUP, LLC

/s/ Justin D. Smith

D. John Sauer, Mo. Bar No. 58721\*

Justin D. Smith, Mo. Bar No. 63253\*

13321 North Outer Forty Road, Suite 300

St. Louis, Missouri 63017

(816) 678-2103

Justin.Smith@james-otis.com

\* *pro hac vice*

*Attorneys for Intervenor-Defendants*

25 \_\_\_\_\_  
26 <sup>2</sup> Plaintiffs also argue that “[t]here is no evidence or information that minor Plaintiffs have  
27 engaged in any improper conduct whatsoever.” Doc. 196, at 7. But “[d]epositions are  
28 allowed to be exploratory, and a questioning attorney does not have to prove in advance  
that a line of questioning will definitely yield useful answers, just that the questions are  
calculated to do so.” *Brown v. City of Crescent City*, No. 18-CV-07826, 2021 WL 857694,  
at \*2 (N.D. Cal. Mar. 8, 2021).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that, on March 22, 2024, I caused a true and correct copy of the foregoing to be filed by the Court’s electronic filing system, to be served by operation of the Court’s electronic filing system on counsel for all parties who have entered in the case.

/s/ Justin D. Smith

1 D. John Sauer, Mo. Bar No. 58721\*  
2 Justin D. Smith, Mo. Bar No. 63253\*  
3 James Otis Law Group, LLC  
4 13321 North Outer Forty Road, Suite 300  
5 St. Louis, Missouri 63017  
6 Telephone: (314) 562-0031  
7 John.Sauer@james-otis.com

8 *Attorneys for Intervenor-Defendants President Petersen and Speaker Toma*

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 Jane Doe, *et al.*,

12 Plaintiffs,

13  
14 v.

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

15  
16 Thomas C. Horne, in his official capacity  
17 as State Superintendent of Public  
18 Instruction, *et al.*,

**Declaration of Justin D. Smith in  
Opposition to Plaintiffs’ Motion for a  
Protective Order**

19 Defendants.  
20

21 I, Justin D. Smith, declare as follows:

22 1. I am an attorney at the James Otis Law Group, LLC and counsel for  
23 Intervenor-Defendants President Warren Petersen and Speaker Ben Toma (the  
24 “Legislative Leaders”) in the above-captioned matter. I am a member of the bar of the  
25 State of Missouri. I submit this declaration in opposition to Plaintiffs’ Motion for a  
26 Protective Order.

27 2. Attached as Exhibit 1 is a true and correct copy of Plaintiffs’ Responses and  
28

1 Objections to Intervenor-Defendants' First Set of Interrogatories.

2 3. Plaintiffs, the Legislative Leaders, Superintendent Horne, and the AIA  
3 identified Plaintiffs Jane Doe and Megan Roe as individuals like to have discoverable  
4 information. *See also* Doc. 198-1, Ex. E, at 2.

5 4. Plaintiffs have not informed the Legislative Leaders that Doe and Roe will  
6 not testify at any trial in this matter.

7 I declare under penalty of perjury that the foregoing is true and correct to the best  
8 of my knowledge and belief.

9  
10 Dated: March 22, 2024

/s/ Justin D. Smith  
Justin D. Smith

1 Colin Proksel (034133)  
2 OSBORN MALEDON, P.A.  
3 2929 North Central Avenue, 21st Floor  
4 Phoenix, Arizona 85012-2793  
5 State Bar No. 034133  
6 Telephone: (602) 640-9000  
7 Facsimile: (602) 640-9050  
8 Email: cproksel@omlaw.com

9 *Attorney for Plaintiffs*  
10 *Additional counsel listed in signature block*

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' RESPONSES AND  
OBJECTIONS TO INTERVENOR-  
DEFENDANTS' FIRST SET OF  
INTERROGATORIES**

1 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiffs  
2 Jane Doe and Megan Roe, by their undersigned attorneys, hereby respond and object to  
3 Intervenor-Defendants President Warren Peterson and Speaker Ben Toma’s First Set of  
4 Interrogatories (the “Interrogatories”).

5 **GENERAL OBJECTIONS**

6 1. All of the general objections set forth herein apply to and are incorporated  
7 into each of the specific responses to the Interrogatories set forth below and have the  
8 same force and effect as if fully set forth therein, whether or not expressly incorporated  
9 by reference in such specific responses.

10 2. Plaintiffs object to the Interrogatories to the extent they seek production of  
11 nonpublic confidential or personal documents.

12 3. Plaintiffs’ failure to object to a specific Interrogatory on a particular ground  
13 shall not be construed as a waiver of their right to object on any additional ground.  
14 Plaintiffs reserve the right to amend or supplement these responses and objections at any  
15 time and hereby reserve all other objections. Any objection or lack of an objection to any  
16 portion of any Interrogatory is not an admission that Plaintiffs have documents or  
17 information sought in a particular Interrogatory.

18 4. Plaintiffs do not concede the relevance, materiality, or admissibility of any  
19 information sought in the Interrogatories. Plaintiffs’ responses are without waiver or  
20 limitation of their right to object on grounds of relevance, materiality, privilege,  
21 admissibility of evidence for any purpose, or any other ground to the use of any  
22 information or documents provided or referred to in these responses, in discovery or in  
23 any proceeding, or at the trial of this or any other action.

24 5. Plaintiffs’ objections and responses to the Interrogatories do not constitute,  
25 and shall not be interpreted as, Plaintiffs’ agreement with, or admission as to the truth or  
26 accuracy of any legal or factual characterizations or allegations stated or implied in any  
27 of Intervenor-Defendants’ specific Interrogatories.

28

1           6.       Plaintiffs object to the Interrogatories to the extent they purport to impose  
2 conditions, burdens, obligations, or requirements other than, or beyond, those set forth in  
3 the Federal Rules of Civil Procedure and any other applicable rules.

4           7.       Plaintiffs object to the Interrogatories to the extent they purport to call for  
5 disclosure of documents protected by the attorney-client privilege, the attorney  
6 work-product doctrine, or any other applicable privilege or protection from discovery.  
7 Plaintiffs will not produce such information, and any inadvertent disclosure of such  
8 information is not intended and should not be construed to constitute a waiver of any  
9 applicable privilege or protection from discovery.

10          8.       Plaintiffs object to the Interrogatories on the ground that they seek  
11 information that is neither relevant to any party's claims or defenses nor reasonably  
12 calculated to lead to the discovery of admissible evidence.

13          9.       Plaintiffs object to the Interrogatories on the ground that they seek  
14 information that is not proportional to the needs of the case.

15          10.       Plaintiffs object to the Interrogatories on the ground that they are  
16 overbroad, unduly burdensome, vague, and ambiguous.

17          11.       Plaintiffs object to the Interrogatories to the extent they are cumulative or  
18 duplicative. Where an identification or piece of information is responsive to more than  
19 one request, Plaintiffs will provide such information only once.

20          12.       Plaintiffs object to the Interrogatories to the extent they are cumulative or  
21 duplicative of requests for the production of documents or information that Intervenor-  
22 Defendants may serve on non-parties.

23          13.       Plaintiffs object to the Interrogatories to the extent they purport to require  
24 Plaintiffs to search for "any" and "all" information. Consistent with their obligations  
25 under Federal Rules of Civil Procedure 26 and 33, and subject to their objections,  
26 Plaintiffs will provide responsive, non-privileged information to the extent it exists and  
27 can be identified after a reasonable search of the documents in their possession, custody,  
28 or control.

1           14. Plaintiffs object to the Interrogatories to the extent they call for the  
2 production of documents that are (i) not in the custody, possession, or control of  
3 Plaintiffs, (ii) already in Intervenor-Defendants’ custody, possession, or control, or (iii)  
4 available to Intervenor-Defendants from public sources.

5                           **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

6           1. Plaintiffs object to the definition of “Communication” to the extent that it  
7 refers to anything not in documentary form. Plaintiffs further object to the definition of  
8 “Communication” to the extent that it includes communications stored on mobile devices,  
9 pursuant to the Order Regarding Discovery of Electronically Stored Information. *See*  
10 Dkt. 148.

11           2. Plaintiffs object to the definition of “Document” to the extent that it  
12 includes communications stored on mobile devices, pursuant to the Order Regarding  
13 Discovery of Electronically Stored Information. *See* Dkt. 148.

14           3. Plaintiffs object to the definition of “Female” and “Biological Female” as  
15 scientifically inaccurate and inconsistent with Plaintiffs’ medical treatment and course of  
16 care.

17           4. Plaintiffs object to the definition of “Identify” to the extent that it requires  
18 Plaintiffs to state a person’s place of employment, position title, last known business  
19 address, and last known business phone number, as overly broad and seeking unnecessary  
20 and irrelevant information.

21           5. Plaintiffs object to the definition of “Male” and “Biological Male” as  
22 scientifically inaccurate and inconsistent with Plaintiffs’ medical treatment and course of  
23 care.

24                           **SPECIFIC OBJECTIONS AND RESPONSES**

25 **INTERROGATORY NO. 1:** Identify all persons involved in answering or assisting in  
26 answering Intervenor-Defendants’ First Set of Interrogatories and Requests for  
27 Production of Documents to you.

28

1 **RESPONSE:** Plaintiffs object to this Interrogatory to the extent it calls for information  
2 protected by the attorney-client privilege or the attorney work-product doctrine.  
3 Plaintiffs object to the definition of “Identify” to the extent that it requires Plaintiffs to  
4 state a person’s place of employment, position title, last known business address, and last  
5 known business phone number, as overly broad and seeking unnecessary and irrelevant  
6 information.

7 Subject to and without waiving her General and Specific Objections, Plaintiff Doe  
8 states that the following persons were involved in answering or assisting in answering  
9 Intervenor-Defendants’ First Set of Interrogatories and Requests for Production of  
10 Documents:

- 11 • Helen Doe

12 Subject to and without waiving her General and Specific Objections, Plaintiff Roe  
13 states the following persons were involved in answering or assisting in answering  
14 Intervenor-Defendants’ First Set of Interrogatories and Requests for Production of  
15 Documents:

- 16 • Kate Roe
- 17 • Robert Roe

18 **INTERROGATORY NO. 2:** Identify all medical professionals you have consulted with  
19 and/or received treatment from in relation to gender dysphoria.

20 **RESPONSE:** Plaintiffs object to the phrase “consulted with” as vague and ambiguous.  
21 Plaintiffs object to this Interrogatory because it seeks information regarding the “medical  
22 professionals you have consulted with,” because medical professionals who Plaintiffs  
23 have merely consulted with but who Plaintiffs have not received treatment from are not  
24 relevant to any cause of action or defense of any party in this action nor proportional to  
25 the needs of this case. Plaintiffs object to this Interrogatory as overly broad and unduly  
26 burdensome because it seeks information about “all medical professionals.” Plaintiffs  
27 object to this Interrogatory as overly broad and unduly burdensome because it lacks a  
28 temporal scope.

1 Subject to and without waiving her General and Specific Objections, Plaintiff Doe  
2 states that she received treatment from the following medical professionals in relation to  
3 her gender dysphoria:

- 4 • Dr. Delphis C. Richardson, Pediatrician, Phoenix Children’s Pediatrics
- 5 • Dr. Darcey M. Winterland, Pediatrician, Phoenix Children’s Pediatrics
- 6 • Dr. Mark S. Molitor, Pediatric Surgeon, Phoenix Children’s Pediatrics
- 7 • Dr. Veenod L. Chulani, Section Chief, Adolescent Medicine, Phoenix Children’s  
8 Hospital
- 9 • Dr. Rochelle T.L. Wilson, Pediatric Endocrinologist, Phoenix Children’s Hospital
- 10 • Tally Iskovitz, LPC, Sunnyside Therapy, PLLC

11 Subject to and without waiving her General and Specific Objections, Plaintiff Roe  
12 states that she received treatment from the following medical professionals in relation to  
13 her gender dysphoria:

- 14 • Dr. Eve Shapiro, Orange Grove Pediatrics
- 15 • Dr. Tracey Kurtzman, Pediatrics and Adolescent Medicine, El Rio Community  
16 Health Center
- 17 • Dr. Lili Jordan, Obstetrics & Gynecology Specialist, El Rio OB/GYN Associates
- 18 • Dr. Richard Muszynski, Ph.D.

19 Plaintiffs reserve the right to supplement these responses as discovery progresses.

20 **INTERROGATORY NO. 3:** Identify any and all medications, medical devices, and/or  
21 agents you have received, taken, or otherwise consumed to treat your gender dysphoria  
22 along with the dates you have received, taken, or otherwise consumed the medications,  
23 medical devices, and/or agents.

24 **RESPONSE:** Plaintiffs object to this Interrogatory as overly broad and unduly  
25 burdensome to the extent it seeks information about “all medications, medical devices,  
26 and/or agents” that Plaintiffs have “received, taken, or otherwise consumed to treat [their]  
27 gender dysphoria.” Plaintiffs object to this Interrogatory as overly broad and unduly  
28 burdensome because it lacks a temporal scope. Plaintiffs object to this Interrogatory as

1 unduly burdensome and not proportional to the needs of the case to the extent it seeks the  
2 date of each instance in which Plaintiffs have taken medication. Plaintiffs object to this  
3 Interrogatory as vague and ambiguous, including as to the phrase “treat your gender  
4 dysphoria.”

5 Subject to and without waiving her General and Specific Objections, Plaintiff Doe  
6 states that she received, took, or otherwise consumed the following medications, medical  
7 devices, and/or agents to treat her gender dysphoria on approximately the following  
8 dates:

- 9 • August 23, 2023–Present: Histrelin 50 mg (65mcg/day) implant.

10 Subject to and without waiving her General and Specific Objections, Plaintiff Roe  
11 states that she received, took, or otherwise consumed the following medications, medical  
12 devices, and/or agents to treat her gender dysphoria on approximately the following  
13 dates:

- 14 • October 25, 2019–November 18, 2020: Eligard 22.5 mg subcutaneous syringe  
15 every three months;
- 16 • September 2, 2020–August 19, 2021: Estradiol .5 mg tablet daily;
- 17 • February 11, 2021: Vantas 50mg Implant;
- 18 • August 20, 2021–February 7, 2022: Estradiol 1mg tablet daily;
- 19 • February 8, 2022–August 4, 2022: Estradiol 1mg tablet twice daily;
- 20 • May 1, 2022–May 31, 2023: Progesterone (Prometrium) 100mg capsule daily;
- 21 • August 5, 2022–Present: Estradiol 2mg tablet twice daily.

22 **INTERROGATORY NO. 4:** Describe your athletic history, including but not limited to  
23 all teams you have participated on, the year(s) of participation, the sports played by each  
24 team, and whether each team is/was a “boys” team, a “girls” team, or a “co-ed” team.

25 **RESPONSE:** Plaintiffs object to this Interrogatory as overly broad and unduly  
26 burdensome and not proportional to the needs of the case because it lacks a temporal  
27 scope and therefore encompasses Plaintiffs’ entire lives. Plaintiffs object to this  
28 Interrogatory as overly broad and unduly burdensome to the extent it asks for information

1 outside the context of formal sports teams and encompasses anything athletic that  
2 Plaintiffs have done in their entire lives. Plaintiffs object to the phrase “athletic history”  
3 as vague and ambiguous.

4 Subject to and without waiving her General and Specific Objections, Plaintiff Doe  
5 states that she participated on the following sports teams from 2019 to the present:

- 6 • 2019:
  - 7 ○ American Youth Soccer Organization, Recreational Girls’ Soccer Team.
- 8 • 2020:
  - 9 ○ USA Track & Field (“USATF”), The Phoenix Flyers, Club Team. Practiced
  - 10 co-ed, competed in the girls’ category.
  - 11 ○ Brazas Soccer Club, Club Girls’ Soccer Team and Recreational Co-ed
  - 12 Soccer Team.
  - 13 ○ The Dobson Dolphins, Recreational Swim Team. Practiced co-ed,
  - 14 competed in the girls’ category.
- 15 • 2021:
  - 16 ○ Brazas Soccer Club, Club Girls’ Soccer Team.
  - 17 ○ The Dobson Dolphins, Recreational Swim Team. Practiced co-ed,
  - 18 competed in the girls’ category.
  - 19 ○ USATF, The Phoenix Flyers, Club Team. Practiced co-ed, competed in the
  - 20 girls’ category.
- 21 • 2022:
  - 22 ○ Brazas Soccer Club, Club Girls’ Soccer Team.
  - 23 ○ The Dobson Dolphins, Recreational Swim Team. Practiced co-ed,
  - 24 competed in the girls’ category.
- 25 • 2023:
  - 26 ○ Brazas Soccer Club, Club Girls’ Soccer Team.
  - 27 ○ Schneider Futsal Club, Co-ed and Girls’ Teams.
  - 28



1 intramural athletic team or sport that is sponsored by an Arizona public school or a  
2 private school whose students or teams compete against a public school?

3 **RESPONSE:** Plaintiffs object to the phrase “male-identifying biological male” as vague  
4 and scientifically inaccurate and interpret the phrase to mean “non-transgender male.”  
5 Plaintiffs object to this Interrogatory because it seeks information that is not relevant to  
6 any claim or defense in this action nor proportional to the needs of the case given the as-  
7 applied nature of Plaintiffs’ claims in this litigation. Plaintiffs object to this Interrogatory  
8 because it calls for a legal opinion.

9 Therefore, Plaintiffs will not respond to this Interrogatory.

10 **INTERROGATORY NO. 7:** Do you contend that the Save Women’s Sports Act (S.B.  
11 1165) prevents female-identifying biological males from competing on an interscholastic  
12 or intramural athletic team or sport that is sponsored by an Arizona public school or a  
13 private school whose students or teams compete against a public school?

14 **RESPONSE:** Plaintiffs object to the phrase “female-identifying biological male” as  
15 vague and scientifically inaccurate and interpret the phrase to mean “transgender female.”  
16 Plaintiffs object to this Interrogatory because it seeks information that is not relevant to  
17 any claim or defense in this action nor proportional to the needs of the case given the as-  
18 applied nature of Plaintiffs’ claims in this litigation. Plaintiffs object to this Interrogatory  
19 because it calls for a legal opinion.

20 Therefore, Plaintiffs will not respond to this Interrogatory.

21 **INTERROGATORY NO. 8:** Identify any and all physical impairments you claim your  
22 gender dysphoria results from.

23 **RESPONSE:** Subject to and without waiving her General Objections, Plaintiff Doe  
24 states that her gender dysphoria results from an atypical interaction of sex hormones with  
25 the developing brain.

26 Subject to and without waiving her General Objections, Plaintiff Roe states that her  
27 gender dysphoria results from an atypical interaction of sex hormones with the  
28 developing brain.

1 Plaintiffs reserve the right to supplement these responses as discovery progresses.

2 **INTERROGATORY NO. 9:** Identify any and all major life activities you claim your  
3 gender dysphoria substantially limits.

4 **RESPONSE:** Subject to and without waiving her General Objections, Plaintiff Doe  
5 states that without her medical treatment her gender dysphoria substantially limits her  
6 from caring for herself, eating, sleeping, learning, reading, concentrating, thinking, and  
7 communicating, as well as the major bodily functions of neurological and brain  
8 functioning.

9 Subject to and without waiving her General Objections, Plaintiff Roe states that without  
10 her medical treatment her gender dysphoria substantially limits her from caring for  
11 herself, eating, sleeping, learning, reading, concentrating, thinking, and communicating,  
12 as well as the major bodily functions of neurological and brain functioning.

13 Plaintiffs reserve the right to supplement these responses as discovery progresses.

14 **INTERROGATORY NO. 10:** Identify any and all communications about this litigation  
15 or the Save Women’s Sports Act (S.B. 1165).

16 **RESPONSE:** Plaintiffs object to this Interrogatory as overly broad and burdensome  
17 because it lacks a temporal scope. Plaintiffs object to this Interrogatory as overly broad  
18 and unduly burdensome because it asks Plaintiffs to identify “any and all  
19 communications” about this litigation or the Save Women’s Sports Act and Plaintiffs  
20 have already agreed to produce those communications in response to Request for  
21 Production No. 4. Plaintiffs object to this Interrogatory to the extent it seeks information  
22 protected by the attorney-client privilege, the attorney work-product doctrine, spousal  
23 privilege and/or marital communications privilege, clergy-penitent privilege, or any other  
24 applicable privilege or protection. Plaintiffs object to this Interrogatory because it seeks  
25 the identification of communications that are not relevant to any cause of action or  
26 defense of any party in this action nor proportional to the needs of this case.

27 Therefore, Plaintiffs will not respond to this Interrogatory.  
28

1 Dated: Phoenix, Arizona

2 December 13, 2023

3  
4 s/Colin M. Proksel  
5 Colin M. Proksel (034133)  
6 OSBORN MALEDON, P.A.  
7 2929 North Central Avenue, 21st Floor  
8 Phoenix, Arizona 85012-2793  
9 Telephone: (602) 640-9000  
10 Facsimile: (602) 640-9050  
11 Email: cproksel@omlaw.com

12 Jyotin Hamid\*  
13 Justin R. Rassi\*  
14 Amy C. Zimmerman\*  
15 DEBEVOISE & PLIMPTON LLP  
16 66 Hudson Boulevard  
17 New York, New York 10001  
18 Telephone: (212) 909-6000  
19 Facsimile: (212) 909-6836  
20 Email: jhamid@debevoise.com  
21 Email: jrassi@debevoise.com  
22 Email: azimmerman@debevoise.com

23 Amy Whelan\*  
24 Rachel Berg\*  
25 NATIONAL CENTER FOR LESBIAN RIGHTS  
26 870 Market Street, Suite 370  
27 San Francisco, California 94102  
28 Telephone: (415) 343-7679  
Facsimile: (415) 392-8442  
Email: awhelan@nclrights.org  
Email: rberg@nclrights.org

\*Admitted pro hac vice.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2023, I served the foregoing document via electronic mail to the following recipients:

Dennis I. Wilenchik  
McKay Worthington  
WILENCHIK & BARTNESS, PC  
diw@wb-law.com  
mckayw@wb-law.com

-and-

Maria Syms  
Arizona Department of Education  
Maria.Syms@azed.gov  
*Attorneys for Defendant Thomas C. Horne*

David C. Potts  
Ashley E. Caballero-Daltrey  
JONES, SKELTON & HOCHULI, P.L.C.  
dpotts@jshfirm.com  
adaltrey@jshfirm.com

-and-

Lisa Anne Smith  
DECONCINI MCDONALD YETWIN & LACY, P.C.  
lasmith@dmyl.com  
*Attorneys for Defendant The Gregory School*

Kristian E. Nelson  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
kristian.nelson@lewisbrisbois.com  
*Attorneys for Defendant Arizona Interscholastic Association, Inc.*

Jordan T. Ellel  
TEMPE TRI-DISTRICT LEGAL SERVICES  
jellel@tuhsd.k12.az.us  
*Counsel for Defendants Toenjes and Kyrene School District*

D. John Sauer  
Justin D. Smith  
JAMES OTIS LAW GROUP, LLC  
John.Sauer@james-otis.com  
Justin.Smith@james-otis.com  
*Attorneys for Intervenor-Defendants  
President Petersen and Speaker Toma*

s/Rebecca Aniol

**VERIFICATION**

I, Helen Doe, hereby state as follows:

1. I am a Plaintiff in and parent of Jane Doe who is a Plaintiff in *Doe, et al., v. Horne, et al.*, No 4:23-cv-00185-JGZ (D. Ariz.).

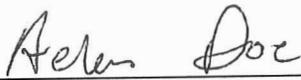
2. I have reviewed Plaintiffs' Responses and Objections to Intervenor-Defendant's First Sets of Interrogatories (the "Responses and Objections").

3. The Responses and Objections were prepared by counsel for Plaintiffs.

4. To the best of my knowledge, information, and belief, the information contained in the Responses and Objections as they pertain to me and/or my child are accurate.

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct, to the best of my knowledge, information, and belief.

Dated this 12 day of December, 2023.

  
\_\_\_\_\_  
Helen Doe  
*On behalf of herself and Jane Doe*

**VERIFICATION**

I, Kate Roe, hereby state as follows:

1. I am a Plaintiff in and parent of Megan Roe who is a Plaintiff in *Doe, et al., v. Horne, et al.*, No 4:23-cv-00185-JGZ (D. Ariz.).

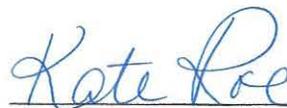
2. I have reviewed Plaintiffs' Responses and Objections to Intervenor-Defendant's First Sets of Interrogatories (the "Responses and Objections").

3. The Responses and Objections were prepared by counsel for Plaintiffs.

4. To the best of my knowledge, information, and belief, the information contained in the Responses and Objections as they pertain to me and/or my child are accurate.

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct, to the best of my knowledge, information, and belief.

Dated this 11<sup>th</sup> day of December, 2023.

  
\_\_\_\_\_  
Kate Roe  
On behalf of herself and Megan Roe