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Attorneys for Proposed Intervenors

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

LINDSAY HECOX, and JANE DOE with her next friends JEAN DOE and JOHN DOE,

Plaintiffs,

v.

BRADLEY LITTLE, in his official capacity as Governor of the State of Idaho; SHERRI YBARRA, in her official capacity as the Superintendent of Public Instruction of the State of Idaho and as a member of the Idaho State Board of Education; THE INDIVIDUAL MEMBERS OF THE STATE BOARD OF EDUCATION, in their official capacities; BOISE STATE UNIVERSITY; MARLENE TROMP, in her official capacity as President of Boise State University;

Case No. 1:20-cv-00184-DCN

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1; COBY DENNIS, in his official capacity as superintendent of the Independent School District of Boise City #1; THE INDIVIDUAL MEMBERS OF THE BOARD OF TRUSTEES OF THE INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1, in their official capacities; THE INDIVIDUAL MEMBERS OF THE IDAHO CODE COMMISSION, in their official capacities,

Defendants.

INTRODUCTION

On April 15, 2020, Plaintiffs filed in this Court a lawsuit raising claims under 42 U.S.C. § 1983, challenging the lawfulness of Idaho's recently enacted H.B. 500, the Fairness in Women's Sport Act. ECF No. 1. Plaintiffs named as defendants several state officials and government entities. Having learned of the lawsuit and discerned its potential to affect interests personal to them, movants now petition this Court, under Federal Rule of Civil Procedure 24, to authorize their intervention as parties to advocate for those interests and in defense of the law Plaintiffs challenge.

FACTS

Proposed intervenors Madison (Madi) Kenyon and Mary (MK) Marshall are Idaho female athletes for whom sports is a passion and life-defining pursuit. *See* Kenyon Decl. (Ex. A), Marshall Decl. (Ex. B), *passim*. Since early childhood each has pursued what has been to them the delight of athletic training and competition. Kenyon Decl. ¶3; Marshall Decl. ¶3. For Madi, athletics is a family activity, bond, and tradition. Kenyon Decl. ¶3. Madi and MK now run track and cross-country on scholarship at Idaho State University in Pocatello. Kenyon Decl. ¶6; Marshall Decl. ¶7. These young women are committed to the integrity of female athletic

competition as such, earnestly support Idaho's Fairness in Women's Sport Act (H.B. 500), and are distressed by Plaintiffs' request for relief in this lawsuit. Kenyon Decl. ¶¶19-28; Marshall Decl. ¶¶16-20. They wish to have their personal concerns fully set forth and represented in this case in which Plaintiffs aim to establish a legal mandate that would leave them, and other female athletes, defenseless to male participation in their sports competitions.

Madi and MK both have experience facing male participation in their sport. They were incredulous and appalled to discover last year that University of Montana male athlete June (formerly Jonathan) Eastwood[1] was authorized to compete in women's cross-country and track events. Kenyon Decl. ¶8; Marshall Decl. ¶10. Both Madi and MK had the deflating experiences of running against and losing to Eastwood and being knocked down a placement level because of his participation. Kenyon Decl. ¶¶12, 14, 15; Marshall Decl. ¶11. They found the experience of losing to a male runner categorically different than losing to a female. Kenyon Decl. ¶¶12, 14, 16; Marshall Decl. ¶12.

Female defeat by a male athlete is uniquely demoralizing due to the elemental inequity involved in being subjected to the match-up in the first place. Male intrusion represents the elimination from female sport of the relationship of effort to success that makes the draw of sport and competitive striving what it is. Kenyon Decl. ¶20. As long-time athletes, the proposed intervenors are well familiar with the difference in strength and speed potential between comparably gifted and trained male and female athletes. Kenyon Decl. ¶¶9, 22; Marshall Decl. ¶¶10, 12, 13. Putting male athletes up against females is simply not fair and changes the nature and dynamics of sport for young women.

[1] *June Eastwood*, Save Women's Sports, https://savewomenssports.com/june-eastwood (last visited May 22, 2020).

Further disturbing to these young women is the message that a sex-defying sports policy sends. The official ratification of male participation in female races symbolically refutes or discredits the meaningfulness of female bodies as *female*. It thus powerfully serves as an unsettling and unwelcome statement about these young women's own identity. As Madi put it, "when sports authorities or the law permit males to compete under the name of female, it sends a disturbing message about who we are as women. I don't agree with what this says about myself and my fellow female competitors." Kenyon Decl. ¶24.

Madi and MK face losses to male athletes in their competitions and stand opposed to any legally sanctioned interference with the opportunities that they have enjoyed as female competitors, and that would deprive them and other young women of viable avenues of competitive enjoyment and success within a context that acknowledges and honors them as females. Kenyon Decl. ¶¶20, 23-27, 29; Marshall Decl. ¶¶17-20.

ARGUMENT

Federal Rule of Civil Procedure 24 authorizes both intervention as of right and permissive intervention. The Ninth Circuit has repeatedly expressed its strong preference for liberal evaluation of intervention standards to favor its authorization. "[T]he requirements for intervention are broadly interpreted in favor of intervention," *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004), precisely because a "liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1496 n.8 (9th Cir. 1995) (internal citation omitted) (abrogated by further broadening of intervention under a specific statute in *Wilderness Soc'y v. U.S. Forest Serv*., 630 F.3d 1173 (9th Cir.

2011)).[2] As set forth below, proposed intervenors' application satisfies the standards for intervention by right, as well as permissive intervention.

I. Proposed intervenor female athletes are entitled to intervene as of right.

Given the Ninth Circuit's liberal policy in favor of intervention, a court must broadly construe the following four criteria when evaluating a request to intervene by right under Fed. R. Civ. P. 24(a)(2): (1) the application must be timely; (2) the applicant must have a significant protectable interest in the action; (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. *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006). Courts "are guided primarily by practical and equitable considerations" in assessing these criteria. *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998).

A. The intervention motion is timely filed.

The Ninth Circuit gauges timeliness of filing a motion to intervene by considering "three factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997) (internal quotation marks and citations omitted). The Ninth Circuit found a motion filed four months after the filing of a lawsuit to be filed at "a very early stage." *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995). That court also deemed a motion timely when filed "less than three months after the

[2] *See also Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) ("In general, we construe Rule 24(a) liberally in favor of potential intervenors."); *id.* at 822 ("We follow the guidance of Rule 24 advisory committee notes that state that '[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.'"); *accord Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897-98 (9th Cir. 2011).

complaint was filed and less than two weeks after [Defendant] filed its answer to the complaint." *Citizens for Balanced Use v. Mont. Wilderness Ass'n,* 647 F.3d 893, 897 (9th Cir. 2011).

Here, proposed intervenors have filed their motion less than six weeks after the filing date of the complaint, and less than four weeks after the filing of Plaintiffs' motion for preliminary injunction. The Defendants have yet to file an answer to the Complaint or a response to Plaintiffs' motion. There has been no delay in proposed intervenors' moving for intervention, and as a result no prejudice to the parties. *See Smith v. L.A. Unified Sch. Dist*., 830 F.3d 843, 857 (9th Cir. 2016) (holding that "the only 'prejudice' that is relevant under this factor is that which flows from [the] prospective intervenor's" delay after discovering the potential inadequacy of representation, "and not from the fact that including another party in the case might make resolution more 'difficult[]'") (citing *United States v. Oregon*, 745 F.2d 550, 552-53 (9th Cir. 1984)). These female athletes' motion complies with the timeliness requirement.

B. Proposed intervenors have a significantly protectable interest in the subject matter of this action.

A proposed intervenor will be found to have a "significant protectable interest in an action if (1) it asserts an interest that is protected under some law, and (2) there is a relationship between its legally protected interest and the plaintiff's claims." *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (quoting *Donnelly*, 159 F.3d at 409). "Whether an applicant for intervention demonstrates sufficient interest in an action is a practical, threshold inquiry. No specific legal or equitable interest need be established." *Berg*, 268 F.3d at 818 (citation omitted). Granting intervention is particularly appropriate where "the injunctive relief sought by the plaintiffs will have direct, immediate, and harmful effects upon [the proposed intervenor's] legally protectable interests." *Id*.

Madi and MK are competitive athletes with a direct and experiential interest in the operation of Idaho's Fairness in Women's Sports Act. They wish to have and maintain female-only competitions and a competitive environment shielded from physiologically advantaged male participants to whom they stand to lose.

The Plaintiffs, on the other hand, seek to enjoin and have declared unlawful the very policy that protects proposed intervenors' interests as female athletes. Put simply, the relief the Plaintiffs seek in this case would eliminate the regulatory standards the intervenor athletes deem necessary to sustain fairness in their sport. Because that outcome would have "direct, immediate, and harmful effects upon" movants, the significant protectable interest factor is satisfied. *Berg*, 268 F.3d at 818 (citation omitted).

C. The ability of these female athletes to protect their interest may be impaired.

The "significantly protectable interest" requirement is closely linked with the third requirement for intervention of right: that the outcome of the challenge may impair the proposed intervenors' interest. Indeed, once such an interest obtains, a court should have "little difficulty concluding that the disposition of th[e] case may, as a practical matter, affect" the proposed intervenors. *Citizens for Balanced Use*, 647 F.3d at 898 (citation omitted). The question of impaired ability "is a practical one, and the rule is satisfied whenever disposition of the action would put the applicant at a practical disadvantage in protecting its interest. . . . Generally, if the applicant would be substantially affected in a practical sense by the determination of an action, he should be allowed to intervene." *Ctr. for Biological Diversity v. Kelly*, No. 1:13-CV-00427, 2014 WL 3445733 (D. Idaho 2014) at *5. In *Kelly*, this Court found a significantly protectable interest in a circumstance when a general interest "may be impaired" by the lawsuit, and the

movants face the potential to "lose the opportunity to make the Court aware of the specific extent of the impact the rule abrogation will have on their respective interests." *Id*. at *6.

The distinct possibility of impairment of the movant young women's interests is present here. If the Plaintiffs prevail, Madi and MK would be stripped of the protections of legislation tailored to their vital concerns. And if they are not permitted to intervene, they "will have no legal means to challenge [any] injunction" that might be granted by this Court. *Forest Conservation Council*, 66 F.3d at 1498; *see also Lockyer*, 450 F.3d at 443 (finding impairment where proposed intervenors would have "no alternative forum . . . [to] . . . contest [the] interpretation" of a law that was "struck down" or had its "sweep substantially narrowed"); *United States v. Oregon*, 839 F.2d 635, 638-39 (9th Cir. 1988) (court recognizing the "*stare decisis* effect" impeding relief in later litigation, and the "practical limitations on the ability of intervention applicants to protect interests in the subject of litigation after court-ordered equitable remedies are in place").

Under such circumstances, movants satisfy the impairment factor.

D. No existing parties to the action adequately represent proposed intervenors' interests.

As Madi and MK's unique interest in the continuing operation of the challenged statute is not adequately represented by the Defendants, their application complies as well with the fourth and final factor of the intervention criteria.

Proposed intervenors need only show that representation of their interests "'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). *See also Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (same). A proposed intervenor "should be treated as the best judge of whether the existing parties adequately represent his or her interests, and . . . any doubt regarding

adequacy of representation should be resolved in [movant's] favor." 6 Moore's Federal Practice § 24.03[4][a] (3d ed. 1997); *see also In Def. of Animals v. U.S. Dept. of the Interior*, No. 2-10-cv-1852, 2011 WL 1085991 (E.D. Cal. Mar. 21, 2011) (same); Wright & Miller, 7C *Fed. Pract. & Proc. Civ.* § 1909 (3d ed.) ("Since [Rule 24(a)] is satisfied if there is serious possibility that the representation may be inadequate, all reasonable doubts should be resolved in favor of allowing [intervention] so that [the absentee] may be heard in his own behalf.").

There are three factors for evaluating 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.

Arakaki, 324 F.3d at 1086 (citation omitted, emphasis added).

1. Defendants will not "undoubtedly" make all intervenor athletes' arguments.

At this early stage (in which none of the defendants has presented a substantive filing), the available evidence of their posture toward the issues to be litigated in this case is unsurprisingly limited. For this reason, it is not the proposed intervenors' responsibility

> to anticipate specific differences in trial strategy. It is sufficient for Applicants to show that, because of the difference in interests, it is likely that Defendants will not advance the same arguments as Applicants. Resolution of this case will decidedly affect Applicants' legally protectable interests and "there is sufficient doubt about the adequacy of representation to warrant intervention."

Berg, 268 F.3d at 824 (*quoting Trbovich*, 404 U.S. at 538). Proposed intervenors readily make this showing.

Plaintiffs have sued a number of government officials and entities. Courts have stated that in the ordinary course there is "an assumption of adequacy when the government is acting on behalf of a constituency that it represents, which must be rebutted with a compelling showing."

Citizens for Balanced Use, 647 F.3d at 898 (cleaned up). But that "assumption" is either inapplicable or incoherent here for several reasons.

First, Plaintiffs have named multiple agencies and voices of the Idaho government that represent multiple constituencies including constituencies with views and interests more aligned with Plaintiffs than proposed intervenors. Merely reciting the government's abstract obligation to "act on behalf of a constituency" fails to address or explain how adequacy of representation is actually carried out when the constituents themselves are divided variously on the policy being challenged. Government cannot simultaneously affirm incompatible or otherwise diverging positions (thus revealing "representation" for all such variants to be impossible), nor can government reasonably be assumed to adequately represent absentee parties with singular interests not uniformly shared across the community. "Inadequate representation is most likely to be found when the applicant asserts a personal interest that does not belong to the general public." 3B Moore's Federal Practice, ¶ 24.07[4] at 24–78 (2d ed. 1995). Thus the "general public interest" cannot be considered equivalent to the specific interest of the intervenors in this litigation.

Next, even assuming Defendants would join the proposed intervenors in seeking to vindicate the statute that Plaintiffs challenge, the various named defendants "represent[] … the *public* interest," which is not "identical to the *individual* parochial interest" of the movant female athletes in the instant action. *Citizens for Balanced Use*, 647 F.3d at 899 (cleaned up, emphasis added). The personal distress and other negative effects suffered by female athletes from the inequity of authorized male competition against females is not felt by institutional administrators. It is borne by the young women who are subjected to that unfair competition environment, and who will suffer the losses. *Cf. In Def. of Animals*, 2011 WL 1085991 at *3

("As the Safari Club points out, the federal defendants do not participate in hunting or recreational activities in or near the Twin Peaks HMA, but its members do. The Safari Club consequently have specific interests in this regard that may not be shared by the [government]."). It is young women athletes—not the general public or the state—who will either enjoy or be denied fair competition and a level playing field. *Forest Conservation Council*, 66 F.3d at 1499 (citing *Mille Lacs Band of Chippewa Indians v. Minn.*, 989 F.2d 994, 1000–01 (8th Cir.1993)) (finding that, because the "local and individual interests" were not shared by the general state citizenry, the State would not adequately represent those interests).

Finally, the government officials and agencies named as defendants have their own partisan outlook on matters of policy. *Cf. id.* (citing *Conservation Law Found. v. Mosbacher*, 966 F.2d 39, 44-45 (1st Cir. 1992) ("The Secretary's judgments are necessarily constrained by *his view* of the public welfare.") (emphasis added)). None of Defendants have revealed that they share proposed intervenors' particular commitments on the personal and legal significance of the sex binary and of the propriety of regulating athletics in terms of it rather than by principles of subjective gender identity (as preferred by Plaintiffs and others in Defendants' constituencies). And as set out below, evidence of government antagonism to proposed intervenors' points of view on the contested issues in this case reinforce these female athletes' doubts that Defendants will make all of their arguments.

a. *Boise State University*

Defendant Boise State has created a "Gender Equity Center" which includes in its aims the advancing of the interests of persons identifying as transgender. *Gender Equity Center Launches New Inclusivity Program*, Boise State University (July 25, 2019), https://www.boisestate.edu/saem/2019/07/25/gender-equity-center-launches-new-inclusivity-

program/. The Gender Equity Center registers among its goals the resistance to "cissexism," which appears to refer to the traditional understanding of human identity in terms of immutable sex, rather than individually asserted identifications. The university's office of Student Diversity and Inclusion announced its apology to "folx in the trans and non-binary community" for harms the diversity office allegedly perpetuated, and announced it will "re-commit to our students from the trans and non-binary population, especially during this time when they have been subject to messages of dehumanization from beyond our campus." *Student Diversity and Inclusion,* Boise State University, https://www.boisestate.edu/sdi/ (last visited May 20, 2020).

Boise State has adopted a policy entitled "Crafting Inclusive Classrooms" that encourages such practices as pronoun innovation (repurposing pronouns for use according to individual selection rather than objective description) and "challenging cissexism" in curriculum and classroom communication. Jasper Varley, et al., *Crafting Inclusive Classrooms*, Boise State University Gender Equity Center (May 2020), https://www.boisestate.edu/genderequity/files/2020/04/crafting-inclusive-classrooms.pdf. The university also publishes online a language guide in which it urges persons to avoid words identifying the sex of persons that may imply an identity description. Office of Communications and Marketing, *Inclusive Excellence Communication Guide,* Boise State University, https://www.boisestate.edu/communicationsandmarketing/communications/inclusive-excellence-communication-guide/ (last visited May 22, 2020). Accordingly, words such as "male" and "female" are discouraged until other persons' authorization to use them is obtained; "they/their/them" are encouraged for use as if they were singular pronouns, in order to accomplish gender neutrality in reference; the speech guide encourages students to say "different gender" rather than "opposite sex"; and so forth.

By contrast, the proposed intervenors intend to argue, present scientific evidence, and cite legal authority to defend the proposition that the male/female binary of reproductive sex is an objective fact, a legally legitimate category, and a reasonable and proper basis for the division of athletic competition.

Both the communication guidance material and the "Crafting Inclusive Classrooms" policy promote the article "3 Examples of Everyday Cissexism" and provide its weblink (Sian Ferguson, *3 Examples of Everyday Cissexism*, everyday feminism (March 21, 2014), https://everydayfeminism.com/2014/03/everyday-cissexism/). This promoted article instructs, among other things, that a person with a penis who identifies as a woman "*is* a woman"; that it is harmful "to assume that only women have vaginas"; that critiques the idea of there being a "woman's reproductive system" and a "man's reproductive system"; and encourages readers to "remember that many men can fall pregnant, and they might need abortions." *Id*.

Boise State's policies and public advocacy on human sexuality do not invite the conclusion that it "will undoubtedly make all of proposed intervenors' arguments." *Arakaki*, 324 F.3d at 1086.

b. *The Idaho Attorney General*

The potential for collision between the governments' interest and advocacy and that of uniquely situated individuals (like proposed intervenors) is also illustrated by an executive branch critique of a draft version of H.B. 500, the Fairness in Women's Sport Act. This critique is contained in a February 25, 2020 letter from the Idaho Attorney General to Representative Ilana Rubel.[3]

[3] *See* Plaintiffs' Complaint ¶83 and footnote 14 (ECF No. 1 at 29).

The letter sets forth analyses not compatible with the intervenor athletes' interests and arguments in defense of the Act. Indeed, the letter casts doubt on the very category and significance of sex on which the Fairness in Women's Sport Act is predicated.

For instance, the Attorney General's equal protection analysis distinguishes between transgender and non-transgender persons, though the legislation does no such thing, nor has reason to do so. The Attorney General further opined that while "men" likely could be lawfully excluded from participating in women's sports, *id.* at 3-4, he expressed doubt that "transgender females" may be so excluded—as if that were a different question, and as if persons whom H.B. 500 identifies as men actually are not men. The Attorney General proposed that the Ninth Circuit's decision in *Clark v. Arizona Interscholastic Association*, 695 F.2d 1126 (9th Cir. 1982), demonstrates only the propriety of excluding "men" from women's sport competitions, not "transgender females"—whom the Attorney General designated as "other women." (February 25, 2020 letter, at 4.) This frame of analysis stands opposed to intervenor female athletes' interests and legal position, and conflicts with the categories of the Act they seek to defend.

Proposed intervenors are likewise concerned with and dispute several other standards the Attorney General proffered in his analysis of H.B. 500. They dispute the letter's "meaningful opportunity" test (*id.* at 4), its "substantial extent" test (*id.*), and its "absolute necessity" test (*id.* at 5), believing none to be expressions of the governing law, and knowing all to be contrary to their own arguments and interests.

The Idaho executive legal office's assessment of now-enacted portions of the Fairness in Women's Sport Act is not just different from, but at points antithetical to, the intervenor female athletes' legal position and personal concerns. "Where government has already offered a limiting construction of the challenged statute . . . and proposed intervenors do not wish to concede a

potentially meritorious reading of the statute, this is not merely a difference in litigation strategy, but goes to heart of the statute." *California ex rel. Lockyer*, 450 F.3d at 445. The Ninth Circuit describes such a circumstance between proposed intervenors and the parties as one "irreconcilably in conflict." *Id.*

Defendants are not obliged to repeat or follow in this litigation the analysis in the February 25 letter. But the fact that officials on behalf of the State of Idaho presented that analysis illustrates how government perspectives and efforts are not presumptively representative of private concerns. The February 25, 2020 letter amply justifies the proposed intervenors' fear that it "may be" that Defendants will not adequately represent their interests, *Trbovich*, 404 U.S. at 538 n.10, and that it is not "undoubtedly" true that they will present all of these female athletes' arguments. *Arakaki*, 324 F.3d at 1086.

2. It is not certain that Defendants will make proposed intervenors' arguments.

The second point of intervention evaluation is similar to the first: whether the named defendants are "capable and willing to make" the proposed intervenors' arguments. *Arakaki*, 324 F.3d at 1086. For reasons set forth in the preceding sections, at this early stage of the case there exists doubt that Defendants will offer those arguments. Defendants' outlooks, institutional commitments, and constituent diplomacy may forbid them to register the full range of arguments that these young women deem essential and would themselves put forth.

3. Proposed intervenor female athletes would offer necessary elements to these proceedings that other parties would neglect.

"Applicants would likely offer important elements to the proceedings that the existing parties would likely neglect." *Berg*, 268 F.3d at 823. The brunt of the loss of the statute's protections would be suffered by the female athletes themselves. The harm to Madi and MK

from unfair competition and losses to male athletes is unique and personal, and in the nature of the case cannot be felt by institutions, be they aligned in policy concern with these young women or not. *See Ctr. for Biological Diversity*, 2014 WL 3445733 at *7 ("The impact of any revision to the rule will be suffered by intervenors, not the [government]. The Court therefore considers intervenors to have made the necessary showing."). The inequity of male athletic participation in their competitions touches the female participants, and their own perspective, experience, and argument is a necessary feature when the issues in contest land so personally with them.

Further, proposed intervenors as young women are alarmed at the wider threat that Plaintiffs' arguments and demands pose to the very category of "female" as defined by biology in law, and thus to the coherence and efficacy of Title IX and other laws that seek to protect the rights of women. For example, on Plaintiffs' argument, Hecox, though a person of the male sex, must be admitted to female competitions because he asserts a "female" gender identity. But another athlete of the male sex would be *excluded* from those same female competitions because he asserts a "male" gender identity. Thus do Plaintiffs attack *sex-separation* in sports in order to replace it with a regime of *gender identity discrimination* in sports. And discrimination it surely is, for there is neither logic nor state interest to justify the inclusion or exclusion of an athlete from competitions based on what he asserts about his "internal, innate sense" of identity. *See* Complaint, ¶95, ECF No. 1 at 33.

Sports are physical contests. The justification for Idaho's Fairness in Women's Sport Act is that it establishes equitable competition by accounting for the objectively identifiable differences between male and female physiology, and the marked performance differentials resulting from those differences. Proposed intervenors intend to establish these scientific facts thoroughly through expert testimony. In contrast to these physical realities, and as just noted,

self-perceptions like gender identity present no reason to exclude athletes from competitions. Plaintiffs, then, aim to replace a coherent system with an incoherent one; a rational system with an ideological and discriminatory one.

Similarly, Plaintiffs' equal protection claim is not a vindication, but a repudiation, of the category of sex that receives special solicitude under equal protection jurisprudence. Plaintiffs' Title IX argument also gets things backward: The introduction of male athletes into female competitions violates female athletes' rights under Title IX's mandate that they receive equal treatment and competitive opportunities that accommodate their different abilities as women. And Plaintiffs' equivocal use of words and categories that are universally used to mark sex, to instead mark categories of mind used to *deny* sex, is a legally fraught practice meriting critical scrutiny. Proposed intervenors' deep concern to preserve their prerogatives as female athletes is bound up with their concern for the survival in law of *female* as a truthful, objective, and historically recognizable category.

Proposed intervenors' personal experiences and interests equip them to contribute necessary details and nuance likely to be passed over by Defendants who are differently situated and motivated.

4. Intervention of right is proper.

In this early stage of the case, proposed intervenors can state nothing with certainty about the strategy and categories of interest in Defendants' representation. But the caselaw does not require such certainty. It requires only what the available evidence reveals: an adequate basis to conclude that the named defendants may not adequately represent their interests. While Defendants may share a general goal of defending the Act, the interests of these female athletes and the government defendants are distinct. It is, in short, proper to conclude that the existing

defendants will not "advance the same arguments as" will Madi and MK, and will not "simply [] confirm" these young women's interests in this action. *Berg*, 268 F.3d at 823-24. The guidance of the Supreme Court and the Ninth Circuit on this factor compels a conclusion that these proposed intervenors have met their burden to establish merely possible inadequacy in Defendants' representation of their unique interests.

II. In the alternative, movant female athletes should be granted permissive intervention.

In addition to satisfying the requirements for intervention as of right, proposed intervenors qualify for permissive intervention. Federal Rule of Civil Procedure 24(b)(1) provides that "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." In making this determination a court must also consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

As discussed above, proposed intervenors' motion is timely filed and their participation will cause no undue delay or prejudice to the original parties. They have tendered a responsive pleading (Ex. C) and their participation not only presents no impediment to efficient litigation by the parties, it constitutes a vital addition for a full airing of the issues in contest in the case. The young women's legal position "shares with the main action a common question of law or fact," Fed. R. Civ. P. 24(b)(1), as their interests situate and compel them to defend the propriety of the statute that Plaintiffs challenge in their Complaint. Finally, these female athletes, unlike Defendants, have a personal, experiential perspective to share. And they can present that perspective and associated plain arguments unhindered by the muting restraint and caution attending Defendants' navigation of conflicting institutional and constituency concerns. As intervenors, they would provide this Court with a perspective otherwise out of view, thereby

aiding in the disposition of the case. *See Ctr. for Biological Diversity*, 2014 WL 3445733 at *7 (court finding the "unique perspectives" of the intervenors would aid the Court in reaching an equitable resolution). Accordingly, movants' application satisfies the conditions for permissive intervention.

CONCLUSION

For the foregoing reasons, Madi and MK qualify for intervention in this case, both permissively and as of right, and respectfully request this Court to issue an order authorizing them to intervene as parties.

Respectfully submitted this 26th day of May, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing:

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Attorneys for Proposed Intervenors

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

LINDSAY HECOX, and JANE DOE with her next friends JEAN DOE and JOHN DOE,

Plaintiffs,

v.

BRADLEY LITTLE, in his official capacity as Governor of the State of Idaho; SHERRI YBARRA, in her official capacity as the Superintendent of Public Instruction of the State of Idaho and as a member of the Idaho State Board of Education; THE INDIVIDUAL MEMBERS OF THE STATE BOARD OF EDUCATION, in their official capacities; BOISE STATE UNIVERSITY; MARLENE TROMP, in her official capacity as President of Boise State University;

Case No. 1:20-cv-00184-DCN

MOTION TO INTERVENE

INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1; COBY DENNIS, in his official capacity as superintendent of the Independent School District of Boise City #1; THE INDIVIDUAL MEMBERS OF THE BOARD OF TRUSTEES OF THE INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1, in their official capacities; THE INDIVIDUAL MEMBERS OF THE IDAHO CODE COMMISSION, in their official capacities,

Defendants.

Pursuant to Federal Rule of Civil Procedure 24(a) and (b), Madison Kenyon and Mary Marshall hereby move this Court to authorize their intervention as parties in this case. In conformity with Local Rule 7(b)(1), a memorandum of law accompanies this motion.

As set forth in the accompanying memorandum, proposed intervenors satisfy the requirements for intervention as of right under Rule 24(a). Their motion is timely, they have a significantly protectable interest in the subject matter of this case, the outcome of this case may impair their interests, and their interests may not be adequately represented by the named parties.

Proposed intervenors also satisfy the criteria for permissive intervention under Rule 24(b). Their filing is timely, their participation will cause no undue delay or prejudice to the original parties, and their legal position "shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1).

Respectfully submitted this 26th day of May, 2020.

By: */s/ Bruce D. Skaug*

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EXHIBIT A

Declaration of Madison Kenyon

In Support of Intervention

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

LINDSAY HECOX, and JANE DOE with her next friends JEAN DOE and JOHN DOE,

Plaintiffs,

v.

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Defendants.

Case No. 1:20-cv-00184-DCN

DECLARATION OF MADISON KENYON IN SUPPORT OF INTERVENTION

I, Madison Kenyon, declare as follows:

1. I am a nineteen-year-old resident of Johnstown, Colorado.

2. I am a rising sophomore and female athlete at Idaho State University in Pocatello, Idaho, where I compete in women's cross-country and track competitions. Running is my passion.

Athletics Background

3. Athletics has been my world from a very young age. Both of my parents were high school athletes and my mom even competed at the collegiate level, so my first encounter with sports was at a young age. At three years old I kicked my first soccer ball which lead to 15 years of competition on various school and club soccer teams.

4. Through soccer, I learned that I love to compete and play sports. In 6th grade, I introduced myself to cross-country where I fell in love with running, and I have not stopped competing since. That love of running caused me to join the track team my freshman year of high school.

5. Running is my happy place. I love being able to push my body to its limits, to explore the great outdoors on foot, and to do it all with a sense of camaraderie and fun with my teammates who are not only my closest friends but are my family.

Competing in Women's Collegiate Athletics

6. I decided to attend college at Idaho State University (ISU) because it is a big university nestled in a small town with lots of opportunity for both outdoor activity and track competition. The track scholarship I received has not only helped finance my athletic career, but to finance my dream of becoming a doctor someday. I am currently pursuing a degree in biomedicine.

7. As an ISU freshman in the 2019-2020 academic year, I made the cross-country team and competed in the 4k (2.49-mile), 3-mile, 5k (3.12-mile), and 6k (3.73-mile) events.

8. Going into the fall 2019 cross-country season, I was informed that I would be competing against a male who identifies as female on the University of Montana cross-country

team. At first, I was incredulous at the idea that any biological male would be permitted to compete in the women's category.

9. I did some research concerning this student—June Eastwood—a biological male who competed on the UM male cross-country team for three years before identifying as June and competing in the women's division. I learned that while competing in the men's division, Eastwood had recorded times in several events faster than the college women's national record.

10. These facts were discouraging, and my heart sank when I began attending cross-country meets and watched Eastwood placing and medaling in the women's cross-country races. I not only watched Eastwood beat other women, Eastwood bested me in competition, too.

11. In cross-country, I competed against Eastwood in these races:

a. 2019 Montana State Cross-Country Classic in the 3-mile event.

b. 2019 Big Sky Cross-Country Championships in the 5k event.

c. 2019 NCAA Division I Mountain Region XC Championships in the 6k event.

12. In all three races, Eastwood beat me by a significant margin and bumped me down to a lower placement than I would have received had I only competed against other women. That may not seem like a big deal to some, but placements matter to athletes. I want to know that I earned my placement fair and square. A one place difference can be the deciding factor on if my team takes second or third, fourth or fifth place, etc. Fair competition pushes me to better myself and try harder; unfair competition leaves me feeling frustrated and defeated.

13. Cross-country athletes like me usually also compete in indoor and outdoor track. So, during the winter 2020 indoor track season, I competed in the 3k (1.86-mile), the mile, and the distance medley relay events.

14. In the indoor track season, again I raced Eastwood. At the 2020 Stacy Dragila Open Women's Indoor Mile, Eastwood took 2nd place and I took 8th. Eighth place is nothing to be ashamed of if won fairly, especially as a freshman competing in a race dominated by juniors and seniors, but the competition is not fair when one of the athletes in the women's category is a male with the strength and speed advantages that come from male physiology.

15. And at the 2020 Indoor Big Sky Championship, I along with three other ISU teammates competed in the distance medley relay against Eastwood's relay team. A distance medley relay is made up of a 1200-meter leg, a 400-meter leg, an 800-meter leg, and a 1600-meter leg. Montana State's relay team was in 6th place before Eastwood began the final 1600-meter leg of the race. During Eastwood's leg, Eastwood advanced the Montana team not one or two, but *four* positions to finish in 2nd place. My team took 5th, though we would have placed 4th if not for Eastwood's participation. We lost not only a placement, but team points as well.

16. Also, at the Big Sky Championship, I watched as one of my teammates lost her bronze medal and spot on the championship podium because Eastwood took first place in my teammate's event, bumping her to fourth place. It was heartbreaking and frustrating to witness.

17. Sadly, the spring 2020 outdoor track season was canceled due to the COVID-19 pandemic, but I was training to compete in the 1500m, steeplechase, 5k, and distance medley relay. I intend to compete in these events next outdoor season.

18. I have four years of NCAA eligibility left. In the near-term, I intend to compete in fall 2020 cross-country, winter 2021 indoor track, and spring 2021 outdoor track competitions.

Fairness in Women's Sports

19. When I first heard that the Idaho legislature was considering H.B. 500, the Fairness in Women's Sports Act, I read the bill for myself to better understand how it would

impact me and my athletic career. I knew from personal experience how it feels to compete against—and lose to—a male athlete in women's sports. And I researched how female athletes in other states and other sports were losing out to males who identify as female. This, to me, looked like an increasing problem. I am convinced that H.B. 500 is necessary to keep fairness in female sports and protect the broader interests of girls and women.

20. I believe that allowing males to enter women's sports defeats an entire aspect of sports: it eliminates the connection between an athlete's effort and her success (which is often the reason athletes love to compete in the first place). Sex separation in sports helps ensure that males and females each enjoy opportunities for fair competition and victory. It helps ensure that if women like me work hard that hard work pays off and we have a shot at winning.

21. I am a biology major. Scientifically, the biological differences between male and female are not matters of personal opinion, or features that can be changed or chosen. I *am* female, not because I chose to be female, or identify as female, but because every nucleated cell in my body is genetically marked female and my entire body developed in alignment with those female markers.

22. But you do not need to be a biology major to understand this, or to understand that males and females are different in essential ways. I'm in this world because I have a mom and a dad. And with respect to sports, I know from everyday experience that males around me are generally bigger, faster, and stronger than the females. The rules of sport implicitly acknowledge this. For example, men's cross-country races are often longer than women's cross-country races.

23. I fear that if we are no longer allowed by law to recognize the objective existence of women, that it will be a huge loss to women's rights. In researching the Fairness in Women's

Sports Act, I also spent some time looking into how Title IX benefited women. From my perspective, it was a big turning point that helped women flourish. After Title IX passed in 1972, historic numbers of women began competing in the Olympics, in the World Cup, and receiving athletic scholarships. I benefit from Title IX's legacy. But putting men in women's sports dials back that progress and threatens to eliminate it.

24. Also, when sports authorities or the law permit males to compete under the name of female, it sends a disturbing message about who we are as women. I don't agree with what this says about myself and my fellow female competitors. Women are unique. But if men can be women, it doesn't really mean anything to be a woman.

25. When male athletes are classified as "women" and allowed to compete in women's sports, we real female athletes lose not only opportunities for success, we also lose the words we need to protest this change in our sports. Those of us who really are females lose our name along with our fair competitions.

26. I strongly support the Fairness in Women's Sport Act. I want my races to be fair and a test of skill and hard work. I do not want to wonder whether I am training countless hours for inevitable losses or a lower race placement, or whether I will miss out on even the opportunity to win because I face physically advantaged male athletes.

27. Sports was the air I breathed growing up, and the air I breath now. I want my future daughters and other young girls to be able to have the same experiences and opportunities that I had. I want my teammates' and my hard work to pay off. I work to be competitive, I do not want to see women's sports fade away as a separate category because males who identify as females are allowed to compete in women's divisions as if they were women. Under the

NCAA's current rules, I fear that we will soon effectively have men's sports and co-ed sports, but no dedicated category for females only.

28. I do not want to see women lose their legal protection and progress under the law because we can no longer identify what a woman is.

29. To my knowledge, Eastwood has graduated. But I have now learned through this lawsuit that another biological male, Lindsay Hecox, wants to compete on the women's team at Boise State University. Idaho State and Boise State occasionally compete at the same invitationals. For example, in the indoor 2020 track season, both universities competed at the UW Invitational in Seattle, Washington on January 31, 2020. Both universities were scheduled to compete at the Long beach Invitational in Long Beach, CA on April 18, 2020 (an event that was cancelled due to the COVID-19 pandemic). So, if the Fairness in Women's Sports Act is not upheld, it is possible that my teammates and I would compete against Hecox at future cross country or track events. And because NCAA rules do not promise female athletes any advance notice if a male is registered to compete on the women's team, it is entirely possible that I and other female runners could face competition from other male athletes in the upcoming season.

30. I believe everyone should be able to compete, but it must be done fairly. It is not fair for women's competitions to be open to biological male athletes. Women's sport itself will lose its meaning, and its specialness, if males can be redefined as females.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Madison Kenyon
Signed May 20, 2020

EXHIBIT B

Declaration of Mary Marshall

In Support of Intervention

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

LINDSAY HECOX, and JANE DOE with her next friends JEAN DOE and JOHN DOE,

Plaintiffs,

v.

BRADLEY LITTLE, in his official capacity as Governor of the State of Idaho; SHERRI YBARRA, in her official capacity as the Superintendent of Public Instruction of the State of Idaho and as a member of the Idaho State Board of Education; THE INDIVIDUAL MEMBERS OF THE STATE BOARD OF EDUCATION, in their official capacities; BOISE STATE UNIVERSITY; MARLENE TROMP, in her official capacity as President of Boise State University; INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1; COBY DENNIS, in his official capacity as superintendent of the Independent School District of Boise City #1; THE INDIVIDUAL MEMBERS OF THE BOARD OF TRUSTEES OF THE INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1, in their official capacities; THE INDIVIDUAL MEMBERS OF THE IDAHO CODE COMMISSION, in their official capacities,

Defendants.

Case No. 1:20-cv-00184-DCN

DECLARATION OF MARY MARSHALL IN SUPPORT OF INTERVENTION

I, Mary Marshall, declare as follows:

1. I am a twenty-year old resident of Twin Falls, Idaho.

2. I am a rising junior and female athlete at Idaho State University in Pocatello, Idaho, where I compete in cross-country and track and field athletic competitions.

Athletics Background

3. I first started playing basketball at seven or eight years old, and I continued through my sophomore year of high school. I enjoyed the competition, the adrenaline rush, and the sheer fun of the game.

4. In 8th grade, I started running track. And in my sophomore year of high school, I also took up cross-country to get in shape for basketball. But to my surprise, I realized that I loved running *more* than playing basketball! So, I kept running cross-country and track, and dropped basketball my junior year.

5. I discovered that I am good at running. In two back-to-back years, my high school medley relay team won the State championship in our division. And in my senior year of high school, I won the State championship in the 800-meter for my division.

6. I love to run. It gives me confidence, improves my mood, and allows me to better myself while also taking in the sights of our beautiful state. But being a competitive female athlete is about more than just running long distances. It is about community. My teammates have become my closest friends. We push each other to be our best, help one another through disappointments and losses, and cheer one another on as we celebrate victories. We travel together for sporting events and share hotel rooms. It's like a sisterhood! We enjoy one another so much that we even spend our free time together. Through running competitively, I have made some of my closest friends.

Competing in Women's Collegiate Athletics

7. I chose to attend college at Idaho State University (ISU) because it is close to home and I really liked my track coaches. I am grateful to be one of the lucky ones to benefit from a women's track scholarship.

8. In college, I am primarily a mid-distance track athlete, focusing on shorter distances like the 800-meter and the mile. But I also compete in cross-country to stay in shape. In cross-country, I generally compete in the 5k.

9. Training is hard work. On Tuesdays and Thursday, I usually have a two-hour workout with my team. On the alternate days, my teammates and I get together for a five-to-six mile run. Additionally, we have an hour-long weightlifting session on Mondays and Wednesdays.

10. But in the fall of my sophomore year of college, I learned that I would be racing against a male who identifies as female, who was competing on the University of Montana women's team. I was appalled. I do not know how anyone could think this is fair to female athletes. Male runners are naturally faster than females.

11. I raced against male athlete June Eastwood not once, but twice. The first was in the Montana State Cross-Country Classic 3-mile event in the fall of 2019. The second was in January 2020 at the Stacy Dragila Indoor mile event. I lost both times.

12. When I lose to another woman, I assume that she must train harder than I do and it drives me to work harder. If I lose to a man, it feels completely different. It's deflating. I wonder whether he has to work as hard as I do, whether he was even trying, or was that an easy race for him. It makes me think that no matter how hard I try, my hard work and effort will not matter.

13. Members of the men's track team sometimes do easy runs with me and my teammates on the women's track team. But we women are under no illusion that we would be competitive in a race against these men. Even our easy runs are at different paces. For example, an easy run for women is usually at an 8:30 pace, while an easy pace for men is around 7:30.

14. I have previously competed against Boise State University's women's track team. I now understand through this litigation that male athlete Lindsay Hecox intends to try out for the Boise State women's track team this fall. Without legal protections for the female category, I fear this will continue.

15. I have three more years of track and cross country NCAA eligibility, and I intend to compete in cross-country during fall 2020, and track during winter and spring 2021. I plan to use all remaining years of my NCAA eligibility.

Fairness in Women's Sports

16. I first heard about Idaho's H.B. 500 Fairness in Women's Sports Act over Christmas break in 2019. I was really excited and wanted it to pass.

17. I have personally seen the negative impact on women when Eastwood was allowed to compete against them, and I fear that if men only need to "identify" as women in order to compete in the women's category, it will have many harmful effects on women's sports, and on women in general. I want to stop this before it becomes popular. I enthusiastically support Idaho's Fairness in Women's Sport Act.

18. I want to preserve the camaraderie and sisterhood that comes from competing with and against females only. I want to see our sports hold on to the real category of girls and women, and to specially protect those who are in that group. Having males in our teams and competitions will change the whole experience and meaning of women's sports.

19. I want other young women to benefit from sports as I did. I did well in high school sports. But if a boy had decided to compete against me in basketball, or track, or cross-country, I am not sure that I would have kept on competing. The hope for success drives effort. If

I knew that I could not win, or would have to compete against boys, I might have dropped out of sports altogether. I'm certain that many female athletes would feel the same.

20. That idea concerns me. Sports have played such an important role in my life. It taught me how to work in groups and as a team. It taught me how to persist through disappointment. It taught me that if I put in the work, I will get the results. It taught me to respect rules and see the importance of them. It has taught me how to interact with people I do not know, and how to respond to those in authority over me. It has given me the confidence to pursue business and economics studies at ISU, to think I can succeed as an entrepreneur and business owner someday, and to make plans to do so. These are the benefits that I want to preserve for the next generation of women. These are the benefits that I think will not be available in the way they were for me if females are demoralized by having their sports altered by opening them to male athletes.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Mary Marshall

Mary Marshall
Signed May 20, 2020

EXHIBIT C

Intervenors' Answer to Verified Complaint

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DISTRICT OF IDAHO

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Plaintiffs,

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Case No. 1:20-cv-00184-DCN

INTERVENORS' ANSWER TO VERIFIED COMPLAINT

SCHOOL DISTRICT OF BOISE CITY #1; COBY DENNIS, in his official capacity as superintendent of the Independent School District of Boise City #1; THE INDIVIDUAL MEMBERS OF THE BOARD OF TRUSTEES OF THE INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1, in their official capacities; THE INDIVIDUAL MEMBERS OF THE IDAHO CODE COMMISSION, in their official capacities,

Defendants.

INTERVENORS' ANSWER TO VERIFIED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 24(c), Intervenor-Defendants respond to the numbered paragraphs in Plaintiffs' Complaint as follows:

1. The allegations in paragraph 1 constitute legal conclusions and general commentary to which no response is required. To the extent a response is deemed necessary, the allegations in paragraph 1 are denied.

2. Allegations in paragraph 2 regarding H.B. 500 constitute legal conclusions and general commentary to which no response is required. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 2 and they are therefore denied.

3. Allegations in paragraph 3 regarding H.B. 500 constitute legal conclusions and general commentary to which no response is required. Intervenors deny that persons of the male sex are women or girls. Intervenors deny the third sentence of paragraph 3. Intervenors deny that "unfounded stereotypes and false scientific claims led to the passage of H.B. 500 and are embodied within" [H.B. 500]" Intervenors lack knowledge or information sufficient to form a belief about the truth of reported issues with the administration of prior rules in Idaho and

therefore this allegation is denied. Intervenor denies the remainder of the allegations this paragraph.

4. Allegations in paragraph 4 regarding H.B. 500 constitute legal conclusions to which no response is required. To the extent a response is deemed necessary, Intervenors deny the allegations in Paragraph 4 in their entirety.

5. Allegations in paragraph 5 regarding H.B. 500 constitute legal conclusions and general commentary to which no response is necessary. To the extent a response is deemed necessary, Intervenors deny the allegations in Paragraph 5 in their entirety.

6. Intervenors deny that Lindsay Hecox is an "adult woman." Intervenors lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegations in paragraph 6 and they are therefore denied.

7. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7 and they are therefore denied.

8. Intervenors admit that Bradley Little is Governor of the State of Idaho. Allegations in paragraph 8 regarding H.B. 500, the Constitution of Idaho, the Idaho Code, and 42 U.S.C. § 1983, constitute legal conclusions to which no response is required. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 8 and they are therefore denied.

9. Intervenors admit that Sherri Ybarra is Superintendent of Public Instruction in Idaho. Allegations in paragraph 9 regarding 42 U.S.C. § 1983 constitute legal conclusions to which no response is required. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 9 and they are therefore denied.

10. Allegations in paragraph 10 regarding H.B. 500, 42 U.S.C. § 1983, and the Idaho Code, constitute legal conclusions to which no response is required. Intervenors admit that Idaho's state educational institutions receive Federal financial assistance. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph10 and they are therefore denied.

11. Intervenors admit allegations in paragraph 11.

12. Intervenors admit that Dr. Marlene Tromp is the President of Boise State University. Allegations in paragraph 12 regarding 42 U.S.C. § 1983 constitute legal conclusions to which no response is required. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 12 and they are therefore denied.

13. Intervenors admit allegations in paragraph 13.

14. Intervenors admit that Coby Dennis is the superintendent of the Boise School District. Allegations in paragraph 14 regarding 42 U.S.C. § 1983 constitute legal conclusions to which no response is required. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 14 and they are therefore denied.

15. Allegations in paragraph 15 regarding 42 U.S.C. § 1983 and the Idaho Code constitute legal conclusions to which no response is required. Intervenors admit that the Boise School District and Boise High School receive Federal financial assistance. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph and they are therefore denied.

16. Allegations in paragraph 16 regarding 42 U.S.C. § 1983 and the Idaho Code constitute legal conclusions to which no response is required. Intervenors lack knowledge or

information sufficient to form a belief about the truth of the remaining allegations in this paragraph and they are therefore denied.

17. Allegations in paragraph 17 constitute legal conclusions to which no response is necessary. To the extent a response is deemed necessary, Intervenors deny the allegations of paragraph 17 in their entirety.

18. Allegations in paragraph 18 constitute legal conclusions to which no response is required. To the extent a response is deemed necessary, Intervenors deny the allegations.

19. Allegations in paragraph 19 constitute legal conclusions to which no response is required. Intervenors admit that a substantial part of the events giving rise to the alleged claims occurred in the District, and that the institutional defendants exist in the District. Intervenors lack knowledge or information sufficient to form a belief about the residence of the individual defendants.

20. Intervenors admit that this Court has authority to enter declaratory judgments and to provide injunctive relief, but deny that such relief is proper in this case.

21. Allegations in paragraph 21 constitute legal conclusions regarding personal jurisdiction to which no response is required. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 21 and they are therefore denied.

22. Intervenors deny that Lindsay Hecox is a woman. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 22 and they are therefore denied.

23. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation implied in paragraph 23 and it is therefore denied.

24. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 and they are therefore denied.

25. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 and they are therefore denied.

26. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 26 and they are therefore denied.

27. Intervenors deny that a person of the male sex is or can become a woman. Intervenors deny that an individual's sex is "assigned at birth," as it is in fact determined at conception. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 27 and they are therefore denied.

28. Intervenors deny that a person of the male sex is or can become a woman. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 28.

29. Intervenors deny that gender dysphoria is a medical condition, and deny that sex is "assigned at birth." Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 29 and they are therefore denied.

30. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 and they are therefore denied.

31. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 and they are therefore denied.

32. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 32 and they are therefore denied.

33. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33 and they are therefore denied.

34. Intervenors admit that collegiate athletes have five potential years to compete under NCAA eligibility rules. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 34 and they are therefore denied.

35. Intervenors deny that a person of the male sex is female. Intervenors deny that the tests for "biological sex" set out in H.B. 500 would bar a female from competing on a female team in Idaho. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 35 and they are therefore denied.

36. Intervenors deny that it is not an option for a male student to participate on a male sports team. Intervenors deny that a person of the male sex is a woman. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 36 and they are therefore denied.

37. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 37 and they are therefore denied.

38. Intervenors deny that H.B. 500 impedes Plaintiff's participation in college athletics, deny that a person of the male sex is a woman, and deny that H.B. 500 would exclude any woman from women's sports competition. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 38 and they are therefore denied.

39. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 and they are therefore denied.

40. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 40 and they are therefore denied.

41. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 41 and they are therefore denied.

42. Intervenors deny that an individual's sex is "assigned at birth." Intervenors lack knowledge or information sufficient to form a belief about the truth of the remainder or the allegations in paragraph 42 and they are therefore denied.

43. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 43 and they are therefore denied.

44. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 44 and they are therefore denied.

45. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 45 and they are therefore denied.

46. Intervenors deny that H.B. 500 has created a system that could be used to bully or harass female athletes. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 46 and they are therefore denied.

47. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47 and they are therefore denied.

48. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48 and they are therefore denied.

49. Intervenors deny that H.B. 500 requires any invasive or uncomfortable tests or any ultrasound test. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegations in paragraph 49 and they are therefore denied.

50. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 50 and they are therefore denied.

51. Intervenors deny that H.B. 500 requires any discredited sex verification practices. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 51 and they are therefore denied.

52. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 52 and they are therefore denied.

53. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 53 and they are therefore denied.

54. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 54 and they are therefore denied.

55. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 55 and they are therefore denied.

56. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 56 and they are therefore denied.

57. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 57 and they are therefore denied.

58. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 58 and they are therefore denied.

59. Intervenors deny that persons of the male sex are women. Intervenors admit that IOC and World Athletics regulations permit men to compete in women's competitions in certain circumstances.

60. Intervenors admit that paragraph 60 accurately quotes from the document it cites

in footnote 7. Intervenors deny the remainder of the allegation in paragraph 60.

61. Intervenors deny that persons of the male sex are women. Intervenors admit that current IOC rules allow men to compete in women's sports competitions upon proof of their testosterone suppression for a year to a level under 10nMol/L—a level multiple times higher than the normal range of testosterone levels for women.

62. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 62 and they are therefore denied.

63. Intervenors deny that persons of the male sex are women. The form of the allegations in paragraph 63 are not sufficiently specific to permit certainty as to its claims and they are therefore denied.

64. Intervenors deny the allegations of paragraph 64.

65. Intervenors deny that H.B. 500 would bar competition in women's sports to any woman, and deny that H.B. 500's standards are restrictive. The form of the allegations in paragraph 65 are not sufficiently specific to permit certainty as to the remainder of its claims, and they are therefore denied.

66. Intervenors admit that in the United States high school athletics are generally governed by state interscholastic associations.

67. Intervenors deny the allegations of paragraph 67.

68. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 68 and they are therefore denied.

69. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 69 and they are therefore denied.

70. Intervenors deny the allegation of paragraph 70.

71. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 71 and they are therefore denied.

72. Intervenors admit that the provision quoted in paragraph 71 does not mention "intersex traits." Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 72 and they are therefore denied.

73. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 73 and they are therefore denied.

74. Intervenors deny that persons of the male sex are women or girls. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegations in paragraph 74 and they are therefore denied.

75. Intervenors deny that persons of the male sex are women. Intervenors admit that the current NCAA policy was adopted in 2011 and has been in effect since that time. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 75 and they are therefore denied.

76. Intervenors deny that there have been "no reported disturbance to women's sports" as a result of competition of males in women's divisions. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 76 and they are therefore denied.

77. Intervenors admit that H.B. 550 was introduced on February 13, 2020 by Rep. Barbara Ehardt. Intervenors deny that H.B. 500 would exclude any women or girls from participation in women's sports.

78. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 78 and they are therefore denied.

79. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 79 and they are therefore denied.

80. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 80 and they are therefore denied.

81. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 81 and they are therefore denied.

82. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 82 and they are therefore denied.

83. Intervenors deny that paragraph 83 accurately characterizes the contents of the referenced letter.

84. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 84 and they are therefore denied.

85. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 85 and they are therefore denied.

86. Intervenors deny that the amended version of H.B. 500 excludes any women or girls from women's sports participation. Intervenors deny that H.B. 500 requires any "invasive testing." Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 86 and they are therefore denied.

87. Intervenors admit that the paragraph accurately reproduces the text of H.B. 500 as signed into law.

88. Intervenors admit that the text of H.B. 500 leaves latitude to the health care provider who undertakes to verify a student's biological sex.

89. Intervenors lack knowledge or information sufficient to form a belief about the

truth of the allegations in paragraph 89 and they are therefore denied.

90. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 90 and they are therefore denied.

91. Intervenors deny that Doriane Lambelet Coleman's work was misleadingly cited in the H.B. 500 legislative findings. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegations in paragraph 91 and they are therefore denied.

92. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 92 and they are therefore denied.

93. Intervenors admit that Governor Little signed H.B. 500 into law and that it becomes effective on July 1, 2020.

94. Paragraph 94 contains legal conclusions to which no response is required. The text of H.B. 500 speaks for itself, as does the content of the court's decision in *F.V. v. Barron*, 286 F. Supp. 3d 1131 (D. Idaho 2018). To the extent a response is deemed necessary, Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 94 and they are therefore denied.

95. Intervenors deny that "gender identity" is a medical term, and otherwise deny that the definition alleged in paragraph 95 constitutes an authoritative or reliable definition of this new and variously used term.

96. Intervenors deny the allegations in paragraph 96.

97. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 97, particularly because one cannot know and accurately describe what "everyone" experiences, and they are therefore denied.

98. Intervenors deny that the term "biological sex" is imprecise. Intervenors further deny that gender identity is a biological attribute, or a feature of sex. Intervenors admit that a person's sex is manifest in several different biological attributes, and admit that in some circumstances when a person suffers from a disorder of sexual development (DSD) anomalous physical attributes can make discernment of sex more difficult. Due to their imprecision, Intervenors deny the remainder of the allegations in this paragraph.

99. Intervenors admit that sex is recognized at birth and customarily recorded on a child's birth certificate in the United States. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 99 and they are therefore denied.

100. Intervenors deny the allegations of paragraph 100.

101. Intervenors deny that the paragraph accurately states the contents of the DSM-V.

102. Intervenors deny that gender dysphoria is a medical condition. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 101 that gender dysphoria causes (rather than coexists with) anxiety, depression, self-harm, and suicidal actions, and therefore denies those allegations.

103. Intervenors admit that suicide rates among those identifying as transgender are far higher than in the popular at large both before and after "social transition" or "gender affirmation." Intervenors deny the remainder of the allegations in paragraph 103.

104. Intervenors admit that the advocacy organization World Professional Association for Transgender Health has published what it identifies as standards of care for treating individuals with gender dysphoria, but deny that they are widely accepted. Intervenors deny that the Endocrine Society has published standards of care for treating individuals with gender

dysphoria. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 104 and they are therefore denied.

105. As the allegations in paragraph 105 are insufficiently specific to permit a certain conclusion about their meaning, Intervenors deny them.

106. Intervenors deny that there are generally accepted standards of care for gender dysphoria. As the remaining allegations in paragraph 106 are insufficiently specific to permit a certain conclusion about their meaning, Intervenors deny them.

107. Intervenors deny the allegations in paragraph 107.

108. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 108 that endogenous puberty causes extreme distress for many adolescents who assert a transgender identity, rather than endogenous puberty being a condition or context in which other troubles cause the distress felt by those adolescents. As a result, Intervenors deny that allegation. Intervenors admit that puberty blocking drugs interfere with endogenous puberty. Intervenors deny the remaining allegations in paragraph 108.

109. Intervenors deny that a person of the male sex is a girl. Intervenors admit that puberty-blocking drugs interfere with endogenous puberty and limit the influence of endogenous hormones on the body. Intervenors lack knowledge or information sufficient to form a belief about the remaining allegations in paragraph 109 and they are therefore denied.

110. Intervenors admit that the overwhelming majority of youth who are treated with puberty blockers go on to take cross-sex hormones. Intervenors deny that cross-sex hormone infusions are medically necessary. Intervenors deny that any person can experience the puberty of the opposite sex by taking cross-sex hormones. Intervenors deny that persons of the male sex are girls, and deny that persons of the female sex are boys. Intervenors admit that it is a standard

regimen for boys who wish to have a more feminine physical appearance to take synthetic estrogen while also administering testosterone-suppressing drugs, and that girls who wish to have a more masculine appearance administer testosterone.

111. Intervenors lack knowledge or information about the protocols to which Plaintiffs allude in paragraph 111 sufficient to form a belief about the truth of that allegation and it is therefore denied. Intervenors deny that "gender-affirming therapy" is medically necessary.

112. Intervenors admit that hormone therapy may change a person's physical appearance and affect certain bodily systems. Because of the imprecision of the allegation and its uncertain import, Intervenors deny the remaining allegations in paragraph 112.

113. Intervenors admit that minors and adults subject themselves to surgeries in hope of approximating the appearances of the opposite sex and to alter hormone production. Intervenors admit that persons who identify as transgender do not need surgical treatment to alleviate their dysphoria. Intervenors deny the remainder of the allegations in paragraph 113.

114. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 114 and they are therefore denied.

115. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 115 and they are therefore denied.

116. Intervenors deny the allegations in paragraph 116.

117. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 117 and they are therefore denied.

118. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 118 and they are therefore denied.

119. Intervenors lack knowledge or information sufficient to form a belief about the

truth of the allegations in paragraph 119 and they are therefore denied.

120. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 120 and they are therefore denied.

121. Intervenors deny that H.B. 500 bars women and girls from participation in athletic activities for women and girls. Intervenors admit that H.B. 500 will preclude males from qualifying to compete in athletic activities for women and girls. Paragraph 121 contains legal conclusions for which no response is required. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 121 and they are therefore denied.

122. Intervenors deny that H.B. 500 bars any women and girls from participation in athletic activities for women and girls. Intervenors deny that H.B. requires any invasive and traumatizing examinations. Paragraph 122 contains legal conclusions for which no response is required. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 122 and they are therefore denied.

123. Paragraph 123 contains legal conclusions for which no response is required. To the extent a response is deemed necessary, Intervenors deny the allegations in paragraph 123.

124. Paragraph 124 contains legal conclusions for which no response is required. To the extent a response is deemed necessary, Intervenors deny the allegations in paragraph 124.

125. Intervenors admit the allegations in paragraph 125.

126. Intervenors deny the allegations of paragraph 126.

127. Intervenors deny that tests mentioned in H.B. 500 are very expensive. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 127 and they are therefore denied.

128. Intervenors deny that H.B. 500 requires disclosure of any private medical information. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 128 and they are therefore denied.

129. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 129 and they are therefore denied.

130. Intervenors deny that H.B. 500 requires the disclosure of results of medical tests to school officials. Intervenors admit that H.B. 500 does not impose confidentiality obligations on medical providers or school officials beyond the extensive confidentiality obligations already imposed by state and federal laws.

131. Intervenors deny the allegations of paragraph 131.

132. Intervenors admit the allegations in paragraph 132.

133. Intervenors admit the allegations of paragraph 133.

134. Intervenors deny that H.B. 500 bars any women or girls from participation in athletic competition or limits the benefit of athletics for any women or girls, or that H.B. 500 will discourage any participation in athletics.

135. Intervenors deny that persons of the male sex are women or girls. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 135 and they are therefore denied.

136. Intervenors deny the allegations of paragraph 136.

137. Intervenors deny that persons of the male sex are girls or women. Intervenors deny the remaining allegations of paragraph 137.

138. Paragraph 138 merely incorporates Plaintiffs' allegations to which Intervenors have already responded, and thus requires no response here.

139. Intervenors admit the allegations in paragraph 139.

140. Intervenors admit that paragraph 140 accurately quotes a portion of the Fourteenth Amendment in paragraph 140. The remainder of paragraph 140 constitutes a legal conclusion as to which no response is required.

141. Paragraph 141 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in paragraph 141.

142. Paragraph 142 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in paragraph 142.

143. Intervenors deny the allegations in paragraph 143.

144. Intervenors deny that H.B. 500 requires "invasive testing." The remainder of paragraph 144 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in paragraph 144.

145. Paragraph 145 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny that persons of the male sex are girls or women. Intervenors deny that high school and collegiate athletic competition in Idaho is organized in terms of gender identity, and so deny that H.B. 500 excludes any students from athletic competition based on their gender identity. Intervenors deny the remaining allegations in paragraph 145.

146. Intervenors deny the allegations in paragraph 146.

147. Intervenors deny the allegations in paragraph 147.

148. Intervenors deny the allegations in paragraph 148.

149. Intervenors deny the allegations in paragraph 149.

150. Intervenors deny the allegations in paragraph 150.

151. Intervenors deny the allegations in paragraph 151.

152. Paragraph 152 merely incorporates Plaintiffs' allegations to which Intervenors have already responded, and thus requires no response here.

153. Intervenors admit the allegations in paragraph 153.

154. Paragraph 154 contains legal conclusions for which no response is required.

155. Paragraph 155 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

156. Paragraph 156 contains legal conclusions for which no response is required. To the extent an additional response is required, Intervenors deny the allegations in this paragraph.

157. Intervenors deny that H.B. 500 requires invasive examinations, and deny that H.B. 500 requires any person to turn over sensitive information to government officials. Paragraph 157 contains legal conclusions for which no response is required. To the extent an additional response is required, Intervenors deny the allegations in this paragraph.

158. Paragraph 158 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

159. Intervenors deny that H.B. 500 requires forced disclosure by any person of information including genetic information or information about genital or reproductive anatomy. The additional allegations of Paragraph 159 comprise legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the

allegations in this paragraph.

160. Paragraph 160 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

161. Intervenors deny that H.B. 500 requires "intrusive and offensive testing" or authorizes disclosure of "sensitive information." The additional allegations of paragraph 161 comprise legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

162. Paragraph 162 merely incorporates Plaintiffs' allegations to which Intervenors have already responded, and thus requires no response here.

163. Intervenors admit the allegations in paragraph 163.

164. Intervenors admit that paragraph 164 accurately quotes from the Fourth Amendment to the United States Constitution in this paragraph.

165. Paragraph 165 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

166. Paragraph 166 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

167. Paragraph 167 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

168. Paragraph 168 contains legal conclusions for which no response is required. To

the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

169. Intervenors deny that H.B. 500 requires disclosure of any private medical information. The additional allegations of paragraph 169 comprise legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

170. Intervenors deny the allegations in paragraph 170.

171. Intervenors deny that H.B. 500 requires disclosure to school officials of information about genetics, hormones, or genitals. The additional allegations of paragraph 171 comprise legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

172. Paragraph 172 merely incorporates Plaintiffs' allegations to which Intervenors have already responded, and thus requires no response here.

173. Intervenors admit the allegations in paragraph 173.

174. Intervenors admit that Plaintiffs have accurately quoted text from 20 U.S.C. § 1681(a) in paragraph 174.

175. Paragraph 175 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

176. Paragraph 176 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors admit the first sentence of paragraph 176, and deny the second sentence including because in some circumstances compliance with Title IX may require the separation of sports teams by sex.

177. Paragraph 177 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

178. Paragraph 178 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph, except admit that the quoted language appears in H.B. 500.

179. Intervenors deny that H.B. 500 acts to exclude any person from participation in sports, and therefore deny the allegations of paragraph 179.

180. Paragraph 180 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors state that they lack knowledge or information sufficient to form a belief about the truth of Defendants barring Plaintiff Hecox from girls and women's athletic teams, and therefore deny that allegation. Intervenors further deny that a person of the male sex is a girl or woman. Intervenors deny the remaining allegations in paragraph 180.

181. Intervenors deny the allegations or paragraph 181.

182. Paragraph 182 merely incorporates Plaintiffs' allegations to which Intervenors have already responded, and thus requires no response here.

183. Intervenors admit the allegations in paragraph 183.

184. Paragraph 184 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

185. Paragraph 185 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this

paragraph.

186. Paragraph 186 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

187. Paragraph 187 contains legal conclusions for which no response is required. To the extent an additional response is deemed necessary, Intervenors deny the allegations in this paragraph.

ANSWER TO PLAINTIFFS' PRAYER FOR RELIEF

Intervenors deny that Plaintiffs are entitled to any relief.

AFFIRMATIVE DEFENSES

1. Plaintiffs lack standing to bring the claims asserted.

2. Plaintiffs fail to state a claim upon which relief can be granted.

3. The relief requested by Plaintiffs would violate Intervenors' rights under Title IX, 20 U.S.C. § 1681, et seq. and its interpreting regulations.

PRAYER FOR RELIEF

WHEREFORE, having answered Plaintiffs' Complaint, Defendants pray that the Complaint be dismissed, with prejudice.

Respectfully submitted this 26th day of May, 2020.

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*Applications for admission *pro hac vice* forthcoming

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